

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E209042

CHARLES P. FRICKS (DEC.D), EMPLOYEE BY BETTY FRICKS, WIDOW	CLAIMANT
OSCEOLA FOODS, INC., EMPLOYER	RESPONDENT NO. 1
LIBERTY MUTUAL INSURANCE COMPANY, CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 21, 2008

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant is not represented by counsel, but appears *pro se*.

Respondent No. 1 represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed September 18, 2007.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations agreed to by the parties are hereby accepted as fact.

3. The claimant has failed to prove, by a preponderance of the evidence, that the decedent's death was directly and causally related to a May 22, 1992, crush injury to the right foot.

4. The claimant has failed to overcome the rebuttable presumption created by Ark. Code Ann. §11-9-527(b) (Repl. 2002).

5. Because the claimant has failed to prove that the decedent's death was causally related to the May 22, 1992, injury, it is unnecessary to address the legal argument concerning liability for any attorney's fees.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

Based on a de novo review of the record, I would reverse the opinion of the Administrative Law Judge and find that the claimant proved by a preponderance of the evidence that her husband's death was causally related to the May 22, 1992, compensable injury. Therefore, I must respectfully dissent from the majority opinion denying the claimant these benefits.

The decedent, Charles P. Fricks, sustained a compensable crush injury to his right foot on May 22, 1992. Thereafter, he developed reflex sympathetic dystrophy and was declared permanently and totally disabled as a result of the work-related injury. At the time of his death, the decedent was being paid permanent total disability benefits from the Death and Permanent Total Disability Trust Fund.

On December 5, 2004, the claimant was found dead in his bed by his wife. An autopsy was not performed. The coroner listed the cause of death as myocardial infarction.

Dr. Christine L. Kasser, Board certified internist, was the deceased's primary treating physician for the last six years of his life. On November 3, 2006, Dr. Kasser wrote a report which stated:

I have followed Mr. Fricks since 1999. He had Reflex Sympathetic Dystrophy, or Complex Regional Pain Syndrome. These are different terms for a particularly severe type of neuropathic pain as diagnosed by Dr. Feler, in the IME (independent medical evaluation), and by myself. This is an extremely severe and difficult pain syndrome to treat. I tried various pharmacotherapies from 1999 until his death. The medications helped to reduce his pain, but he continued to have severe, debilitating pain. His activity level was limited by pain and by nerve damage to his right lower extremity. He also had depression secondary to his injury (pain, nerve damage, and limitations). Mr. Fricks appeared to be motivated and compliant throughout his course of treatment. He did not overtake his medications, and, in fact, he was hesitant and cautious in taking medications.

It is well known that chronic pain, particularly this type of severe pain, affects an individual's general health including central nervous system, endocrine system, etc. Increasingly, chronic pain is being characterized as a disease entity in and of itself, due to

the physiologic consequences. Therefore, his injury, subsequent pain, nerve damage, depression, activity limitations, and general health consequences were his medical diagnoses at the time of death and should be considered to be primary factors contributing to his death. Also, he did not have other known medical conditions; I have not seen documentation of known hypertension, coronary artery disease, or pulmonary disease upon review of available medical records and as documented in the IME. I had previously ordered an arterial Doppler ultrasound (to assess blood (sic) flow to the lower extremities) which was normal. The available laboratory reports did not indicate any other known medical condition. Furthermore, the death certificate did not appear to be specific and did not indicate another cause of death from some other condition.

Therefore, his only medical conditions known at the time of death appear to be those resulting from his injury, and his history indicates that he was in good health and quite active before the injury and complications. (emphasis added.)

On May 23, 2007, Dr. Barry D. Baskin issued a narrative report answering a number of questions posed by respondent No.2, as follows:

1. Based on the medical records, Dr. Christine Kasser's deposition, testimony, and the death certificate, what was the cause of Charles Fricks' death? Based on the information provided, I don't think that an exact cause of death could be determined without an autopsy. It is apparent from Dr. Kasser's deposition that she is uncertain of the cause of Mr. Fricks' death.

2. If you are unable to narrow the cause of death to only one condition, can you state that the claimant's May 22, 1992 crushed right foot injury and consequences there from caused Mr. Fricks (sic) death to the exclusion of all other possible causes of death? No. Mr. Fricks' death could not be attributed to his 1992 crushed right foot injury and the consequences there from to the exclusion of all other possible causes of death. In fact, in my opinion, it is more likely than not that Mr. Fricks died of cardiac or pulmonary related issues. This gentleman had a strong family history of coronary artery disease. He was a heavy smoker, which is a major risk factor for coronary artery disease, and he had interstitial pulmonary fibrosis and chronic obstructive pulmonary disease that can cause oxygen desaturation and lead to increased risk of cardiac related death. Mr. Fricks had been treated for multiple bouts of bronchitis and had in excess of a 60 pack per year smoking history. In my 17 years of medical practice, during

which time I have taken care of well over 100 patients with suspected RSD, I have never had a patient to die from RSD.

3. Do I agree or disagree with Dr. Christine Kasser's state (sic) that, "I cannot say, nor do I believe, anyone can say what the final event was in his death," found at page 16 of her deposition testimony? I agree with that comment.

4. In her deposition, Dr. Kasser opined, "From the available evidence and my knowledge of him and his available records, I would say that injury and the consequences were/would be the best known contributor to his death." Taking into consideration the decedent's medical, social, and family history, do I agree or disagree with this statement? I disagree with Dr. Kasser's statement that his injury and the consequences would be the best known contributor to his death.

5. What is the likelihood that Mr. Fricks died from conditions or causes unknown or undiagnosed prior to his death? In my opinion, having evaluated this gentleman and reviewed his medical records, I think that it is more likely than not that Mr. Fricks died from conditions or causes that are unknown or were undiagnosed prior to his death.

6. Is there any way to show with any degree of certainty whether Mr. Fricks (sic) crushed right foot injury and reflex sympathetic dystrophy actually contributed to his death? No. (emphasis added.)

In her deposition, Dr. Kasser testified that she treated Mr. Fricks from November 17, 1998 until the date of his death. During her treatment, she evaluated him for vascular disease and coronary artery disease and the studies were normal. It was Dr. Kasser's opinion that Mr. Fricks did not suffer from problems which would cause a terminal cardiac event. With respect to the coroner's report and his conclusion that Mr. Fricks died from myocardial infarction, Dr. Kasser testified as follows:

Q. Doctor, for my next question I'd like to have you assume hypothetically that the -- that Mr. Fricks died in his bed --

A. (Interposing.) Yes.

Q. (Continuing.)-- and was discovered by his wife, was never taken to a hospital for treatment, there has never been any autopsy, and the only time that the coroner had an opportunity to see Mr. Fricks was after he was dead and he came

by his home and delivered him to the funeral home.

If that is the case, do you have an opinion as to whether the coroner would be in a position from a medical or any other standpoint to provide an opinion as to cause of death regarding Mr. Fricks having a myocardial infarction?

In my experience when an autopsy is not done and there is a sudden death of this nature, generally on death certificates I have seen the cause of death as cardiopulmonary arrest, which is how essentially everyone ends up dying; and quite often in such cases when a specific cause of death is not known and an autopsy is not done, then often the I assume presumptive diagnosis of myocardial infarction is made. To my knowledge that would simply be a presumptive diagnosis.

And finally, Dr. Kasser reiterated her opinion that, even though the specific final event of his death could not be ascertained because there was no autopsy, the compensable injury and the resulting pain, depression, sleep disturbance, and loss of function was the cause of death.

The weight of the credible medical evidence of record certainly preponderates in favor of a finding that

the compensable injury was the cause of the death of Charles Fricks. The relationship between the injury and the death was unquestionably established by the decedent's treating physician of six years, a Board certified internist. On the other hand, the opinion of Dr. Baskin, the insurance doctor, was that the decedent "more likely than not" died from cardiac or pulmonary problems or "more likely than not" died from causes unknown or from causes undiagnosed. Dr. Baskin never identified which one of the four possible causes was the one he thought resulted in death.

When compared to the opinions of Dr. Kasser, the opinions of Dr. Baskin lack credibility, for a number of reasons. Firstly, Dr. Baskin's opinions are contradictory in that he states that four different things are "more likely than not" the cause of death. Dr. Baskin was a second opinion physician who saw the claimant only two times on referral from the workers' compensation insurance company. Dr. Baskin is a physical medicine and rehabilitation doctor which is not the appropriate speciality for the diagnosis of cardiac and pulmonary maladies. Dr. Baskin never treated

Mr. Fricks for any problem and only evaluated him for reflex sympathetic dystrophy. On the other hand, Dr. Kasser is a Board certified internist and holds the appropriate specialty for the diagnosis and treatment of cardiac and pulmonary conditions. And most importantly, Dr. Baskin's conclusions regarding cardiac or pulmonary causes of death are totally and completely contradicted by the physician who treated Mr. Fricks for six years and who investigated his cardiac and pulmonary problems and who said that there were no indications of cardiac or pulmonary problems which would cause a terminal cardiac event.

Based on the above, I find that the overwhelming weight of the credible and persuasive medical evidence of record compels the conclusion that the rebuttable presumption contained in Ark. Code Ann. §11-9-527(b) has been overcome; that the claimant proved by a preponderance of the evidence that the death of Charles Fricks was caused by the compensable injury of May 22, 1992; and that the widow of the decedent should be awarded statutory funeral

expenses, dependency benefits from December 6, 2004, and a maximum controverted attorney's fee on these benefits.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner