

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F801104

TOMMY R. KIMBLE, (DECEASED) EMPLOYEE	CLAIMANT
HINO MOTORS, EMPLOYER	RESPONDENT NO. 1
TOKIO MARINE AND FIRE INSURANCE COMPANY, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 2, 2011

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

Claimant represented by the HONORABLE ALVIN SIMES, Attorney at Law, Forrest City, Arkansas.

Respondents No. 1 represented by the HONORABLE JOSEPH PURVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L. KING, 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 January 19, 2011.

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

1. There was a December 21, 2006 employer/employee relationship.
2. Compensation rates are \$360/270.

3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable heart attack injury pursuant to Ark. Code Ann. § 11-9-114.

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 suffered a compensable heart attack pursuant to Ark. Code Ann. §11-9-114. Ark. Code Ann. §11-9-114(a) provides, in pertinent part:

A myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to their factors contributing to the physical harm, an accident is the major cause of the physical harm. Major cause is defined as "more than fifty percent (50%) of the cause. A.C.A. §11-9-201(14) (A).

A finding of major cause shall be established according to the preponderance of the evidence. A.C.A. §11-9-102(14) (B).

I find that the preponderance of the evidence shows that extra work, sorting through defective parts in addition to his already increased work duties, was the major cause of the claimant's heart attack. According to the claimant's testimony at the hearing, as a quality production supervisor, it was the claimant's responsibility to inspect the knuckles on the work production assembly line. According to the claimant and his supervisor, Greg Long, each knuckle weighed between 13-15 pounds. During a normal day, Mr. Kimble would inspect approximately 200 knuckles. However, on December 21, 2006, he was asked by his

supervisor to recheck the work quality of approximately 200 knuckles assembled the day before, and those knuckles had to be removed from boxes before being checked. This clearly was not Mr. Kimble's normal daily work responsibility.

In Williford v. City of North Little Rock, 62 Ark. App. 198, 969 S.W.2d 687 (1998), the claimant, a 22-year veteran of the North Little Rock Fire Department, suffered a heart attack within 48 hours of performing the Firefighters' Encounter and Agility Test (FEAT) on an extremely hot and humid day in July. The autopsy revealed several physical problems with the claimant's heart, including chronic pulmonary disease, hypertension, and chronic renal insufficiency, as well as noting the deceased claimant's history of insulin dependency. *Id.* at 202. In reversing the Commission, the Court of Appeals noted the following findings of the pathologist, Dr. Peretti:

In summary, this individual had evidence of severe pre-existing cardiovascular disease and a 20 year history of insulin dependent diabetes mellitus. He was undergoing rigorous physical exercise which was required to maintain his position as a North Little Rock Fireman. These exercises are responsible for putting excessive stress on his already compromised heart. It is my opinion based on reasonable medical certainty that he sustained his myocardial infarction during the physical workout... It is clear that the strenuous workout

was the major cause in precipitating that myocardial infarction. Id. at 202-3."

Notwithstanding the claimant in Williford's pre-existing physical condition, Dr. Peretti concluded that the strenuous workout was about a 95 to a 100% contributing factor to the heart attack. Id. at 203. In reaching this conclusion, Dr. Peretti cautioned that the whole situation should be put in perspective, noting that, prior to the workout, Williford had no cardiovascular complaints, such as chest pains, and, after undergoing all of the stress of the exercises, he developed all of the symptoms. Likewise, in this case, the claimant had no cardiovascular complaints, such as chest pains, and, after performing extra and unusual duties of sorting defective parts, the claimant developed all the symptoms of a heart attack. In Williford, prior to the workout, the claimant was fine, walking around with no chest pains and no complaints. Id. Based on this "persuasive" evidence, the Court of Appeals found that there was no substantial basis for the Commission's decision that the claimant's activity was not the major cause of his heart attack, and reversed and remanded for an award of benefits. Id.

Here, as in Williford, the claimant appeared to be in good health prior to the assignment of extra work required of him on the afternoon of December 21, 2006. There was no evidence that he had chest pains or cardiovascular complaints prior to the

extra exertion on that afternoon. Here, the claimant's heart attack occurred within minutes of his supervisor's assignment of extra work.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner