

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505420

JERRY RIDGELL (DEC'D),  
EMPLOYEE

CLAIMANT

CHICOT COUNTY,  
SELF-INSURED EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 17, 2008

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE GAIL O.  
MATTHEWS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed April 19, 2007. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on February 1, 2004.
3. Jerry Ridgell's average weekly wage was \$507.56, resulting in a temporary total disability rate of \$338.37 and a widow's benefit of \$118.43.
4. Jerry Ridgell is deceased.

5. Dorado Ridgell is the widow and only dependent of Jerry Ridgell.

6. The claimant has failed to prove by a preponderance of the evidence that his work activities were a major cause of the fatal heart attack.

7. The claimant has failed to prove by a preponderance of the evidence that his heart attack was brought on by the exertion of work which was unusual or extraordinary in comparison to his usual work or alternatively that some unusual or unpredicted incident occurred which was found to have been the major cause of the physical harm suffered by the claimant.

8. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable heart attack injury on February 1, 2004.

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.

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

covered by the Act; however, the claimant has failed to establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the April 19, 2007 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

Jerry Ridgell died as a result of a fatal heart attack. The majority is affirming an Administrative Law Judge's decision which found that the fatal heart attack was not a compensable injury. Based upon a de novo review of the record, I find that the claimant's fatal heart attack was a compensable injury and that his widow is entitled to dependent benefits. Therefore, I must respectfully dissent from the majority's opinion.

At the outset, I note that the parties and the Administrative Law Judge miscalculated the correct benefit rate. While the majority's decision renders this point moot, I believe the error should be corrected. In a discussion between the parties' attorneys and the Administrative Law Judge prior to the beginning of testimony, it was agreed that the correct benefit rate in this case was \$118.43. They reached that amount by taking 35% of what would have been Mr. Ridgell's total disability rate of \$338.37. However, Ark. Code Ann. §11-9-527 states that the percentage of survivors' benefits for each class is multiplied times the decedent's average weekly wage, not the total disability rate. Since it was stipulated that the claimant's average weekly wage was \$507.56, the correct benefit rate should be 35% of that amount or \$178.00 per week.

At the time of his death, Mr. Ridgell was employed as a deputy sheriff in Chicot County. Most of the testimony developed in the case dealt with a burglary arrest which the decedent was involved in on February 1, 2004, the date of his untimely demise. According to the testimony of Mr. Ridgell's widow, he received an early morning telephone call which caused

him to quickly rise and get dressed and leave his residence. Mrs. Ridgell testified that he told her another deputy was in trouble and he needed to provide back-up.

The record contains the testimony of Deputy Samuel Washington, a co-worker of the deceased. According to Deputy Washington, he was the "on-call" deputy on February 1, 2004. Apparently, the Chicot County Sheriff's Department was understaffed and each of the deputies rotated being the individual on-call during non-business hours. This meant that if a disturbance arose in which a deputy sheriff was needed, that deputy would be called to respond. If the deputy needed back-up, he could radio the dispatcher, who would then summon other off-duty deputies.

According to Deputy Washington's testimony, he arrived at a residence in response to an early morning burglary call and observed an individual standing in the shadows of the house. He then called back to the dispatcher requesting immediate back-up. Mr. Ridgell was at home on a scheduled day off when he was called at approximately 6:30 AM. By the time Mr. Ridgell arrived at the scene of the arrest, Deputy Washington had placed the suspect in custody. Shortly after the arrival of

the County Sheriff and Mr. Ridgell, Deputy Washington transported the suspect to the jail. After completing an investigation at the scene of the burglary, Mr. Ridgell returned to the jail, spoke briefly with Deputy Washington and returned home. According to Mrs. Ridgell, her husband arrived home at approximately 10:30 AM. Shortly after that, he took a bath. While in the tub, he suffered a fatal heart attack. Mrs. Ridgell summoned an ambulance, but Mr. Ridgell was unresponsive to attempts to resuscitate him and he was announced dead upon arrival at the nearest hospital.

Mr. Ridgell's widow contends that her husband sustained a cardiovascular injury compensable under Ark. Code Ann. §11-9-114, which provides as follows:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b) (1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's

usual work in the course of the employee's regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.

I find that the majority has focused on the wrong part of the statute. Specifically, the majority looks to the part of subsection (b) (1) that refers to an exertion that was "extraordinary and unusual in comparison to the employee's usual work. . . ." The majority then notes that the physical contact between Deputy Washington and the suspect being arrested was over by the time the claimant arrived, and that the claimant's part of the incident merely involved the post-arrest investigation. On that basis, the majority concludes that the claimant did not undergo any unusual exertion. However, I find that the relevant portion in the statute is the final clause which states: ". . .or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm." I find that the early morning back-up call was the "unusual and unpredicted

incident" that precipitated the claimant's fatal heart attack. However, to understand more about that situation, some additional background information must be understood.

The decedent had a long history of employment in law enforcement. At the time of his death, he had been employed with the Chicot County Sheriff's Department for several years. In the latter part of 2003, he announced that he intended to run for county sheriff. On September 9, 2003, at approximately 2:00 AM, an unknown party fired a number of shots into the home shared by Mr. and Mrs. Ridgell. On December 7, 2003, Mr. and Mrs. Ridgell returned home after being away for a short period to find that their house had been set on fire. While they were able to salvage the structure, they lost a number of personal items. On January 26, 2004, they were awakened in the early morning hours by another house fire which consumed their entire home, as well as everything they owned.

Obviously, some unknown individual, or individuals, were carrying out a series of increasingly more threatening and dangerous criminal acts directed at Mr. Ridgell and his wife. This situation was certainly of grave concern to him and placed a considerable amount

of stress in connection with the performance of his job duties. Mrs. Ridgell testified that the claimant was only rarely called to duty on one of his scheduled days off. I believe that a sudden and unexpected early morning phone call, telling him that a fellow officer is in a dangerous situation, certainly would have created extreme concern on Mr. Ridgell's part. While it is true that by the time he arrived at the scene, the suspect had already been arrested, being called out in such a manner clearly would have been extremely stressful. Not only was the decedent being called away from his home on his scheduled day off into a potentially dangerous situation, he was leaving his wife at home alone, knowing that on three prior occasions, persons unknown had directed attacks at his personal residence. In finding this situation to be an "unusual and unpredicted incident" as that term is used in the Workers' Compensation Act.

I also note that Mr. Ridgell's treating physician, Dr. Paulette Mehta, opined that his heart attack was job related. In her letter of July 11, 2005, she stated that Mr. Ridgell's myocardial infarction could be attributed to the stress of the February 1, 2004 incident.

In conclusion, I find that the facts of this case clearly establish that Mrs. Ridgell is entitled to dependent benefits because of her husband's fatal injury. I find that the decedent's fatal heart attack was attributable to the sudden and unexpected early morning back-up call he received and that it was, therefore, a compensable injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner