

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801360

NORMAN E. FLETCHER, EMPLOYEE	CLAIMANT
GLOVER'S TRUCK PARTS & EQUIPMENT, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., C/O AIG DOMESTIC CLAIMS, INC., CARRIER	RESPONDENT

**OPINION FILED MAY 29, 2009**

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

Claimant represented by HONORABLE J. MARK WHITE, Attorney at Law, Bryant, Arkansas.

Respondent represented by HONORABLE MELISSA WOOD, 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 December 11, 2008.

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 reasonable and hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable hyperthermia injury by specific incident on August 22, 2007.

4) The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable "unexplained injury" by specific incident on August 22, 2007.

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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant proved by a preponderance of the evidence that he sustained a compensable hyperthermia injury by specific incident on August 22, 2007, and therefore, I must respectfully dissent.

**FACTS**

On August 22, 2007, the claimant was working for respondent as a body shop manager, or "body man." The area where he worked was in a metal building that was not air conditioned. He described the environment inside as, "The regular temperature was like 98, 99, but the heat factor was probably 110 or better. You know, if you didn't have a fan right in front of you, you could burn up." Temperature records from the National Weather Service corroborated his testimony as to the heat.

The claimant described his accident as follows: "That day I was working on a truck, standing on a ladder, stool, and just grinding the side of a hood. And the next thing I knew, I got dizzy and sat down and fell out underneath the truck." He was out for a couple of minutes,

and when he came to, he felt weak and was vomiting. This incident occurred shortly before noon. His supervisor, who was called to testify by respondents, said that when he came in, the claimant "was laying there." A co-worker called for an ambulance, and the claimant was taken to the hospital. He was admitted for a couple of days, and later followed up with the doctor.

Though the claimant is diabetic, he had taken his diabetes medication that day and had missed none of his medication that week. He also has high blood pressure. His doctors gave him no reason to think this incident was related to his diabetes, nor did they give him any reason to think this incident was related to a heart condition or any other medical condition he might have.

#### ARGUMENT

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings,

as defined in Ark. Code Ann. §11-9-102(16), establishing the existence and extent of the injury, and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Though none of them were acknowledged by the majority, affirming and adopting the Administrative Law Judge, the record contains a number of objective findings of injury. The ambulance crew who initially encountered the claimant noted his color was "pale" and that he was "diaphoretic." "Diaphoretic" is defined as, "related to, or causing, perspiration." Stedman's Medical Dictionary, 28<sup>th</sup> Ed., p. 533. When the incident happened, the claimant passed out, and when he came to, he was vomiting. All of these things were outside his voluntary control and are thus objective findings of injury, supporting the remaining medical evidence of his injury.

The majority, by affirming and adopting the Administrative Law Judge, has speculated this incident was caused by the claimant's "preexisting diabetes, hypertension, and other ailments" - in other words, that the injury was idiopathic. However, there is insufficient evidence in the record to prove a causal connection with

these pre-existing conditions. Though the claimant had been diabetic for 10 years, and had high blood pressure for 16 years, he had never before experienced this type of incident. He testified that he had been regularly taking his diabetes medication, and there is nothing in the record to show that his diabetes was not under control as of the date of the incident. His doctor described his high blood pressure as being "in good control." He testified that his doctors gave him no reason to think this incident was related to his diabetes, nor did they give him any reason to think this incident was related to a heart condition or any other medical condition he might have. None of the doctors have given any opinion relating this incident with any of his pre-existing conditions.

Given the lack of any medical opinion to the contrary, the most reasonably plausible explanation of this injury is that the claimant fainted because of the excessive heat. The ambulance crew, who saw him before he began to recover and were in the best position to assess what happened, recorded this incident as "hyperthermia." "Hyperthermia" is essentially heat stroke. Stedman's Medical Dictionary, 28<sup>th</sup> Ed., pp. 928, 926.

While the claimant was in the hospital, the doctors ruled out his heart as having any connection with

the incident, and he was discharged with no definitive diagnosis. His personal physician, Dr. James Morse, directly tied the incident to the heat: "I postulate that he simply had vasovagal or orthostasis. He was working in the heat and had been standing." His cardiologist, Dr. Mark St. Pierre, opined that this incident was "not related to a cardiac problem." The most plausible explanation is that the claimant's passing out and falling was caused by the excessive heat in his work environment and is, therefore, a compensable injury.

In conclusion, I find, based on the above-outlined evidence of record that the claimant has proved by a preponderance of the evidence that he sustained a compensable hyperthermia injury. For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner