

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G805984

JEFFREY S. JOHNSON, EMPLOYEE	CLAIMANT
PECO FOODS, INC., EMPLOYER	RESPONDENT NO. 1
OCCUSURE CLAIMS SERVICES, LLC, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 14, 2021

Upon review before the Full Commission, Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE JASON A. LEE, 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: Reversed.

OPINION AND ORDER

Respondents appeal the Opinion filed December 29, 2020 by the administrative law judge ("ALJ") finding, among other things, the following:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The employee-employer relationship existed between Claimant and Respondents No. 1 on July 8, 2018.
3. Claimant earned an average weekly wage of \$566.56, which entitles Claimant to compensation rates of \$378 for TTD benefits and \$284 for PPD benefits.
4. Claimant has proven that he sustained a compensable injury during the course and scope of his employments with Peco Foods.
5. Claimant has proven, by a preponderance of the evidence, that the medical treatment he received from July 8, 2018, and continuing to date, including his cardiology treatment provided by St. Bernard's Heart and Vascular Clinic and primary care provided by Dr. Rebecca Osbourne constituted reasonable and necessary medical treatment and that he is entitled to payment of his medical bills incurred which were a result of his treatment.
6. Claimant has proven that he is entitled to temporary-total-disability benefits from July 8, 2018 until a date yet to be determined.
7. Claimant has proven that the claim was controverted, and he is entitled to attorney's fees on the indemnity benefits awarded herein.
8. All other issues are reserved.

For the reasons set out below, the ALJ's Opinion filed December 29, 2020 is reversed.

I. BACKGROUND

Claimant Jeffrey Johnson began working for Respondent No. 1 Peco Foods, Inc., in May 2018. He worked on the "Live Hang" line, where Claimant's job was to grab the live chickens by the feet, flip them over, and hang them upside down on a conveyer line. Claimant testified that while performing this work, the birds flogged him, tried to fly out of his hands, and

pecked at him. According to Claimant, at some point – Claimant did not specify when – he began developing rashes all over his body. According to Claimant, the onsite nurse treated these rashes with diaper cream. Eventually, Claimant was transferred to another department.

In July 2018, Claimant was enjoying the Independence Day holiday at the lake with his family when he was rushed by ambulance to the emergency room.

In Progress Notes signed July 14, 2018, Dr. Wilber noted:

Assessment/Plan

1. Cardiopulmonary arrest  
Unclear of cause
2. Anoxic encephalopathy  
Resolving. He is still somewhat slow but overall has made a remarkable recovery. At this point, the patient is doing much better. He's up walking. I had initially felt like he would need to go to a rehabilitation facility. However, he is doing so well now that we may end up being able to just discharge him home in a day or [two] and have him get outpatient therapy.
3. Cardiomyopathy  
Possible viral induced. He had a viral syndrome prior to coming to the hospital. He may have had an arrhythmia from a viral cardiomyopathy.

Dr. Godfrey noted on July 15, 2018, that he discussed with Claimant “the possibility of a viral etiology with cardiomyopathy and subsequent cardiopulmonary arrest.” It is unclear who initiated this discussion or the substance of the discussion.

On July 17, 2018, Dr. Barry Tedder (cardiologist) noted that Claimant has a family history heart disease and that Claimant “had a viral type illness with a rash on his arms about 2 to 3 weeks prior to the event and could have developed a viral cardiomyopathy.”

Dr. Tedder noted his Impression and Plan, as follows:

The patient has a nonischemic cardiomyopathy at a young age. This still could be post-arrest recovery, but it has been a couple of weeks. We would ultimately like to get him on an ACE inhibitor, but we will see what his kidney function is and start potassium 20 mg a day. He is to follow up with Dr. Vance after his event monitor. After discussion with Dr. Vance, since he initially documented PEA it could be etiology is unknown and it could have been a respiratory arrest and subsequent ventricular arrhythmias after asystole, but we have no way of knowing whether his primary arrhythmia could have been ventricular and then developed PEA. He will follow up with Dr. Vance for further assessment of arrhythmias. He will need consideration for genetic testing, as he had a sudden cardiac death in a great uncle in his 50s, also I want to see if his cardiomyopathy improves. We will need to consider ACE inhibitors, depending on his creatinine. We will check BNP. He needs to be followed up in the Heart Failure Clinic as well.

Eventually, Claimant’s primary care physician, Dr. Rebecca Osborne stated that she believed within a reasonable degree of medical certainty that the “viral illness [Claimant] contracted at work caused the cascade of medical problems afterwards.”

Respondents No. 1 submitted the written report of Dr. Michael Gelfand, an infectious-disease expert. Dr. Gelfand’s report states the following:

There is no medical evidence of an infectious etiology of the cardiac illness suffered by Mr. Johnson. No viral studies or myocardial biopsy was done by his physicians.

I am not aware of any infection likely to be acquired from a contact with/exposure to chickens that is expected to cause a cardiomyopathy.

The clinical course of a prolonged illness with nausea, vomiting, diarrhea, and fever over the period of June 2018 (as described by Mr. Johnson in his deposition) is inconsistent with a viral illness.

In summary, I find no evidence that Mr. Johnson's cardiac illness is related to an occupational exposure at Peco Foods.

I base my opinion on my clinical experience and general knowledge and the pathophysiology and natural history of infectious diseases, including viral myocarditis and infections related to exposure to birds, including chickens.

## II. STANDARD

A compensable injury is one that (1) arises out of and in the course of employment; (2) causes internal or external harm to the body that requires medical services or resulted in disability or death; and (3) is caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

Under § 11-9-114(b), a claimant alleging that a cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction caused a compensable injury must show that "the exertion of the work necessary to precipitate the disability or death was **extraordinary and unusual** in comparison to the employee's usual work in the course of the employee's regular employment **or, alternatively,**

**that some unusual and unpredicted incident occurred** which is found to have been the major cause of the physical harm.” (emphasis added)

The Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *See, e.g., Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

### III. DISCUSSION

Claimant contends that he sustained a heart injury in the course and scope of his employment at Peco Foods where he was handling live chickens. As a threshold matter, Claimant failed to prove that he sustained an injury caused by a specific incident, identifiable by time and place of occurrence, during the course of his employment as required under § 11-9-102(4)(A)(i). Although Claimant suffered his heart injury on July 4, he was not working at that time. Nor did Claimant identify a specific time or date on which he sustained the virus that he alleges caused his heart injury. The closest we get to a specific date and time is found in the medical notes of July 17, 2018, in which Dr. Tedder noted that Claimant “had a viral type illness with a rash on his arms about 2 to 3 weeks prior to the event and could have developed a viral cardiomyopathy.” This is insufficient to establish a specific date and time.

Additionally, as set out above, Section 11-9-114(b) of the Arkansas Code requires that for heart injuries, such as the one here, the

employee must prove that “the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee’s usual work in the course of the employee’s regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.”

In *City of Blytheville v. McCormick*, 56 Ark. App. 149, 154-55, 939 S.W.2d 855, 857-58 (1997), the usual work performed by the injured worker was driving a fire engine. When the employee suffered his heart injury, he was performing a task that he did not normally perform – cutting a hole in a roof and placing a pipe to allow smoke and gas to escape. While performing this task, the firefighter “inhaled a good deal of smoke that was unusually heavy, dark, and thick immediately prior to his heart attack.” The medical evidence submitted was sufficient to show that this unusual work was the major cause of his heart injury. Accordingly, the Commission and the Court of Appeals found that the firefighter was entitled to workers’ compensation benefits.

In *J Mar Express, Inc. v. Poteete*, 2011 Ark. App. 122, at 16, 381 S.W.3d 159, 168, a worker was changing a mudflap on a big rig in temperatures so hot that when, after he finished installing the mudflap (alone and with less-than-ideal tools), he collapsed on the pavement, he suffered severe burns such that when workers picked him up his skin peeled off. The court of appeals noted that “although he had previously

assisted, on a single occasion, with changing a mud flap, he had not been required to perform those duties in as hot an environment as that present on the day in question.” *Id.* Accordingly, the court found this was sufficiently unusual work for the employee as required by Section 11-9-114(b). *Id.*

Section 11-9-114(b) of the Arkansas Code requires that Claimant prove (1) that he was performing work that required unusual and extraordinary exertion, or (2) that some unusual or unprecedented incident occurred, which was the major cause of his heart injury. Claimant did not prove either of these elements – nor did he prove causation.

First, the work he was performing did not require unusual and extraordinary exertion. According to Claimant’s testimony, the work he was performing was the same work he and all the other employees normally performed while working in that department.

Nor did Claimant prove that “some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.” According to Claimant’s testimony, all the workers in the Live Hang department dealt with the same issues as he did (feces on the floor, which eventually found its way onto the employees’ clothes – “there was nobody coming there that was in that department that would come out clean from it”). Even assuming that the virus preceded the heart injury, more on that below, Claimant was told during orientation that it is normal (*i.e.*, not unusual) for workers in that department to suffer from a virus.



Claimant testified that he was told that “you would come down with a virus that they said would pass in a week and mine never let up after a week.”

Claimant also testified that other workers “g[o]t sick in there the same way that [Claimant] was.”

Moreover, Claimant failed to prove causation. Although Dr. Osborne opined that she believed a virus sustained in the course of employment caused Claimant’s medical issues, her opinion on this point is not conclusive because, as Dr. Gelfand – an expert on this topic – pointed out, neither Dr. Osborne nor any other of Claimant’s treating physicians performed any viral studies or myocardial biopsies necessary to reach such a conclusion. In fact, according to Dr. Gelfand, he is not aware of any viral infection that is likely to be acquired from exposure to chickens that would cause Claimant’s cardiomyopathy. In other words, not only did Claimant fail to prove causation, but according to Dr. Osborne it is not even possible. The Full Commission credits the expert opinion of Dr. Gelfand that Claimant’s cardiomyopathy could not have been caused by a viral infection likely to be acquired from exposure to chickens.

Lastly, to the extent that Claimant alleges that he suffered from an occupational disease as defined in § 11-9-601(e)(1)(A) of the Arkansas Code, Claimant failed, as set above, to prove by a preponderance of the admissible evidence that his employment caused his heart injury as is required under § 11-9-601(e)(1)(B). Accordingly, Claimant failed to prove

by a preponderance of the evidence that he sustained a compensable occupational-disease injury.

IV. CONCLUSION

As set out above, the Full Commission finds that Claimant failed to prove by a preponderance of the evidence that he sustained a compensable heart injury.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs.

CONCURRING OPINION

After my *de novo* review of the entire record, I concur with the majority opinion finding that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable heart injury. I write separately to clarify, for the benefit of the claimant.

Although it appears that the claimant may have suffered an injury that was of a viral etiology, there does not appear to be any objective evidence that the claimant suffered from a viral infection. Thus, I cannot say that the claimant's heart injury had a causal connection to a workplace

incident without conjecture and speculation. Therefore, I am constrained to agree with the majority.

For the foregoing reason, I concur with the majority opinion.

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M. Scott Willhite, Commissioner