

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610565

LISA N. STONE, WIDOW AND GUARDIAN OF CAITLYN GARZA, STEP-CHILD OF JEFFREY MICHAEL STONE (Dec'd), EMPLOYEE	CLAIMANT
KOHL'S DEPARTMENT STORES, INC., EMPLOYER	RESPONDENT NO. 1
LIBERTY INSURANCE CORPORATION, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 26, 2008

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

Claimant represented by the HONORABLE SCOTT A. SCHOLL,  
Attorney at Law, Jacksonville, Arkansas.

Respondents No. 1 represented by the HONORABLE JAMES A.  
ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by the HONORABLE TERRY PENCE,  
Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals  
an administrative law judge's opinion filed July 9, 2007.

The administrative law judge found that the accident which  
caused Jeffrey Michael Stone's death was caused by an

idiopathic condition but was compensable. After reviewing the entire record *de novo*, the Full Commission affirms as modified the administrative law judge's finding of compensability. The Full Commission finds that the accident which caused Jeffrey Stone's death was unexplained and therefore compensable.

I. HISTORY

Jeffrey Stone, date of birth February 3, 1964, married the claimant, Lisa Nell Garza, in June 2002. Jeffrey underwent a general medical evaluation provided by Dr. Christopher B. Skelley on October 29, 2004. At that time, Mr. Stone complained of pain in his lower extremities. Risk factors included use of tobacco, one pack daily. Dr. Skelley subsequently assessed "Leukocytosis" and "Elevated Blood Pressure Without Diagnosis Of Hypertension." Dr. Paul J. Baxley assessed Jeffrey's condition on November 2, 2004: "Acceleration of pressures in proximal thigh bilaterally. This could be related to diffuse arterial calcification in these segments versus obesity....Advise further evaluation for peripheral vascular disease with either MRA or arterial duplex." The impression from an MR Peripheral Runoff on December 17, 2004 was "No abnormality of definite clinical significance."

Dr. Skelley assessed bilateral leg pain on January 4, 2005. On March 21, 2005, Jeffrey complained of a lump in his right neck region. Dr. Skelley assessed "Neck mass." A chest x-ray was taken on March 21, 2005: "Normal bony structures. Normal soft tissues. Normal heart size. Lung fields reveal a suspicious lesion in the RUL. No effusions. PA diameter of the chest is normal. IMPRESSION: Suspicious lesion RUL." The impression from a CT of the Jeffrey's thorax on March 24, 2005 was "Negative CT evaluation of the thorax." A surgical pathology report on April 21, 2005 showed the following diagnosis: "Right clavicle neck mass. Lipoma without atypical histologic features."

Mr. Stone complained of a rash on his torso on November 23, 2005. Dr. Skelley assessed "Pityriasis Rosea." Dr. Skelley diagnosed the following on February 2, 2006: "Polycythemia Rubra Vera, Hyperglycemia, Elevated Blood Pressure Without Diagnosis of Hypertension, Tobacco Use." Dr. Lawrence Mendelsohn examined Jeffrey on February 17, 2006 and gave the following assessment: "Jeff may have polycythemia. I am not sure if this is primary or secondary." After a procedure performed on February 20, 2006, Mr. Stone was assessed as having severe obstructive sleep apnea syndrome. It was recommended "that the patient

not drive or operative (sic) heavy machinery if excessively sleepy." Dr. Skelley diagnosed "DM, Uncomplicated, Type II" on May 11, 2006.

The parties stipulated that the employment relationship existed at all relevant times, including September 6, 2006. Danna Raeburn, an administrative assistant for Kohl's, testified that she worked with Jeffrey Stone and saw him on September 6, 2006. Ms. Raeburn testified, "His appearance was normal. I didn't notice anything out of the ordinary that particular morning."

The parties stipulated that Jeffrey Michael Stone was involved in a fatal motor vehicle accident on September 6, 2006. The following was noted on an EMS dispatch call sheet dated September 6, 2006: "Caller reported MVC on I-40 eastbound at app. 12 mm....ASP dispatch said they thought the pt might be having heart attack. Pt was D.O.A. on scene."

The record contains a Patient Care Report, incident date September 6, 2006: "Upon arrival found a single pick-up MVC with one pt. inside the cab. Alma F.D. called for extraction due to pt. trapped within the cab and unable to be removed. Pt. had no pulse, respirations, pupils-dilated and fixed, and no heart beat, CM showed asystole. Pt. had

multi-system trauma due to MVC. Pt was turned over the 90's unit and was pronounced at scene. DOA x 1."

An Arkansas Uniform Motor Vehicle Collision Report dated September 6, 2006 indicated the following: "For unknown reason, operator Stone traveled off of the paved portion of the roadway into the median. Operator Stone's vehicle crossed the eastbound lanes of Interstate 40 and exited off of the paved portion of the roadway to the southwest....The left-front area of operator Stone's vehicle collided with a metal right-of-way fence....The left side of operator Stone's vehicle collided with a tree sitting just south of the right-of-way fence. The force of the impact caused the left-front tire of operator Stone's vehicle to shear off coming to rest near the tree. Operator Stone's vehicle rotated counterclockwise coming to final position facing south."

The Collision Report indicated that the driver's condition "Appeared Normal." Contributing Factors were "Careless prohibited driving."

Another Motor Vehicle Collision Report indicated that the accident occurred at approximately 12:38 p.m., that the atmospheric condition was clear, daylight, and that the asphalt surface condition was dry.

Lonnie Dale Griffith, Jr. wrote a Witness Statement on September 6, 2006: "I was driving westbound on I-40 near exit #13 when a pickup passed me with one person in it and he all of a sudden with no vehicle around him the truck went out of control and shot acrossed (sic) the median and went air born (sic) and hit a tree."

Trooper First Class Eric D. Schrock wrote on Accident Report on September 6, 2006:

At approximately 12:38 p.m. on 09/06/06, I was dispatched to a one vehicle collision involving injury on Interstate 40 near the 15 mile marker. I arrived on scene at approximately 12:42 p.m. I saw a silver in color GMC pickup had left the eastbound shoulder and collided with a tree. There were no medical, fire, or police personnel on the scene at the time. I saw that there were approximately five people in the area of the vehicle and that two of the people were attending to the driver of the vehicle.

I made my way to the vehicle and saw the driver, later identified as Jeffery M. Stone, was still inside the vehicle with his seatbelt attached. Stone was unresponsive to touch, and would not give verbal response when talked to....

Sergeant Jason Aaron and Trooper First Class Dale Howard of the Arkansas State Police arrived on the scene to assist. Members of the Alma Police Department, Alma Fire Department, and Angel Care Ambulance arrived on the scene. Members of Angel Care determined that Stone had no pulse and we waited on a representative of the Coroner's Office to pronounce Stone deceased.

Deputy Coroner Don Bullock arrived on scene at approximately 1:00 p.m. and pronounced Stone deceased....

I began a rough sketch and began taking measurements of the collision scene.... The tire marks showed no abrupt change in motion and it appeared as if the braking system was never activated....

Medical personnel from the Coroner's Office withdrew two vials of blood from Stone. Those vials were receipted over the Sgt. Aaron and will be sent to the Arkansas State Crime Laboratory for standard drug and alcohol analysis per State Police policy and procedure....

A Coroner's report dated September 6, 2006 listed the type of injury as "Massive Trauma" and cause of death as "Blunt Force Trauma" due to accident. A Certificate Of Death dated September 12, 2006 indicated that Jeffrey Michael Stone died as a result of Blunt Force Trauma and that an autopsy was not performed. A State Crime Laboratory analysis dated December 14, 2006 reported that no alcohol or drugs were detected in Jeffrey M. Stone's body.

A pre-hearing order was filed on March 21, 2007. According to the pre-hearing order, it was "undisputed that the decedent was providing employment services at the time of the fatal accident." The claimant contended that "Jeffery Stone's injuries and death arose out of and during the course of his employment with Kohl's Department Store,

entitling his widow and child to applicable dependency benefits, payment of funeral and burial expenses, and a controverted attorney's fee on any benefits awarded." The respondents contended that "the decedent's accident and death were caused by a personal medical condition and does therefore not meet the definition of a compensable injury under the Arkansas Workers' Compensation Act." The parties agreed that "the primary issue to be presented for determination concerns compensability of the injuries resulting in the death of Jeffery Michael Stone."

The parties deposed Dr. Skelley on April 11, 2007. Dr. Skelley testified regarding conversations with Lisa Stone and her mother, "All we know - or all we kind of talked about, they kind of told me that they don't know what happened, but that he ran off the road and hit a tree." Dr. Skelley testified that he knew no other details regarding the September 6, 2006 motor vehicle accident. Dr. Skelley's testimony indicated that Jeffrey Stone abused tobacco and was obese and diabetic. The respondents' attorney questioned Dr. Skelley:

Q. You've identified obesity, smoking, polycythemia, Type 2 diabetes, obstructive sleep apnea, all of which carry an increased risk for myocardial infarction, heart attacks, strokes,

thrombosis or various kinds, all of which are conditions which can lead to sudden death?

A. Correct....

Q. Based upon these medical conditions that we have discussed, would you agree that Mr. Stone was at risk for a heart attack, stroke, or other sudden medical emergency?

A. Yes.

Q. Can you quantify for us, Doctor, the level of that risk?

A. No, sir....

Q. I'm going to ask you to assume, Doctor, that the testimony from the eyewitnesses to the accident and the testimony of the state trooper who investigated the accident was that there was no other traffic in the area. There was no debris or other physical impediment on the roadway in the area where Mr. Stone left the road, that after his vehicle left the road, there was no evidence, either visual or physical, of any attempt to correct, get back on the roadway, no physical evidence or visual observation that he attempted to slow the vehicle at all prior to hitting of the tree.

In the absence of a physical explanation for his vehicle leaving the roadway - by that I mean another vehicle forcing him off the road, his attempting to avoid something and losing control of the vehicle, based upon his medical condition, would it be a reasonable conclusion that there was some medical emergency which prevented him from being able to keep his vehicle under control?

A. Yes.

The claimant's attorney questioned Dr. Skelley:

Q. I know Mr. Arnold had asked you about some assumptions about the accident, saying, you know,

was it a reasonable conclusion a medical problem could have caused, you know, something to happen. You know, if that really so much as a reasonable conclusion based on the evidence, or is that something that you can speculate that that could happen?

A. You can speculate that it could happen.

Q. So pretty much, you know, if anything was - say that something happened, that he had a stroke, heart attack, passed out or anything like that, it would all be speculation?

A. That's correct....

Q. And based upon your knowledge of his condition, you know, like your examinations and your notes, is there anything that leads you to believe with any certainty that he might have had a medical condition that would have caused the accident?

A. With any certainty?

Q. Right.

A. Not necessarily, no.

The parties deposed Lonnie Griffith on April 18, 2007.

The respondents' attorney questioned Mr. Griffith:

Q. Do you remember that accident?

A. I remember it, yes....I was driving on I-40 and I was going westbound....I remember that I was in the right-hand lane and I remember seeing him in my mirror coming to pass me and he was probably doing the speed limit, about 70. He probably had his cruise on. I was doing the speed limit at 65, for me, for trucks....And I seen in there and I thought, "That's a nice truck," you know, "That guy has got him a nice

truck." And everything seemed to be fine from what I saw, you know....

Q. Were you able to see Mr. Stone in the truck?

A. Yes. I seen him just like a glance, you know....

Q. And were you able to - did you actually see Mr. Stone behind the wheel?

A. Yes.

Q. Could you tell whether or not he was conscious at the time when you saw him?

A. Yes, he was. He looked just fine.

Q. What were the road conditions when you saw Mr. Stone?

A. They were great....

Q. What happened next after you saw Mr. Stone pass you?

A. He went up there a ways. You know, he was a ways in front of me. There was no traffic around. We were just kind of cruising along and then all of a sudden just out of nowhere his truck just goes like that (indicating to the left)....And then when it went to cross the other side - you know, when I seen that happen, that's what I envisioned in my mind was oncoming traffic and total chaos, you know, a bad deal. And so that's when I reached for my cell phone. I'm stopping my truck right then and dialing 9-1-1....

Q. You had just seen Mr. Stone pass you and he was conscious at the time. What do you think happened? What do you think caused him to veer off the road like that?

A. At the time, you know, thinking in my mind and everything, and still today, the only thing I can

think of myself, you know, is that he might have had a heart attack or - you know, it had to have been something like that.

A hearing was held on May 24, 2007. Donald Bullock, a deputy coroner for Crawford County, testified that he had investigated the accident scene and had concluded that the cause of death was blunt force trauma. The claimant's attorney questioned Mr. Bullock:

Q. You had mentioned that there wasn't any blood in the heart?

A. Right.

Q. Okay. Can you explain to the Court is there any significance to that?

A. That basically tells us that his heart was beating when he became injured and the blood left him under pressure....

Q. And to your knowledge, is there any explanation other than the impact itself of what could have caused Mr. Stone's death?

A. No, sir. I was convinced that, you know, especially there's no way he could have survived that accident. You know, I looked at it and determined that as far as I was concerned, he was alive, his heart was beating when he hit the tree, and, you know, there's definitely enough injuries and enough impact to kill him, you know, when he hit the tree. So, you know, as far as if he had some other medical condition, it would just be speculation on my part.

Q. Okay. So your investigation didn't reveal any other medical condition that might have contributed?

A. No, sir....I have no idea why he ran off the road, and I don't - from what I heard out there, nobody else did either....

The administrative law judge found, in pertinent part:

3. The claimant has proven, by a preponderance of the credible evidence, that the death of Jeffery Michael Stone on September 6, 2006, arose out of and during the course of his employment with Kohl's Department Stores, Inc., thus entitling eligible beneficiaries to dependency benefits and other benefits pursuant to Ark. Code Ann. §11-9-527.

4. A preponderance of the credible evidence reflects that the accident which resulted in the death of Jeffery Michael Stone was caused by an idiopathic loss of his faculties while driving a vehicle during the course of his employment. However, the death of Mr. Stone was caused by the blunt force trauma from the accident rather than the underlying idiopathic medical condition. The decedent's employment contributed to his death because of the increased dangerous effect of being required to drive a vehicle on the highways, and thus, the claim is compensable.

Both parties appeal to the Full Commission.

## II. ADJUDICATION

An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. See *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Convention & Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). The Arkansas Supreme Court has held that injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. *Cedar Chemical*

*Company v. Knight*, 07-307 (Ark. 1-31-2008), citing *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). Where a claimant suffers an unexplained injury at work, it is generally compensable. *Pack, supra*. Simply because an employee's injury is unexplained does not render the injury noncompensable. *Knight, supra*.

In the present matter, the Full Commission finds that Jeffrey Stone's fatal accident on September 6, 2006 was wholly unexplained and therefore compensable. The parties agreed that the decedent was providing employment services at the time of the fatal accident. No one knows what caused Mr. Stone's vehicle to careen out of control and crash into a tree. None of Mr. Stone's co-workers, witnesses on the scene, the investigating law enforcement officer, the coroner, or Dr. Skelley could identify with any certainty a reason for the motor vehicle accident. The Motor Vehicle Collision Report concluded that the reason for the accident was "unknown." Mr. Stone's physical condition following the accident, according to the Collision Report, "Appeared Normal." The record indicates that the road conditions were dry, the accident occurred during daylight, and the weather was clear. No alcohol or drugs were detected in Jeffrey's body. The cause of death was "Blunt Force Trauma." Dr.

Skelley credibly testified that the cause of the accident was speculative. Lonnie Griffith credibly testified that Mr. Stone "looked just fine" immediately before the accident. The claimant's co-workers could identify nothing physically out of the ordinary in Jeffrey's appearance at the beginning of the workday on September 6, 2006. Mr. Bullock, the coroner, testified, "I have no idea why he ran off the road." We can identify no probative evidence of record supporting the theory that Jeffrey Stone's pre-existing medical condition caused the fatal motor vehicle accident.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's decision as modified. The Full Commission finds that Jeffrey Stone's fatal motor vehicle accident occurred as the result of an unexplained cause and was compensable. Mr. Stone's vehicle crash caused physical harm to his body, arose out of and in the course of his employment, required medical services, and resulted in death. The accidental injury was caused by a specific incident and was identifiable by time and place of occurrence. The claimant established a compensable injury by medical evidence

supported by objective findings, including, but not limited to, the findings of the coroner.

The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant's death arose out of and during the course of his employment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof. Specifically, I find that the Mr. Stone's idiopathic loss of faculties resulted in his death prior to the

motor vehicle accident on September 6, 2006, therefore his death was not in the course and scope of his employment.

An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998); Kuhn v. Majestic Hotel, 324 Ark. 21, 918 S.W.2d 158 (1996); Little Rock Convention & Visitors Bur. v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997); Moore v. Darling Store Fixtures 22 Ark. App. 21, 732 S.W.2d 496 (1987). Injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. ERC, supra. Where a claimant suffers an unexplained injury at work, it is generally compensable. Little Rock Convention & Visitors Bur., supra. Because an idiopathic injury is not related to employment, it is generally not compensable unless conditions related to the employment contribute to the risk by placing the employee in a position, which increases the dangerous effect to the fall. Id. Employment conditions can contribute to the risk or aggravate the injury by, for example, placing the employee in a position which increases the dangerous

effect of a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Id.

In Moore, supra, the Court of Appeals offered the following analysis with regard to whether an on-the-job fall will give rise to compensation:

When one suffers an injury at work, the cause is, obviously, either known or unknown. Larson's treatise on workers' compensation law states that the most common example of a situation in which the cause of the harm is unknown is the unexplained fall in the course of employment and that most courts confronted with that situation have seen fit to award compensation. 1 Larson, *The Law of Workmen's compensation*, § 10.31, at 3-87 (1985). However, injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury by, for example, placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Larson § 12.11.

The word "idiopathic" is defined in *Webster's Third New International Dictionary, Unabridged* (1976), as (1) peculiar to the individual, (2) arising spontaneously or from an obscure or unknown cause. Although the two concepts are frequently confused,

Larson says "unexplained fall cases begin with a completely neutral origin of the mishap, while idiopathic fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin." Larson § 12.11, at 3-314.

Our Arkansas cases have followed the above rules. In Fairview Kennels v. Bailey, 271 Ark. 712, 610 S.W.2d 270 (Ark. App. 1981), we relied upon a statement from Larson § 10.31 that "It is significant to note that most courts confronted with the unexplained fall problem have seen fit to award compensation," and we held that the claimant's explanation that, while engaged in her work-related duties she "fell and couldn't get up," was sufficient for the Commission to find that the claimant fell in the course of her employment. 271 Ark. at 715.

The record reflects that Mr. Stone suffered from multiple medical conditions that placed him at risk for heart attack or stroke. The deposition of Dr. Christopher Skelley, an internal medicine specialist and Mr. Stone's treating physician were offered into the record. Dr. Skelley's deposition reflected that Mr.

Stone was extremely overweight. He had a history of smoking and an elevated cholesterol level; generalized atherosclerotic disease; had been diagnosed with polycythemia, a condition characterized by increased red blood cells or, in layman's terms, a thickening of the blood; had been diagnosed with severe obstructive sleep disorder; as well as Type II diabetes. Dr. Skelley testified that obesity, smoking, polycythemia, obstructive sleep apnea, and Type II diabetes all carry increased risk for thrombosis, heart attacks, and strokes which can lead to sudden death. Dr. Skelley opined that Mr. Stone's multiple medical conditions had a cumulative effect that increased the risk of life threatening events.

The testimony of Lonnie Griffith, a truck driver who witnessed the accident, was offered into the record. Mr. Griffith was driving an 18-wheeler in the west-bound lane of I-40 when Mr. Stone passed him in the left lane, seconds before the accident. He described the weather as clear and the road dry. He testified that there was no animal, debris, or other object that would have caused Mr. Stone to dramatically turn into the median. Mr. Griffith did not observe any corrective or

evasive action by Mr. Stone at any time after the truck veered off the road. He stated that the truck maintained a constant speed, estimated at 70 miles per hour, as if the cruise control was on while it sped into the tree. Mr. Griffith did not observe any braking and the truck traveled at a consistent angle after leaving the road. Mr. Griffith opined that, based on his observations, Mr. Stone had a heart attack. Mr. Griffith testified that he and his father were passengers in a vehicle driven by his grandfather when his grandfather suffered a heart attack. His father was able to get control of the vehicle but he explained that it started on a course similar to the course Mr. Stone's vehicle took. Mr. Griffith also testified that when he went to the aid of Mr. Stone after the accident, Mr. Stone had a cut on his head but there was no blood.

The investigating officer, State Trooper Eric Schrock, had been an Arkansas State Trooper for 7 ½ years and had extensive training in accident investigation. Trooper Schrock testified that there was no evidence of debris or anything else in the roadway that would have caused or forced Mr. Stone to leave the roadway. Trooper Schrock stated that because there was

no evidence of evasive or corrective action over a long distance, he did not think falling asleep caused the accident. He testified that the vehicle's constant speed and motion over such a long distance were indicative of some other cause other than falling asleep. He also ruled out other likely causes of the accident other than a personal medical condition.

When considering the circumstances of the accident, specifically, the testimony of Mr. Griffith and Officer Schrock, together with the medical testimony of Dr. Skelley, it is my opinion that Mr. Stone suffered a medical emergency at the time of the motor vehicle accident and that medical condition caused the accident.

Deputy Coroner Donald Bullock was called as a witness. Mr. Bullock had been a deputy coroner for approximately eighteen (18) months. He has worked in law enforcement most of his adult life, having retired from the Sebastian County Sheriff's Department. Mr. Bullock opined that the claimant died as a result of blunt force trauma. Mr. Bullock candidly admitted that he had no medical training or expertise at all. He acknowledged that the position of deputy coroner required no medical proficiency.

Mr. Bullock concluded that he found a massive amount of blood in the area around Mr. Stone's body. He therefore concluded that Mr. Stone's heart was still beating when he struck the tree. However, the physical description of Mr. Stone's injuries to the lower portion of his body were particularly severe. In fact, one of his legs was nearly severed. It is axiomatic that the blood would have to go somewhere and gravity alone could account for the presence of blood found around Mr. Stone's body. The blood would pool even after death. The pooling of the blood is known as hypostasis and/or livor mortis. This occurs when the blood ceases flowing, settling in the lowest parts of the body. This process is complete in up to 6 hours after death.

I give little weight to Mr. Bullock's opinion that the claimant died from blunt force trauma. Mr. Bullock has no medical training and could only make a conclusion based upon his observations of Mr. Stone after the accident. I give more weight to the testimony of Mr. Griffith. Mr. Griffith observed Mr. Stone immediately after the accident and noted that there was absolutely no blood coming from a cut on Mr. Stone's face. This is clear evidence that Mr. Stone was deceased

prior to the vehicle hitting the tree. If Mr. Stone's heart had been beating prior to that, and if he were alive when he hit the tree, there would have been blood coming from that cut.

Therefore, when I consider the testimony of Dr. Skelley that Mr. Stone's underlying medical conditions could have produced sudden death at any time, the testimony of Mr. Griffith that he observed no blood from the cut on Mr. Stone's face within minutes of the accident, and the circumstances of the accident, I cannot find that the claimant can meet her burden of proof. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner