

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709397

DUSTIN DONAHOO, EMPLOYEE

CLAIMANT

USA TRUCK, INC., SELF-INSURED EMPLOYER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED JULY 20, 2010

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

Claimant represented by the HONORABLE THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December

11, 2008, are hereby accepted as fact.

2. The claimant has failed to meet his burden of providing by a preponderance of the evidence that he suffered a compensable work-related injury.
3. The claimant has failed to prove by a preponderance of the evidence is entitlement to benefits in this matter.
4. The respondents' Shipper's defense argument is moot in this matter.

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. In order to prove that the claimant sustained a compensable heart attack injury, he must show (1) that the exertion of his work was extraordinary and unusual compared to his usual work and (2) that the exertion was the major cause of the physical harm. Ark.Code Ann. §11-9-114. After a de novo review of the record, I find that the claimant has met both elements.

The claimant testified that the work he was performing when he experienced the heart attack symptoms was extraordinary and unusual in that he was working at a high altitude and he had never been required to unload or load by USA Truck, Inc. before. The Administrative Law Judge,

affirmed and adopted by the majority, recognized that the claimant "was performing an extraordinary or unusual task on August 29, 2007, when he unloaded the tires." However, the Administrative Law Judge goes on to opine that "the time between the claimant's heart attack and the tire unloading is far too distant". The Administrative Law Judge, affirmed and adopted by the majority, ignores the claimant's testimony of "trouble breathing, muscles aching and burning, chest hurting, nausea, shaking, and trembling", all cardiac arrest warning signs, when he unloaded the tires. That the claimant was suffering acute distress is also demonstrated by his visit to a walk-in clinic immediately after the unloading of the tires. The claimant was originally diagnosed with "oxygen deprivation" when he saw a doctor in Denver.

When extreme exertion demands more oxygen to the heart, travelers are routinely warned that this elevation demands an adjustment to ones exercise initially on arriving to such a high altitude. That the angina symptoms initially arose during the strenuous exercise at the high Denver altitude and continued through his initial hospitalization is evident from the testimony and does not distract from the

causal relation between the work activity and the ultimate hospitalization. I find that the claimant may have suffered the attack in Colorado, but then, rather than recovering, he pushed himself to drive 13 hours. When he arrived at his brother's house, his brother, a Registered Nurse, recognized that the claimant was having serious problems and took him to an emergency room where he was stabilized and then airlifted to Saint Francis Heart Hospital on September 2, 2007.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner