

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H205774

TOMMY JONES, Employee	CLAIMANT
SUPERIOR CHEVROLET SILOAM SPRINGS, Employer	RESPONDENT
RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED NOVEMBER 18, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 20, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 24, 2024, and a Pre-hearing Order was filed on June 25, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on August 8, 2022.
3. The respondents have controverted the claim in its entirety.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$790.00 for temporary total disability benefits and \$593.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to his spleen, liver, collar bone, ribs and left hand on or about August 8, 2022.
2. Whether Claimant is entitled to medical treatment for his spleen, liver, collar bone, ribs and left-hand injuries.
3. Whether Claimant is entitled to temporary total disability benefits from August 9, 2022, to January 16, 2023.
4. Whether Claimant's attorney is entitled to an attorney fee.
5. Respondents raise Intoxication Defense; alternatively, the injuries were idiopathic in nature.

The claimant's contentions are as follows:

“Claimant contends that he sustained compensable multiple injuries as a result of an automobile accident, 08/08/22. Claimant contends entitlement to payment of temporary total disability benefits from the date of injury through December 2022 (precise date to be provided). Claimant has incurred medical expenses of at least \$150,000.00. This claim has been entirely controverted for purposes of attorneys' fees.”

The respondents' contentions are as follows:

“Respondents contend that Claimant did not suffer a compensable injury on 8/8/22. Respondents contend the claimant had a post-accident drug screen that was positive for THC, benzodiazepine and alcohol. According to the police report, Claimant was drinking beer at the time of the accident. The claimant also told the ambulance attendant that he had stopped on his way home to get a few beers and was drinking one. Alternatively, Respondents assert the cause of the injury was idiopathic in nature and, thus, Respondents are not liable for it under the Act. Lastly, Respondents contend that Claimant resigned from his job on 10/11/22. In the event compensability is found and Claimant is found entitled to benefits for his off work status, Respondents

assert that entitlement ended when he resigned his position with the employer.”

The claimant in this matter is a 62-year-old male who alleges to have sustained compensable injuries to his spleen, liver, collar bone, ribs, and left hand in a motor vehicle accident on or about August 8, 2022.

On that day the claimant was travelling by himself from the respondent’s automobile dealership in Northwest Arkansas to Tulsa, Oklahoma, to meet with a customer to have a document signed. Following is a portion of the claimant’s direct examination testimony about the events that followed:

Q And then what happened after that?

A Well, I was probably less than a mile from the convenience store so I went in the convenience store because I had to take a leak, washed my hands. Okay? I did pick up two beer, paid for it, and put them in a sack by the paperwork, started the car and got to the end of the parking lot, and then I shared my location with my wife so she would know about what time I would be home.

Q How did you do that?

A With my cell phone.

Q I get it now. So you left from there and what’s the next thing that you remember?

A The next thing I remember is bam, bam.

Q The wreck?

A Two loud bam bams.

Q And you don’t remember why the wreck took place or what was going on, just the – just the impact?

A I don’t remember seeing either vehicle. I don’t remember seeing anybody at the scene. A lot of things I don’t remember. Some things I do, but there’s a lot that I don’t.

Q How far were you from the convenience store?

A About eight miles.

Q How far were you from – how far was the convenience store from where you had met the couple to get the signatures?

A About half mile.

Q About a half mile. So very close?

A Uh-huh.

Q And then convenience store eight miles –

A I think the convenience store was on the way to the freeway or to the lanes I needed to get onto to go back; 412 East.

Q 412 East back to Rogers?

A Actually, Siloam Springs and then on to Rogers. The dealership was in Siloam Springs.

Q So now this accident, again, it takes place only eight miles from the convenience store?

A Uh-huh.

Q Is that right?

A Correct.

Q This young lady is trying to get down what you say.

A Yes. Yes, eight miles. Could be eight and a half, could be ten point nine but eight miles.

Q So now you were present in the courtroom a moment ago when your wife testified that she had called and happened to get you right at the time that this accident or right after this accident had taken place?

A Yes.

Q And the ambulance records that we have indicate that you were found sitting up in the driver's seat of an SUV.

Were you driving an SUV?

A Yes, sir.

Q And that you were "awake, alert, and oriented."

A Well –

Q You were awake? You were not unconscious?

A Well, I heard the phone ring, and I answered it.

Q But it also says here that you were unable to – were not physically or mentally capable of signing the report. Did you – were you aware of that?

A No, I wasn't aware of that.

Q Were you – do you remember the conversation with your wife?

A I remember the conversation with my wife. I remember there was a lady back here that said, "No, ma'am, he's hurt. There's an ambulance on the way." Then I don't remember anything else. I don't remember them getting me out of the car. I didn't remember the slide at the accident. The next thing I remember is, you know, they put you on a stretcher and they click it, you know, they click/click because they put you in an ambulance?

Q Yes, sir.

A They click/click, I remember that. And then I remember – I guess my eyes opened up. The doors were open and there was a lady on the left, and they slid me in there. She was probably a paramedic, and I remember her asking me a few questions. I don't remember them getting me out of the ambulance. And then I wake up three days later.

Q You had had some pretty significant surgery after that ambulance ride; you're aware of that?

A Yeah.

An Oklahoma Highway Patrol officer arrived on the scene of the claimant's motor vehicle accident and subsequently produced an "Official Oklahoma Traffic Collision Report," which is found at Respondents' Exhibit 2. That report, through a diagram, explains the motor vehicle accident which in total included three motor vehicles. A portion of that report entitled "Remarks" follows:

UNIT 1 WAS TRAVELLING EASTBOUND ON US 412 IN THE OUTSIDE LANE. UNIT 2 WAS TRAVELLING EASTBOUND ON US 412 IN THE OUTSIDE LANE IN FRONT OF UNIT 1. UNIT 3 WAS TRAVELLING EASTBOUND ON US 412 IN THE INSIDE LANE. UNIT 1 COLLIDED WITH THE REAR END OF UNIT 2. AOI #1 IS .9 MILES WEST OF THE WEST EDGE OF COUNTY ROAD (4160 RD) AND 6 FEET NORTH OF THE SOUTH EDGE OF US 412 EASTBOUND. UNIT 2 DEPARTED THE ROADWAY TO THE RIGHT IN A CLOCKWISE SKID AND STRUCK THE GUARDRAIL. AOR FOR UNIT 2 IS 157 FEET EAST OF AOI #1 AND 6 FEET SOUTH OF THE SOUTH EDGE OF US 412, FACING SOUTHWEST. UNIT 1 ENTERED THE INSIDE LANE FACING NORTHEAST. UNIT 3 COLLIDED WITH THE DRIVER'S SIDE OF UNIT 1. AOI #2 IS 177 EAST OF AOI #1 AND 20 FEET NORTH OF THE SOUTH EDGE OF US 412. UNIT 1 WAS SENT INTO A CLOCKWISE SPIN AND DEPARTED THE ROADWAY LEFT LEAVING APPROXIMATELY 140 FEET OF YAW MARKS IN THE GRASS MEDIAN AFTER THE COLLISION WITH UNIT 3. UNIT 1 CONTINUED EASTBOUND IN A CLOCKWISE SPIN AND ENTERED THE ROADWAY TRAVELLING SOUTH ACROSS THE ROADWAY. UNIT 1 STRUCK THE GUARDRAIL ON THE SOUTH SIDE OF US 412 AND CAME TO REST. AOR FOR UNIT 1 IS 350 FEET EAST OF AOI #1 AND 6 FEET SOUTH OF THE SOUTH EDGE OF US 412 E/B. AOR FOR UNIT 3 IS 198 FEET EAST OF THE AOI AND 20 FEET NORTH OF THE SOUTH EDGE OF US 412 E/B.

The claimant was attended to and treated by EMS personnel at the motor vehicle accident scene. Following is a portion of the patient care report from that interaction:

D - DISPATCHED TO VEHICLE MVC ON HWY 412 AND VERDIGRIS RIVER BRIDGE, EB, UNKNOWN INJURIES, FD EN ROUTE.

C – SHOULDER/COLLAR BONE PAIN, SWELLING L HAND, ABRASION TO LEFT FLANK, TRAUMATIC INJURY SECONDARY TO MVC.

H – PT IS A 50 YOM WHO IS THE RESTRAINED DRIVER OF A CHEVY EQUINOX SUV THAT WAS TRAVELING EAST ON 12 AND HIT A CAR WHILE CHANGING LANES ON THE BRIDGE AND SPUN AND WAS T-BONED IN THE DRIVER DOOR/DRIVER'S SIDE BY A PICKUP. PT C/O L. SHOULDER/COLLAR BONE PAIN AND HAS SWELLING CLOSED DEFORMITY TO L. HAND. HE REPORTS HE DOESN'T THINK HE IS HURT ANYWHERE ELSE. HE DENIES LOC. HE REPORTS HE REMEMBERS CHANGING LANES AND DID NOT SEE THE OTHER CAR. THERE IS 12" INTRUSION TO THE DRIVER DOOR, FD IS WORKING ON EXTRICATION WITH EXTRICATION TOOLS. THERE IS SIGNIFICANT INTRUSION DAMAGE TO BOTH DRIVER SIDE DOORS AND FRONT DRIVER FENDER. SOME DAMAGE TO REAR AND HOOD. THE WINDSHIELD IS BROKEN. HE HAD STOPPED AND GOT A FEW BEERS AND WAS DRINKING ONE WHEN THE ACCIDENT OCCURRED. PMH: HTN, A-FIB, AND CARDIOVERSION 4 TIMES TWO YEARS AGO. NOT ON MEDS FOR A-FIB, TAKES BP MED NKDA.

The claimant was taken by ambulance to St. Francis Health Emergency Department in Tulsa, Oklahoma, to triage. A triage note, authored by Registered Nurse Tabitha Spataro with a given date of service of August 8, 2022, 10:03 pm, states:

Patient was in MVA going 60mph and tried to change lanes, hit another car, and then got t-boned. Patient had an open alcohol can in room. Approx 1ft intrusion into front door. Air bags deployed. Broken glass present. Steering wheel intact.

Patient has been in a-fib. Pulse 150-190. Bp stable 133/79 BP, 95% RA, Glucose 122.

Fracture to left hand, left collar bone. Unable to get ring off left hand. Good cap refill but swelling noted.

The claimant was admitted to the hospital at that time and was not discharged until August 19, 2022. It is without question that the claimant sustained serious injuries during his August 8, 2022, motor vehicle accident including injuries to his spleen, liver, collar bone, ribs, and left hand. Claimant's Exhibit 1 well documents those injuries and the treatment he received while hospitalized.

The respondent in this matter has raised the Intoxication Defense. I will first address that defense. Ark. Code Ann. 11-9-102(4)(B)(iv)(a)-(d) states that compensable injuries do not include injuries where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. An employee is not entitled to compensation unless it is proven by a preponderance of the evidence that the alcohol did not substantially occasion the injury or accident.

The Supreme Court analyzed the intoxication statute with regard to alcohol usage, in *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998), and determined the following:

- (1) Any amount of an intoxicating or illegal substance invokes the presumption that the injury or accident was substantially occasioned by the use of the intoxicant or illegal substance.
- (2) Whether a rebuttable presumption is overcome by the evidence is a question of fact for the Commission to determine.
- (3) The phrase, "substantially occasioned by" requires that there be a direct causal link between the use of an intoxicant or illegal substance and the injury.

During the claimant’s hospitalization, specifically on August 9, 2022, at 1:43 pm, Registered Nurse Daniel Russell collected a urine sample from the claimant. That urine sample was then used in a drug screen profile for drugs of abuse. The medical records regarding the urine collection, testing, and results can be found at Respondents’ Exhibit 1, pages 24 and 25.

Following is a portion of that report:

Amphetamines: Results <500ng/mL are considered negative.
Barbituates: Results <200ng/mL are considered negative.
Benzodiazepines: Results <200ng/mL are considered negative.
Buprenorphine: Results <5ng/mL are considered negative.
Cannabinoids: Results <50ng/mL are considered negative.
Cocaine: Results <300ng/mL are considered negative.
Methadone: Results <300ng/mL are considered negative.
Opiates: Results <300ng/mL are considered negative.

Amphetamines Qual	Negative
Barbituates Qual	Negative
Benzodiazepine Qual	Positive
Buprenorphine Qual	Negative
Cannabinoid Qual	Positive
Cocaine Qual	Negative
Methadone Qual	Negative
Opiates Qual	Negative

The test results from St. Francis Health System indicate the claimant was positive for benzodiazepine at a level above 200ng/mL and cannabinoid at a level above 50ng/mL. After a review of the medical records submitted into evidence I find no indication of testing for the presence of alcohol in the claimant’s system. EMS records and hospital records note at least the presence of an open can of beer during the motor vehicle accident. The claimant testified on direct examination that after he completed his time with the respondent’s customer, he went to a nearby convenience store and while there “pick up two beer, paid for it, put them in a sack by the

paperwork....” On cross examination the claimant was asked about the presence of beer as follows:

Q Now, the beer as far as what you have admitted, you said you bought two tall boy 24 to 25 ounce beers; correct?

A I’m sure that’s what they were.

Q Do those fit in the cup holder of the vehicle?

A I put them in a bag.

Q Do they fit in the cup holder of the vehicle?

A I don’t know.

Q You don’t know. And you told me, even though you paid the open container ticket, you don’t know how the beer got opened?

A That’s correct.

Q Is that your testimony again today?

A Yeah, sure is.

Q And you came to that idea that the can busted during the wreck?

A Could have. I don’t know. I didn’t open it.

Q Is that –

A And all my clothes, there’s no alcohol on my clothes.

Q Does that sound possible to you that they would write you an open container ticket for a busted can?

A You know, I don’t know. I never had that ticket before.

Q The ambulance report stated that you had stopped and got a few beers, was drinking one when the accident occurred.

You have seen that report; haven’t you?

A I haven't read the report.

Q Personnel at ER said you had an open alcohol can, they say in the room but I'm pretty sure the discussion was about it being in the car.

You didn't have a beer in the room; did you?

A No, and I'm sure – I didn't have a room.

Given the test results of the claimant's urine screen analysis at St. Francis Health System of positive findings of both benzodiazepine and cannabinoid, along with the presence of beer in the motor vehicle accident and the EMS report indicating the claimant was taking a drink of beer at the time of the accident, I find that the respondent has met its burden to invoke the rebuttal presumption that the claimant's motor vehicle accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

The claimant, in order to prove the injuries he alleges compensable, must now overcome the rebuttable presumption. The claimant testified on cross examination regarding benzodiazepine as follows:

Q What about taking muscle relaxers, Benzodiazepine, Xanax, anything like that?

A Never had one.

Q So if any of that is going on, you wouldn't be on the clock or working; right?

A Yeah, I don't know anything about them others that you mentioned. Never had one.

Q If any of that was going on, you wouldn't be on duty working; would you?

A Like I said, I don't know anything about them benzo...

The claimant was also asked on cross examination about his use of medical marijuana as follows:

Q Okay. Now, you told me you got medical marijuana for anxiety and stress so you could relax in the evening; is that correct?

A I may have told you that.

Q Well, did you or didn't you? You did, didn't you? I have your deposition transcript if we want to go page by page.

A There's a lot of things I don't remember. I don't want to sit here and say yeah if I don't remember it.

Q Okay.

A I'll tell you the truth right now.

Q You told me in your deposition you were prescribed medical marijuana for anxiety and stress so you could relax in the evening. You don't dispute that; do you?

A No.

Q (Mr. Parrish continuing.) Eddie, even if you have a marijuana card, you're not supposed to ingest marijuana and drive; are you?

A No, I don't do that.

Q And that's especially true if you're combining marijuana and alcohol; correct?

A Yes.

Q And that would be triple true if you're combining marijuana, and alcohol, and any type of Benzodiazepine or muscle relaxer; right?

A I don't take 'em.

Q Do you have the card with you?

A No. I don't carry the card.

Q Where's it at?

A I assume it's in our safe at home. I hadn't had the card in a long time.

Q Do you remember telling me in your deposition that you cut the card up after the wreck?

A I may have.

Q Where did the picture that we've introduced today, where did that come from?

A I had it already.

Q You already had a picture of your card?

A In case I had to renew it or something like that or wanted to.

Q Where was this picture?

A In my pictures.

Q On your phone?

A Uh-huh.

Q Can you say "yes" for the record?

A Oh.

Q Say "yes" instead of "uh huh" –

A Yes.

Q -- so the record's clear.

A That's correct.

Q Did you explain to me that you haven't used the card since the wreck because the wreck was a "eye opener" for you? You don't deny saying that; do you?

A I don't deny saying that.

The claimant does deny the use of benzodiazepine at any time and denies the use of marijuana/cannabinoid and alcohol while working. The claimant was very clear that he has very little knowledge of the events surrounding the motor vehicle accident. Following is a portion of the claimant's cross examination testimony:

Q At your deposition and then again today, you explained that you don't remember anything about what happened between when you dropped you location at the gas station to your wife and the impact of the wreck?

A That's correct.

Q Right?

A That's correct.

Q You do agree you bought the beer, but you don't remember getting on the road, driving, any of it?

A No. Next thing is bam bam.

Q You can't tell me what you did or did not do between the gas station and the wreck –

A No.

Q -- in any form or fashion; can you?

A No.

Q You said it's a mystery. I think you said you'd pay a million dollars to find out what happened in that window of time?

A I've told that to several buddies of mine.

The claimant did admit to receiving a citation from the State of Oklahoma for inattentive driving and a citation for open alcohol beverage container. The claimant did not receive a citation for DUI or DWI.

Here the claimant is unable to rebut the presumption that his motor vehicle accident was substantially occasioned by the use of benzodiazepine, cannabinoid, and alcohol. The only evidence presented is his own uncollaborated testimony that essentially says, I did not do or use those substances at all or in the time and space surrounding the motor vehicle accident. I note the time directly before the accident the claimant says he has no memory of at all. In *Ester v. National Home Ctrs., Inc.*, 61 Ark App. 91, 967 S.W.2d 565 (1998), the Arkansas Court of Appeals found that a worker failed to rebut the presumption that his motor vehicle accident was caused by the use of illegal drugs where he tested positive for opiates and cocaine metabolites and the only evidence presented to rebut the presumption was his own uncollaborated testimony concerning the nature and extent of his drug use and his own uncollaborated testimony his interpretation of the cause of the accident.

This case is similar to the claimant's in that the claimant's only evidence to rebut the presumption is his own uncollaborated testimony. I give much more weight to the urine screen done on the claimant in the hospital that revealed the presence of benzodiazepine and cannabinoid. I also give weight to the EMS and hospital records that indicate the presence of alcohol at the scene of the motor vehicle accident, along with the citation the claimant admits he was given for an open container of alcohol. The claimant has failed to rebut the presumption that his August 8, 2022, motor vehicle accident was substantially occasioned by benzodiazepine, cannabinoid, and alcohol. As such, the claimant is unable to prove that he sustained the compensable injuries he alleges as a result of that August 8, 2022, motor vehicle accident.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 24, 2024, and contained in a Pre-hearing Order filed June 25, 2024, are hereby accepted as fact.

2. The respondent has successfully raised the Intoxication Defense and the claimant has been unable to overcome the rebuttable presumption that his motor vehicle accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

3. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his spleen, liver, collar bone, ribs, and left hand on or about August 8, 2022.

4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment in this matter.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits in this matter.

6. The claimant has failed to prove by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**