

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704618

STANLEY HOUK, EMPLOYEE	CLAIMANT
FRANKLIN ELECTRIC CO., EMPLOYER	RESPONDENT
HELMSMAN MANAGEMENT SERVICES, CARRIER	RESPONDENT

OPINION FILED JUNE 9, 2009

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE JAMES A. ARNOLD, III, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed August 20, 2008.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on April 27, 2007 when claimant fell at work injuring his right elbow.

3. Respondent has controverted this claim in its entirety.

4. The parties' stipulation that claimant earned an average weekly wage of \$620.01 which would entitle him to compensation at the rate of \$414.00 for total disability benefits and \$310.00 for permanent partial disability benefits is hereby accepted as fact.

5. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by respondent on April 27, 2007. Specifically, the claimant's fall was idiopathic in nature; therefore, it is not a compensable claim.

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.

A. WATSON BELL, Chairman

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 sustained a compensable injury and is entitled to benefits accordingly.

The key issue in this case is whether the claimant's fall was due to an unexplained fall or an idiopathic fall. The Administrative Law Judge specifically noted in his opinion that there was a lot of testimony dealing with claimant's insulin levels and whether he felt dizzy, but that his finding that the fall was idiopathic had to do with peripheral neuropathy. As this Commission is

aware, and as the Administrative Law Judge cited in his Opinion, "if a claimant suffers an unexplained injury at work, it is generally considered compensable. Little Rock Convention and Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1977). However, an idiopathic injury is personal in nature and is not related to the employment, unless the conditions related to the employment contributed to the risk of injury or aggravate the injury. Crawford v. Single Source Transportation, 87 Ark. App. 216, 189 S.W.3d 507 (2004)."

In addition, it was found in Bennie Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987), that Arkansas cases have followed the rules and definitions that state:

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.

The majority has affirmed and adopted the findings of the Administrative Law Judge. The Administrative Law Judge came to his conclusion in the present case that it was not an unexplained fall, but rather an idiopathic fall, quite simply, because the claimant has the unfortunate luck of having diabetes and suffers from lymph edema in his legs (swelling of the lymph glands). Although the claimant had never had any problems standing and moving around on his legs all day, every day, for 29 years, the Administrative Law Judge came to the conclusion that the fall must have been due to the claimant's leg problems. This is obvious speculation on the Administrative Law Judge's part, and the opinion should not have been affirmed and adopted by the majority. The claimant credibly testified, "Yes, I have some neuropathy but I haven't lost my feeling in my feet and legs." No one is more aware or qualified to say whether or not he has feeling in his legs and feet than the claimant, himself, and for anyone else to do so, is purely speculation. Any problems he had with his legs had never

affected his ability to do his work and had never caused any falls.

It is also important to note that it was found in Bennie Moore:

Arkansas cases have followed the above rules. In Fairview Kennels v. Bailey, 271 Ark. 712, 610 S.W.2d 270 (App. 1981), we relied on 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." "Work connection is shown by the fact that the injury occurred in the course of employment, and that the employment brought the employee to the place where he was injured at the time he was injured." Larson §10.31, at 3-100.

In this case, the claimant fell because of an unexplained reason. As he testified, he guess that his feet must have gotten "tripped up," but he was not sure how the fall happened for sure. It was thus unexplained. The respondent tries to support its contention of an idiopathic fall by offering the July 7, 2008 report of Dr. Holder in which he speculates that, "it is not uncommon for these patients to lose their balance easily." Dr. Holder had not even evaluated the claimant before rendering this

speculation; he had only looked over the medical reports. Again, the claimant had no history of falls, and testified that he did not have loss of feeling in his legs and feet. The respondents go on to try to connect the fall that happened in 2007 with an evaluation performed in February of 1994 by Dr. Henderson, some 14 years before this fall occurred, where he stated that a previous toe injury was due to the amount of feeling the claimant had in his foot. Dr. Henderson was not a treating physician or even an examining physician in the case at bar; he was talking about an entirely different incident, which occurred many years prior to the work accident.

It is clearly erroneous that the Administrative Law Judge, affirmed and adopted by the majority, linked the claimant's fall to the claimant not using a cane or assistance while working. Although the claimant had surgery to remove a small portion of his left great toe in December of 2006, he had no problems continuing his work after he was released with no restrictions other than, "no overtime until February 15, 2007." The form mentioned in the Administrative Law Judge's Opinion, which supposedly gave the claimant a

permanent restriction of not walking without assistance from a brace, cane, crutch, another person, etc., was, upon closer examination, a form to obtain disabled plates for his car. It was filled out shortly after his surgery and it is clear that he would not have been able to walk long distances when parking at that time. His work restrictions, as stated above, were only "no overtime." If he had had such restrictions for work, then clearly the respondent would not have been complying with them.

It should also be considered that the claimant was not doing the same job he normally did or, for that matter, was trained for, and he was not working in the same area where he usually worked. He testified that he had a 50-pound tray in his hands and was turning around to put it on a pallet. This is certainly a situation in which one's feet could get "tripped up" if he were not familiar with the area or job.

The respondent contends that the fall was not unexplained, but clearly there is not any evidence that supports the contention that it was related to peripheral neuropathy in the claimant's legs. There is only speculation

that this was the case. Not one of the claimant's treating physicians has opined that the fall was due to his peripheral neuropathy. He was in a new situation with new duties and simply had an accident, resulting in a compensable injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner