

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H002124

KEVIN O. MARTIN, EMPLOYEE

CLAIMANT

**ROCK REGION METRO,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MGMT. RESOURCES,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 15, 2021

Hearing before Administrative Law Judge O. Milton Fine II on March 31, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James W. Stanley, Jr., Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 31, 2021, the above-captioned claim was heard in Little Rock. A prehearing conference took place on December 16, 2020. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. Following amendments at the hearing, they are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer relationship existed among the parties on February 5, 2020.
3. Claimant's average weekly wage entitles him to compensation rates of \$711.00/\$533.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. Following amendments, they read as follows:

1. Whether Claimant sustained a compensable injury to his face and left shoulder by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from February 5, 2020, to August 16, 2020.
4. Whether Claimant is entitled to a controverted attorney's fee.
5. Whether Respondents are entitled to an offset concerning short-term disability benefits received by Claimant.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments, are the following:

Claimant:

1. Claimant contends that on February 5, 2020, he sustained an injury to his face and left shoulder while proceeding to his assigned bus after he clocked in at his place of employment with Respondent employer. Therefore, this trauma arose out of and in the performance of his work for Respondent employer. Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits from February 5, 2020, to August 16, 2020, and to a controverted attorney's fee.

Respondents:

1. Respondents contend that Claimant did not sustain a compensable injury on February 5, 2020, or at any other time while working for Respondent employer. Although he fell on February 5, 2020, his fall was due to an idiopathic event. The medical records do not support an off-work status in the event compensability is found.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

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

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2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his face by specific incident.
4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his left shoulder by specific incident.
5. Because of the above findings, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney’s fee, and whether Respondents are entitled to an offset or a credit—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of Claimant’s Exhibit 1, a compilation of his medical records, consisting of two index pages and 30 numbered pages thereafter; Respondents’ Exhibit 1, another compilation of Claimant’s medical records, consisting of one index page and 23 numbered pages thereafter; Respondents’ Exhibit 2, non-medical records, consisting of one index page and six numbered pages thereafter; and Respondents’ Exhibit 3, a DVD containing video footage of Claimant’s fall.

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A. Compensability

Introduction. Claimant has alleged that he suffered a compensable injury by specific incident to his face and left shoulder on February 5, 2020, when he fell at work. Respondents have denied that the alleged injuries are compensable, arguing that the fall that caused them was idiopathic in nature.

Standards. 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. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). 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). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Conv. & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). Injuries due to

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an unexplained cause are different from those whose cause is idiopathic. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). An unexplained injury at work is generally a compensable one. *Pack, supra*. On the contrary, since an idiopathic injury is not related to one's employment, it is generally not compensable unless conditions related to the employment contribute to the risk of injury or aggravate the injury. *Id.*

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Evidence. Claimant, who is 55 years old and a high school graduate, testified that he has been employed as a bus driver for Respondent Rock Region Metro since 1998. In describing his workday, he stated that he reports for work at 12:40 p.m. at the Rock Region Metro's location on Maple Street in North Little Rock. After clocking in there, he rides a 15-passenger van that is owned by his employer to its Travel Center, located at Fourth and Cumberland Streets in Little Rock. On the date in question, he traveled there along with three other individuals. Once he leaves the van, he walks over to his assigned bus, logs into the Synchronatic device on board, and begins his route.

When questioned about his activities on February 5, 2020, traced his routine up until the time he arrived at his bus. He stated that he got within two feet of the bus's door, and guessed that the time was 12:48 to 12:50 p.m. Asked what happened next, he responded: "I don't recall." However, on cross-examination, he admitted that he has no memory whatsoever, of the events and his activities that day. The following exchange took place:

Q. I asked you in the deposition what happened. Your response was: "I can't recall." Is that accurate?

A. Yes.

Q. I next said: "You have no idea what happened?" Your response was "No." is that right?

A. Yes.

Q. You don't remember falling?

A. No.

Q. And you told me, in fact, that you don't even remember going to work that day, is that right?

A. No, I don't.

Q. You don't remember that morning or that afternoon at all?

A. No.

Q. I asked you if you recalled how you fell. You said you did not know, is that right?

A. That's correct.

Q. You don't know if you tripped or if you just fell?

A. I don't—don't recall.

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Q. You told me that you don't recall whether you talked to anyone at the Travel Center before going to the bus, is that right?

A. I don't recall.

...

Q. You don't remember hitting the ground at all?

A. No, I don't.

His testimony was that his next memory is of waking up several days later in his hospital room at the University of Arkansas for Medical Sciences ("UAMS"). When he did so, he believed that he was still at work. He was hospitalized there for 14 days. While at UAMS, he received treatment for his eye and for his left shoulder.

Asked if he had any pre-existing medical concerns or issues, Claimant responded: "Just where I had passed out the year before." He explained that on that occasion, he had been preparing to take his daughter to school when "it [sic] just started passed out." As a result, he was referred to a cardiologist. After being off work for approximately one month because of this, he went back to driving a bus. Other than the above, he has had no medical concerns. Two years before the fall in question, he passed a DOT physical.

Claimant admitted that in paperwork that he filed with Rock Region Metro in order to obtain short-term disability benefits, he wrote that he suffered a pulmonary embolism and a collapsed lung, and that they were the cause of his injury. He obtained this information from his wife. Later, he stated that the above conditions, as well as the injuries sustained in the fall, formed the basis for his short-term disability application.

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In August 2020, he underwent a DOT physical. Thereafter, he was allowed to return to work as a bus driver.

Medical Records. The records of Claimant that are in evidence reflect that nearly one year prior to the fall at issue, on January 16, 2019, Claimant treated at CHI St. Vincent after he fainted. He related to treating personnel that he became dizzy at home and fell while walking from his kitchen to his bedroom. His belief was that he passed out. Claimant was assessed as having, inter alia, near-syncope, essential hypertension, tachycardia, and an abnormal EKG. He was referred to Dr. Thomas Conley, a cardiologist.

On February 5, 2020, Claimant was found lying supine on the sidewalk. An ambulance was summoned. The report from MEMS in evidence reads in pertinent part: “LRPD [Little Rock Police Department] advised bystanders that witnessed pt fall reported that pt was staggering first then fell facedown ont[o] concrete.” He was taken to UAMS. There, he underwent a CT scan of his chest that showed “[n]o acute traumatic findings” but did reflect bilateral pulmonary artery emboli involving the right and left main pulmonary arteries. The emboli appeared to be occlusive on the right and near occlusive on the left. Thrombi extended to the lower lobe segmental arteries bilaterally. There was evidence of right heart strain with dilation of the right ventricle. The CT also showed deep venous thrombosis involving the left common femoral vein extending to the distal left external iliac vein. Claimant underwent a thrombectomy, along with placement of an IVC filter. He was treated with Heparin intravenously.

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In his application for short-term disability benefits dated February 12, 2020, Claimant stated that in addition to his “fall with facial trauma,” he was suffering from “submassive pulmonary embolism requiring vascular intervention and anticoagulation[.]”

Dr. Aleobe Eruenmior saw Claimant on April 20, 2020, and wrote:

I discussed at length and with patient that based on his current physical ability, there is no indication why he cannot return back to work driving and **I cannot for certainty say that he would not have another syncopal episode as the previous etiology was likely unknown however because he was found to have a PE [pulmonary embolism] this was attributed to likely being the cause.**

(Emphasis added)

The footage of Claimant’s fall, contained on the DVD in Respondents’ Exhibit 3, shows that Claimant fell as he approached the front entrance of the bus, hitting the concrete. He is not seen tripping over anything, and he makes no apparent effort to catch himself.

Discussion. At the outset, it must be shown that Claimant suffered a fall at work on February 5, 2020, because of work conditions and not because of an idiopathic condition he had on that day. Otherwise, he cannot prove that he sustained a compensable injury to either his face or his left shoulder as a consequence of said fall.

Claimant has no recollection of the events of that date. The video evidence shows that while approaching the bus, he simply fell forward, striking the hard ground. Nothing on the video shows him tripping; and the footage does not show him putting up his hands or doing anything to catch himself before landing. This comports with the MEMS record discussed above: bystanders reported that Claimant “was staggering

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then fell facedown onto [the] concrete.” The evidence thus preponderates that Claimant suffered a syncope prior to hitting the ground. What was the cause of this? The chest CT scan he underwent in the hospital after the fall found pulmonary emboli but “[n]o acute traumatic findings.” He was also found to have deep vein thrombosis.

After considering the foregoing evidence, I find that Claimant’s circulatory condition was the cause of his fall. In doing so, I note that less than one year prior to the fall at the Travel Center, he suffered a near-syncope. Per DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 1807 (30th ed. 2003), “syncope” is defined as: “a temporary suspension of consciousness due to generalized cerebral ischemia; called also *faint*.”

After consideration of the evidence at bar, I find that a preponderance of the evidence establishes that Claimant ended up on the ground at the Travel Center on February 5, 2020, as a result of syncope. Moreover, I find that the syncope was caused by his circulatory condition—the pulmonary emboli and deep vein thrombosis—and not any condition related to his job. This is illustrated by Claimant suffering a syncope at home less than one year before this incident. Nothing before me shows that condition was in any way tied to his employment. The preponderance of the evidence establishes that Claimant did not suffer an unexplained fall, but instead suffered an idiopathic fall. See *Askins v. Kroger Ltd. Partnership I*, 2018 Ark. 23, 535 S.W.3d 629; *ERC Contractor Yard & Sales, supra*. Moreover, I do not find that his job for Respondent Rock Region Metro placed him at higher risk of injury, caused him to be more susceptible to syncopal episodes, or contributed to his facial and shoulder injuries in any way. See *id*. Consequently, I cannot find that his alleged injuries are compensable. For me to find

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otherwise would require that I engage in speculation and conjecture. But this I cannot do. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

B. Remaining Issues

Because of the above finding, the balance of the issues—whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney’s fee, and whether Respondents are entitled to an offset—are moot and will not be addressed.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim for initial benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge