

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H202251**

LARRY RODEBAUGH (DEC'D), EMPLOYEE	CLAIMANT
ARK. INDUSTRIAL MACHINERY, INC., EMPLOYER	RESPONDENT
ACCIDENT FUND INSURANCE CO. AMERICA, CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 28, 2023

Hearing before Administrative Law Judge Steven Porch on September 13, 2023, in Little Rock, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on September 13, 2023. Claimant was represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas; Respondents were represented by Ms. Karen McKinney, Attorney at Law, Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee relationship existed on December 7, 2021, when Claimant sustained a compensable injury to his left elbow and arm.
3. Respondents accepted the claim as compensable and paid all benefits through date of Claimant's death on March 13, 2022.
4. The parties will stipulate to Claimant's average weekly wage and compensation rates on or before the hearing date.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether the Claimant's death resulted from a stroke on 3/13/22 associated with surgery performed 3/11/2022.
2. Whether Claimant's wife, Brenda Young, is entitled to dependency death benefits.
3. Whether Claimant's funeral expenses should be paid by Respondents.
4. Attorney's fees.

All other issues are reserved.

CONTENTIONS

Claimant's and Respondents' contentions are set out in their responses to the Prehearing Questionnaire. Said contentions are hereby incorporated by reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, Claimant and Respondents' post hearing briefs that are blue-backed and made a part of this record and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant's widow, Brenda Young, the sole witness in this claim, and observe her 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.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. The Claimant's estate has proven by the preponderance of the evidence that the cause of Claimant's death was multiple cerebral infarctions occurring on March 13, 2022, approximately 3 days after elbow surgery.
4. The Claimant's estate has proven beyond a preponderance of the evidence that his death on March 13, 2022, from multiple cerebral infarctions was a compensable consequence of his compensable December 7, 2021, injury to his left elbow and arm.
5. Claimant's estate has proven by the preponderance of the evidence that Brenda Young, wife and now widower of Claimant, is entitled to benefits in accordance with A.C.A. §11-9-715 (Repl. 2002).
6. Claimant's estate has proven by the preponderance of the evidence that its attorney is entitled to controverted attorney fees.

CASE IN CHIEF

Summary of Evidence

The sole witness at the hearing was the Claimant's widow, Brenda Young. In addition to the prehearing order discussed above, I also have admitted into evidence Claimant's and Respondent's exhibits that were properly admitted before the Commission. Claimant suffered a compensable injury to his left elbow and arm during the course and scope of his employment with Respondent. Claimant needed surgery to repair the tendons in his left arm. The Claimant had surgery on March 11, 2022, at the Arkansas Surgery Center. The Claimant, according to his widow, appeared to be having a stroke. The left side of his face was drooping, and his words were slurred. Dr. Joshua Smith, an anesthesiologist, evaluated claimant and stated that it was not a stroke but Horner's

Syndrome from the nerve block in the left clavicle area. Claimant was discharged, with objections, by the patient's wife and now widow. The symptoms appeared to have cleared up by the time of discharge.

The next morning the Claimant was transported by ambulance to the Arkansas Heart Hospital in Bryant, Arkansas. He was again showing symptoms of what appeared to be a stroke such as left facial droop, weakness in his left leg, and some slurred speech. The Claimant remained at the Bryant Heart Hospital for approximately 1 to 1.5 hours and was transported by ambulance to CHI Saint Vincent Hospital in North Little Rock, Arkansas. The Claimant died approximately one day after being admitted into CHI Saint Vincent Hospital. The Claimant's cause of death was determined to be multiple cerebral infarctions which all parties did not dispute as the cause of death.

The Respondents argue that the stroke like symptoms or Horner's Syndrome had resolved. Respondents further argue that Claimant had a CPAP machine but didn't use it while he was in the hospital. The Respondents' strongest argument was that the multiple cerebral infarctions were not a complication of Claimant's recent repair of his left triceps surgery. The Respondents rely on Dr. Adedamola Adepoju, Neurosurgeon, report, dated March 22, 2022, that denies a connection between Claimant's recent left triceps surgery and his death. The Respondents also used Dr. Barry D. Baskins report stating that "within a reasonable medical certainty that Mr. Rodebaugh [Claimant] died as a result of a stroke related to atherosclerotic cardiovascular disease as outlined in his autopsy." Dr. Baskins continued, "There was no clear indication, based on my review of the records and autopsy, that Mr. Rodebaugh's death was the result of surgical complication or the result of his work injury." Dr. Baskins based his opinion on the Claimant's extensive records,

operative note, and his autopsy report. The autopsy was performed by Dr. Frank Paretti, Forensic Pathologist. Claimant's estate lawyer counters with signed releases warning Claimant that strokes are a risk that can occur from his left triceps surgery.

Adjudication

A. Compensable Consequence

Claimant's estate has contended that on March 11, 2021, immediately after undergoing surgery that had been prescribed by his authorized treating physician for his compensable left elbow and arm injury, Claimant experienced what appeared to be a stroke and was later officially diagnosed as multiple cerebral infarctions that resulted in his death. The estate has argued that his multiple cerebral infarctions and resulting death were compensable consequences of his compensable injury.

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Hublely v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The test is whether a causal connection between the two episodes exists. *Sword, supra*; *Jeter v. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780 (2009). It is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002), a claimant has the burden of establishing the existence of a compensable consequence by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415 (2009) (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

A compensable consequence must be established utilizing all the statutory elements of compensability. *Burkett v. Tiger Mart, Inc.*, 2009 AWCC 70, Claim No. F608022 (Full Commission Opinion filed May 4, 2009), *aff'd in part and rev'd in part on other grounds*, 2009 Ark. App. 93, 304 S.W.3d 2; *Jones v. B.A.E. Sys.*, 2004 AWCC 81, Claim Nos. F001696 & F212243 (Full Commission Opinion filed May 6, 2004). This includes the requirement that there be medical evidence of an injury support by objective findings. *Malone v. Mid-South Mfg., Inc.*, 2003 AWCC 82, Claim No. F100223 (Full Commission Opinion filed April 28, 2003).

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.*

Claimant's medical records contain objective findings that he suffered a serious injury to his left elbow and arm that required surgery. There is no need to go into the finite details of such injury since both parties have stipulated that the Claimant had sustained a compensable injury to his left elbow and arm. The Commission has accepted this

stipulation and finds by the preponderance of the evidence that Claimant's injury to his left elbow and arm are compensable. Thus, compensability has been fully established and will not be further addressed. The issue now to be addressed is whether Claimant's death is a compensable consequence of his compensable injury.

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based upon my review of the medical evidence, I credit the opinion of Dr. Frank Peretti, Forensic Pathologist, stating in his autopsy report that Claimant "died of multiple cerebral infarctions with the contributory factors of status post left triceps tendon repair and hypertensive arteriosclerotic cardiovascular disease." Dr. Peretti's medical training and primary job function is determining the cause of death in people. Dr. Peretti's opinion is based on an actual external and internal examination of Claimant's body to determine the contributing factors of his death. Thus, I credit his opinion over the opinions of Dr. Adedamola Adepoju and Dr. Barry Baskins. Therefore, Claimant's estate has proven by a preponderance of the evidence that Claimant's death was the result of a compensable consequence stemming from the compensable left elbow and arm injury. More specifically, the repair of the compensable injury by way of left triceps tendon surgery.

In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, *i.e.*, a connection between an injury and the claimant's employment, *Wal-Mart v.*

Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Dr. Peretti's opinion was clear and concise that Claimant's left triceps surgery was a contributing factor to his death. Respondents would like to focus on Claimant's other contributory ailments towards his stroke. Nevertheless, you find the Claimant how you find the Claimant – Thin Skull Rule/Eggshell Rule. Claimant's surgery for his compensable injury was a contributing factor.

CONCLUSION AND AWARD

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2002). See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge