

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G904871**

ROBERT L. CRENSHAW, EMPLOYEE

CLAIMANT

TYSON POULTRY INC., SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED **NOVEMBER 2, 2021**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Russellville, Pope County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JEREMY SWEARINGEN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 14, 2021, the above captioned claim came before the Workers' Compensation Commission in Russellville, Arkansas, for a hearing. A prehearing conference was conducted on June 10, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1, with modifications announced at the hearing. No objection was raised to making it part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on March 18, 2019, through April 3, 2019.
3. Claimant's average weekly wage at the time on April 3, 2019, was \$540.87.
4. The respondents have controverted the claim in its entirety.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury in March 2019 that led to his

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passing out at work on April 3, 2019.

2. Whether claimant gave proper notice of his injury to his employer.

All other issues are reserved.

The claimant contends that he passed out at work on April 3, 2019, as a result of an unspecified incident that happened at work between March 18 and March 22, 2019.

The respondents contend that:

“1. Respondent contends that the claimant cannot prove by a preponderance of evidence that he sustained a specific incident of injury, identifiable by time and place of occurrence, arising out of and in the course of his employment.

2. Respondent contends that the claimant’s condition was caused from a syncope/seizure problem unrelated to his employment and apparently consistent with the abuse of alcohol.

3. Respondent contends that the claimant failed to give the respondent notice of any alleged work injury prior to April 3, 2019.”

The above stipulations are hereby accepted as fact. From a review of the record as a whole, including medical reports and other documents, and having heard testimony and observed the demeanor of all witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on June 10, 2021 and contained in the pre-hearing order (as modified at the hearing) filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on or about March 22, 2019, that led to his passing out at work on April 3, 2019.

FACTUAL BACKGROUND

At the Prehearing Conference, the parties were not certain of the claimant's average weekly rate. Before taking any testimony at the hearing, the parties agreed on an average weekly wage, and that amount was added to the stipulations in the Prehearing Order.

Claimant testified on his own behalf and called two of his adult children to testify. Respondent called no witnesses. Claimant introduced five pages of medical records, which were admitted without objection, and a single page of non-medical records, also admitted without objection. Claimant objected to the introduction of one page of respondents' non-medical exhibits, and during the hearing, that page was withdrawn. Respondents' thirty-five pages of medical records were admitted without objection by claimant.

HEARING TESTIMONY

On April 3, 2019, claimant was working at respondent's plant in Russellville, Arkansas. Sometime during his shift, he had a seizure and was taken by ambulance to St. Mary's Hospital in Russellville and from there to St. Vincent Hospital in Little Rock. Claimant testified he had no recollection of the events of that day except seeing the sign that said, "St. Mary's" and wondering what he was doing there.

After returning home from his hospitalization and subsequent rehabilitation, claimant testified that in July 2019 he remembered an incident in which he had bumped his head at work on or about March 22, 2019. His testimony on what happened on or about March 22, 2019, was concise:

MR. CRENSHAW: On March, approximately March the 22, 2019, I bumped my head on the overhead frame of the catwalk and I can best describe this by saying that what I was pushing was a four feet -- a four-foot wide trash cart and about five-feet long trash cart going under a five-foot high catwalk ceiling.

And so, when I go under that with this and aim toward the door to the hallway, I have to bend my knees and turn my head to the side so I can't see what is in front of me and I happened to raise up a little early and bumped my head on the frame of the catwalk.

I thought my head would be bleeding when I exited the catwalk. I felt on my head, and I looked and I didn't see any blood and the pain went away in a couple of minutes, so I figured it wasn't anything, so I continued on and took the trash to the trash compactor and everything.

I did have a few minor headaches during that time following that and the headaches on a scale of 1 to 10 was something like a 3, so I didn't -- you know, I didn't really consider it anything major. I thought it might have been just stress from the things me and my wife had to deal with, so I never considered -- I never thought any more about that particular incident until after the accident that took place on 4/3/2019 happened.

That is the extent of what I believe caused me to pass out. I've never had a seizure in my life. I've never had a seizure in my life. I've never passed out in my life. All this just came up over this period of time.

On cross examination, the following exchange occurred between claimant and respondent's counsel regarding claimant's bump on the head:

Q [BY MR. SWEARINGEN] So this head bump incident that you say you had, you don't know what day that happened on; do you?

A I don't know the exact date. I know the approximate date. And the reason I don't know the exact -- I don't remember the exact date because I didn't think it was that serious, so I didn't -- if I thought it was serious enough to keep up with the date, I would have thought it was serious enough to go and report it.

Q Okay.

A I thought I just bumped my head: No blood, no swelling. The pain went away. I mean –

Q So this incident that you say that you had, nobody saw it; is that right?

A No. I was under that framework. No cameras are pointed in there. That steel that I hit –

Q I am just asking "yes" or "no". Nobody saw it; right?

A No, they couldn't see my head up against the ceiling. I couldn't even see the ceiling myself.

Q And when you had this incident that you say that you had with the catwalk or whatever it was, even if you didn't think it was that serious at first, did you go to a co-worker or a supervisor or anybody and say, "Hey, I just bumped my head. I thought I was going to be bleeding, but I am not." Did you mention it to anybody?

A No, I didn't go to no co-worker or nobody. Like I said, I was under the impression that it wasn't a serious accident. My head wasn't bleeding, and the pain went away.

Q Okay.

A If I went to the nurse, what would the nurse have said if I go up and tell the nurse I bumped my head? I would have made the report, but the nurse would come to no conclusion based on that. They'd probably tell me to go back on the floor.

Q You don't know because you didn't go; right?

A No, I don't know.

A few minutes later while still on cross-examination, the following exchange took place:

Q [BY MR. SWEARINGEN]: And I am just saying for purposes of argument, sir, if you did have some kind of a bump incident, would it be fair to say that even you didn't think it was a very big deal and it wasn't even worth reporting?

A No because the pain went away.

Q Okay.

A And there wasn't any blood. I figured you don't have any pain, no swelling, and no blood, that I didn't figure it would be an issue. I thought I was okay.

Q Okay. No pain -- excuse me, no swelling, no blood. Any discoloration or anything like that that you could have even pointed out?

A I had too much hair on my head to talk about discoloration. I couldn't see the color of my scalp, but I did stick my finger in my head and rubbed it to see if my head was bleeding.

THE COURT: So, the bump was in the hairline?

MR. CRENSHAW: Yes. In this area of my head(indicating).

THE COURT: Well, the court reporter can't get where you are pointing.

MR. CRENSHAW: It was in the hairline, yes.

THE COURT: On the right side?

MR. CRENSHAW: On the right side because I was looking at -- my head was turned towards the cooler in the plant.

THE COURT: Again, that is for the purposes of the court reporter where you are pointing.

MR. CRENSHAW: Okay.

Q [BY MR. SWEARINGEN]: Just so I am clear: Are you now saying you had a bump on your head from the incident?

A No, I didn't have a bump.

Q Okay. So, no bump, no blood, no discoloration that you could find --

A Some pain --

Q Sir, if I could, please let me finish. So, no blood, no bump, no discoloration that you could find, and the pain went away momentarily after this thing that happened; is that correct?

A Well, as far as the discoloration that I could find, I didn't attempt to find any discoloration. I would have had to go in the bathroom or somewhere and part my hair and look and see if there was discoloration, which I didn't do.

During his testimony, claimant denied excessive alcohol use. He admitted that he takes medication for hypertension and there were times that he ran out of medicine, causing his blood pressure to be elevated. Claimant frequently went to the nurse's station to have his blood pressure checked but testified that it was never so high that he was sent home.

Again, on cross-examination, claimant gave the following testimony:

Q Sure. And you raise a very good point, sir. Based on just the information that you just said, does it occur to you that perhaps you had a seizure and fell to the floor and hit your head?

A It occurred me that it's a possibility that I could have fell in the plant while in the trash compactor area where I was and hit my head and then had a seizure. That's a possibility. But you all -- there is a camera back there in that area, but I assume they had no footage or took no pictures of the area where I had the seizure at.

Q Okay.

A I only found out that I had the seizure in a certain area back in June from another employee.

Q Sure. And I guess my question, too, then, is given what you just said that it's a possibility that this could have happened and there is a possibility that this circumstance could have happened, do you at least accept that it's a possibility that this bump incident that you described that you didn't report to anybody has nothing to do at all with your seizure or your brain bleed?

A No. No. I don't accept that.

Q Okay.

A I feel now that -- the fall, I feel like it could have had a lot to do with it if I didn't fall in the area because I've never had a seizure before and I've never fainted before.

Q Okay.

A All of this is first time stuff.

Q And I appreciate that. Would it be fair to say you didn't know and you may still not know what caused your seizure?

A That is correct. I am not a doctor.

Q Okay. Do you have a single medical record that you have introduced or that I have introduced that you can point to that says from a doctor, this unwitnessed incident that he is referring to, caused a seizure or caused a brain bleed?

A And I don't have a doctor said that it didn't. And the doctor could have been misled --

THE COURT: That wasn't the question. The question was do you have a record that shows that it did?

MR. CRENSHAW: That it did cause the seizure?

THE COURT: Yes, sir.

MR. CRENSHAW: No, because number one, I never talked with the doctor about that.

THE COURT: Okay.

Angel Hankins-Crenshaw, claimant's daughter, went to St. Mary's Hospital while her father was still there and found that he was incoherent. She testified that when asked who the president was, claimant said it was "Ronald Reagan," and that he didn't know the date or the medications he was taking. She followed the ambulance to the hospital in Little Rock and was by her father's side when he was being admitted to the hospital. She stated that she lives nearby claimant and was a daily



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visitor to his home. Ms. Hankins-Crenshaw did not see any evidence of claimant being frequently intoxicated.

Raymond Hankins, claimant's son, testified that he came to the hospital at St. Vincent on April 4. He recalled that claimant was confused and combative on that day. He followed his father's progress and in May 2019, he became concerned about the effect the medications his father was taking were having on him; claimant was making statements about the FBI tracking his movements and complained of somnolence. Mr. Hankins is a licensed pharmacist, and he went with his father to see a nurse practitioner at Dr. Anthony Davis' office about getting his medication changed. After this visit, Mr. Hankins said claimant noticed a change in his somnolence and his paranoia went away.

Even considering the natural bias that I would expect a child to have for his or her parent, I found the testimonies of Ms. Hankins-Crenshaw and Mr. Hankins to be credible on the issues to which they spoke. I understood better that the statements claimant gave at the emergency room following his seizure, and even later in the day, might not be totally reliable, and why it was not until July that claimant made a connection between his seizure and the earlier incident of bumping his head. However, neither of those witnesses were able to shed any light on the main issue in the case, that being whether claimant's seizure on April 3, 2019, was caused by an on-the-job injury, i.e., bumping his head on or about March 22, 2019.

#### REVIEW OF THE MEDICAL RECORDS

Claimant introduced only five pages of medical records.<sup>1</sup> There were two pages from St. Mary's Regional Medical where claimant was taken by ambulance following his seizure at work on

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<sup>1</sup> There was a large packet of documents mailed to my office which were not introduced as exhibits by either party. Records are not reviewed before they are introduced into evidence, so these have remained in the Commission's file without being read. When claimant only introduced five pages of medical records, I asked: "I have a big stack of things here in front of me, but these are the ones you want me to consider?" Claimant said those five pages were what he wanted considered.

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April 3, 2019, and two pages from the St. Vincent's records of the same day. Claimant's medical exhibits concluded with the April 9, 2019, discharge face sheet from St. Vincent's. The records from St. Mary's support claimant's testimony that he did not remember much about his day at work; Dr. Kristin Martin recorded that "patient appears to have either a postictal state or altered mental status." As part of her neurological exam of claimant, her report says that he was "slowed to response, appears somewhat confused. Doesn't remember medications or some basic things." As such, I am reluctant to give much weight to anything that Dr. Martin recorded that claimant said, including "patient admits to drinking every day." I have no reason to doubt that the doctor recorded what was said, but I'm not convinced that claimant was then able to give accurate answers to such questions.

The history and physical consultation by Dr. Ali Raja were apparently dictated on April 3, 2019, at 5:13 p.m., approximately thirteen hours after claimant had arrived at St. Mary's in Russellville. In it, Dr. Raja recorded that claimant had a right sided subdural hematoma. "He has a two-week history of headaches, without a known precipitating event that brought this about, including no known fall or injury at that time since that time." Claimant's final medical record was the discharge face sheet of April 9, 2019, which provided no new information other than describing how the subdural hematoma was dealt with.

Respondent's medical documentary evidence contained records from claimant's primary care physician, Dr. William Barron, from February 2007 through November 2013, which serve to prove that claimant has a history of hypertension. (R.X.1-5) Likewise, the nurse's notes from Tyson showed claimant frequently had his blood pressure checked by one of the nurses on duty and nurse's assessment frequently noted an elevated blood pressure. (R.X.6-10) Respondent had a more complete set of records from St. Mary's Hospital. (R.X.11-22) Respondent duplicated the two pages from Dr. Kristin Martin that claimant introduced as an exhibit, but also included additional information such

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as claimant's blood pressure being 182 over 96 at 5:50 a.m. and the clinical impression of "syncope and collapse, seizure-like activity, acute subdural hematoma". (R.X. 16)

The history and physical report by Dr. James Crouch recorded "history of the present illness" as "in the ER, he had the brain scan obtained. It showed the moderate right sided subacute appearing subdural hematoma with a measurement of 2.1 centimeters. There is a 3.5-millimeter leftward shift." Also in that history, "at this point in time, the patient denies having had any recent head injury that he is aware of. He does not really complain much of a headache. Denies any neck pain. He has never had a seizure before. He tells me he may have one to two beers and some hard liquor a couple of times a week, but he does not drink every day." (R.X.18)

Dr. Crouch consulted with Dr. Anthony Davis. In Dr. Davis' history of the present illness, claimant denied any head injury, but his family reported that he had had some headaches for the past couple of months. Regarding his social history, Dr. Davis recorded that claimant "drinks about a few times a week but not daily." (R.X.21)

Respondent's records from St. Vincent began with the same two pages claimant introduced from April 3, 2019. Dr. Raul Ramirez saw claimant on that day, and in his pertinent history, he said "history of present illness dates back about two weeks when patient had been complaining of headaches. It was when at work he just fainted. He did not bump his head." In the social history, Dr. Ramirez recorded that claimant was a nondrinker. (R.X.27). Under his impressions, Dr. Ramirez believed claimant had a "subdural hematoma, acute on chronic, right hemisphere."

Following claimant's treatment at St. Vincent's and during rehabilitation at St. Mary's, claimant came to the emergency room at St. Mary's on April 18, 2019, stating that his blood pressure was high today when he had checked it at Walmart. When his blood pressure was checked at St. Mary's at 4:10 p.m., it was 187 over 103. When the claimant left the hospital, his blood pressure had

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been reduced to 161 over 104. He was instructed to follow up with his primary care provider in one to two days. (R.X. 29-33)

The final medical record introduced by respondent is a claim form for income protection benefits. It was completed by Dr. Davis, who had been treating claimant since June 12, 2019, and had last seen claimant on August 1, 2019. While I do not see a date on the form that indicates when it was completed, it was received at Tyson's on August 16, 2019. Dr. Davis answered this question on the form "is the patient's condition due to injury or sickness involving the patient's employment?" by checking "no" and below that, when asked "what is the primary diagnosis preventing your patient from working?" the answer was "non traumatic acute subdural hematoma." (R.X. 34-35)

#### ADJUDICATION

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show that: (1) an injury occurred that arose out of and in the course of his employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The "preponderance of the evidence" standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415.

I find claimant failed to meet his burden of proof on the first element, as I cannot find claimant made the necessary causal connection between the slight bump to his head on or about March 22,

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2019, and the subdural hematoma that was discovered on April 3, 2019. “When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury.” *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. “However, for this rule to apply, the basic test is whether there is a causal connection between the injury and the consequences of such. *Id.* The burden is on the employee to establish the necessary causal connection.” *Id.*

The Arkansas Supreme Court in *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 447, 990 S.W.2d 522, 524 (1999) stated:

“The plethora of possible causes for work-related injuries includes many that can be established by common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case.” (Emphasis added)

In this case, it was necessary for claimant to provide medical evidence connecting a bump on his head that caused pain for a couple of minutes and a seizure/subdural hematoma that manifested itself approximately two weeks later. The medical records introduced by the parties contained several denials of a blow to the head that could have caused the injury. I understand that claimant maintains it wasn't until July 2019 that he concluded that the incident in March 2019 led to the seizure on April 3, 2019, but it was nonetheless his statements to the doctors that caused them to rule out a blow to the head. This excerpt from the testimony above bears repeating:

Q [BY MR. SWEARINGEN] Would it be fair to say you didn't know and you may still not know what caused your seizure?

A That is correct. I am not a doctor.

Q Okay. Do you have a single medical record that you have introduced or that I have introduced that you can point to that says from a doctor, this unwitnessed incident that he is referring to, caused a seizure or caused a brain bleed?

A And I don't have a doctor said that it didn't. And the doctor could have been misled --

THE COURT: That wasn't the question. The question was do you have a record that shows that it did?

MR. CRENSHAW: That it did cause the seizure?

THE COURT: Yes, sir.

MR. CRENSHAW: No, because number one, I never talked with the doctor about that.

It was two years and three months from July 2019, when claimant said he determined that the bump on his head might have caused the seizure and the subdural hematoma, until September 2021, when the hearing was conducted. In claimant's words: "I never talked with the doctor about that." Giving his doctors that information would have provided them the opportunity to provide an opinion if what they saw while treating claimant following his seizure episode on April 3, 2019, was consistent with his version of what happened when he bumped his head without causing bleeding or swelling to the affected area. Claimant was likely correct when he said "the doctor could have been misled"—because it was claimant's statements that misled them; the physicians asked about a head injury because they were trying to determine a cause for claimant's condition, and claimant denied any such injury. Most significantly, there is the form submitted to respondent by Dr. Davis that was completed after claimant's August 1, 2019, visit with him—which was about two weeks after claimant says he realized that the incident on or about March 22, 2019, could have been the cause of his April 3, 2019, seizure. Based on what Dr. Davis knew from claimant's denial of a head injury, he did not find a connection with claimant's work and the condition for which claimant was being treated.

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To be clear, I have no reason to doubt that claimant believes what he testified to: “That is the extent of what I believe caused me to pass out. I’ve never had a seizure in my life. I’ve never had a seizure in my life. I’ve never passed out in my life.” (TR. 19) But he also admitted that he did not know what caused his seizure. “Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or conjecture.” *Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979). “Speculation and conjecture can never be substituted for credible evidence, no matter how plausible.” *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979). I do not find what claimant concluded to be utterly implausible, but without medical evidence connecting the bump on his head when he raised up under a catwalk on or about March 22, 2019, with the seizure and subsequent hospitalization many days later, it would require speculation to make a causal connection between the two events.

As I find claimant failed to prove the necessary causal connection between the incident on or about March 22, 2019, and the seizure event on April 3, 2019, I need not determine if notice was adequate, or if his seizure was due to some other cause unrelated to his employment.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury on or about March 22, 2019, that caused him to pass out at work on April 3, 2019. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$584.35

IT IS SO ORDERED.

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE