

FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge  
After Remand from the Missouri Court of Appeals)

Injury No.: 01-157477

Employee: Lawrence Gardner  
Employer: Contract Freighters, Inc.  
Insurer: Self-Insured  
Date of Accident: April 15, 2001  
Place and County of Accident: El Paso, Texas (contract of hire in Joplin, Missouri)

This matter is before the Labor and Industrial Relations Commission (Commission) on a remand from the Court of Appeals, Southern District. The Commission had earlier reversed the award of the associate administrative law judge denying compensation in this matter by award dated December 17, 2004. The Court of Appeals, Southern District, has reversed the Commission award and directed that the Commission enter its award denying benefits.

In accordance with the decision of the Court, the Commission reinstates the award of the associate administrative law judge as supported by competent and substantial evidence and having been made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission reinstates and affirms the award and decision of the associate administrative law judge dated August 19, 2004, and awards no compensation in the above-captioned case.

The award and decision of Associate Administrative Law Judge Karen Wells Fisher, as issued August 19, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of July 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
NOT SITTING  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Lawrence Gardner Injury No. 01-157477

Dependents: N/A

Employer: Contract Freighters Inc.

Additional Party: N/A

Insurer: Self-insured

Hearing Date: March 25, 2004

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by:

**FINDINGS OF FACT AND RULINGS OF LAW**

1. Are any benefits awarded herein? NO
2. Was the injury or occupational disease compensable under Chapter 287? NO
3. Was there an accident or incident of occupational disease under the Law? NO
4. Date of accident or onset of occupational disease: 4/15/01
5. State location where accident occurred or occupational disease was contracted: EL PASO, TEXAS
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? NO
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
DRIVING TRUCK FOR EMPLOYER
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: HEART ATTACK
14. Nature and extent of any permanent disability: -0-
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$730.89
19. Weekly compensation rate: PERMANENT PARTIAL DISABILITY RATE - \$314.26  
TEMPORARY TOTAL DISABILITY RATE - \$487.26
20. Method wages computation: AGREED

**COMPENSATION PAYABLE**

21. Amount of compensation payable: -0-

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

weeks of permanent partial disability from Employer

weeks of disfigurement from Employer

22. Second Injury Fund liability: NONE

TOTAL: NONE

23. Future requirements awarded: NONE

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Lawrence Gardner Injury No: 01-157477  
Dependents: N/A  
Employer: Contract Freighters, Inc.  
Additional Party: N/A  
Insurer: Self-insured Checked by:

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

### **AWARD ON HEARING**

I have adopted the award submitted by attorney, Ronald G. Sparlin, as my award. The award in this case is as follows:

The hearing of the above matter was held on March 25, 2004. The issues presented for determination were the following: whether the claimant sustained an accident arising out of and in the course of his employment, causation, nature and extent of disability, liability of the employer/self-insured for past temporary total disability benefits, liability of the employer/self-insured for past medical expenses, and liability of the employer/self-insured for future medical treatment.

The parties stipulated that the claimant's average weekly wage was \$730.89 with corresponding rates for temporary total disability of \$487.26 and permanent partial disability of \$314.26.

Lawrence Gardner filed a claim for compensation alleging an accident occurring on April 15, 2001. The formal claim alleged Gardner "encountered unusual stress in loading large rolls of wire" on the day in question which led to a myocardial infarction. Gardner was the only witness to testify live at trial.

The claimant, who is a 50 year old resident of Carrolton, Mississippi, testified that he was employed as a truck driver for Contract Freighters, Inc. (CFI) in April of 2001. He started with CFI in February 1999 and his job consisted of driving the truck and periodically securing loads, though he did not have to load freight. Gardner has made his living driving a truck over the road since being discharged from the United States Navy in 1973.

In describing his health prior to April of 2001, Gardner testified he had had some problems with his blood pressure in 1998. His wife had done a routine blood pressure check, the result was high, so Gardner consulted a doctor. The claimant actually saw a nurse practitioner in the doctor's office, she confirmed the diagnosis of high blood pressure, and started Gardner on appropriate medication. According to the claimant, he stayed on the medication for three or four months and then no longer took it because his blood pressure was down.

Gardner denied any symptoms of dizziness or unusual sweating before April of 2001. He reported no history of heart disease in his parents or siblings.

The claimant's testimony regarding his heart attack began with the events of April 13, 2001. On that date Gardner arrived in El Paso, Texas around 5:00 or 6:00 p.m. after driving about six hours. He checked in at the CFI terminal then spent the night in his truck. Gardner's work on April 14 began around 8:00 a.m. when he arrived at a customer's premises to pick up a load of coiled wire. The large coils of wire were sitting on pallets and were loaded into the truck by the customer. Gardner recalled there being at least five pallets. Gardner had to secure the load which required him to place blocks of wood on each of the four sides of the pallets. He then nailed the blocks to the floor of the trailer using long nails and a claw hammer. Gardner described the process as unusual for him and something he

had only rarely been called on to do. The claimant testified the work of securing the load was "strenuous" and, further, he recalled the weather that day as being hot. However, Gardner was confronted on cross-examination with his deposition testimony, in which he had specifically stated the weather that day was "just warm" and did not stand out as a hot day.

During the 1 ½ to 2 hours required to secure the load Gardner began feeling as if he was coming down with the flu, experiencing dizziness, sweating, and chest pain. When he had completed securing the load Gardner returned to the CFI terminal, fueled his truck, and then spent the remainder of the day in his truck. He continued to feel "fluish" the rest of the day. When Gardner awoke on the morning of April 15 he "felt fine" and had no symptoms at all. As a result, around 8:30 or 9:00 a.m., Gardner left El Paso with his load headed for his next stop in North Carolina. Gardner got as far as nearby Van Horn, Texas when his symptoms returned. He stopped and called his wife, who suggested he get to the hospital, and he then went to the emergency room of the Culbertson Hospital in Van Horn. After briefly being attended to in the emergency room, Gardner was transferred to a hospital in El Paso via ambulance.

The claimant was hospitalized at Sierra Medical Center in El Paso for three or four days where he was diagnosed with an acute inferior myocardial infarction which required angioplasty and the placement of a stent. Gardner thereafter returned to his home in Mississippi and came under the treatment of Dr. Seibel, a cardiologist. Through the time of trial Gardner was continuing to see Dr. Seibel every six months to monitor his heart condition. Dr. Seibel released the claimant to work in August of 2001 but with restrictions such that he was unable to drive for CFI. Gardner received a full release, with no restrictions, in September of 2001 after he passed a stress test. Shortly thereafter Gardner went to work driving for Metal Transportation as a truck driver, and Gardner had worked continuously up to the time of trial as a truck driver. His current employment is with Vortex Truck Lines as an over the road driver. His duties involve driving the truck only, with no loading or unloading.

At trial, the claimant complained of ongoing symptoms of shortness of breath (such as when he walks long distances), becoming easily fatigued, and swelling in his legs. Gardner continues to take several prescription medications related to his heart condition, and testified that he spends approximately \$80.00 per month on the medications. The claimant admitted that some of the medications are for his high blood pressure which was present before his heart attack. Gardner sought temporary total disability benefits for the time frame of April 16, 2001 through September 20, 2001. He identified Exhibits D and E as listing the medical bills and prescription charges for which he sought reimbursement, being \$233.00 and \$1975.00, respectively.

The claimant was cross-examined by counsel for CFI. Gardner admitted that he had essentially been of the same body shape and weight (255-260 pounds) for years before April 15, 2001. Gardner also testified that in the years preceding April of 2001 his lifestyle was such that he exercised rarely, at best. Further, Gardner had a history of smoking a pack of cigarettes a day for nearly thirty years.

Mr. Gardner was questioned further by the employer's attorney regarding his high blood pressure. The claimant began taking medication to control his high blood pressure in early 1999. Gardner stopped taking the medication based on his own assessment that his blood pressure was under control. However, Gardner admitted that neither the doctor nor nurse practitioner told him to stop the medication and he did not consult with them about it. Moreover, at the time he stopped the medication he still had an additional prescription to be filled. By April 15, 2001, Gardner had failed to take his medication for over a year. Cross-examination revealed that Gardner arrived at the CFI terminal in El Paso on the evening of April 13, 2001, and that the day was uneventful. Gardner felt fine at all times on April 13. The work Gardner did on April 14 securing his load of pallets was all done inside the trailer, not out in the sun, and the work was completed well before noon.

Mr. Gardner admitted that when his symptoms returned on April 15 he was behind the wheel of his truck, which was an air conditioned, automatic that "drove like a Cadillac". Gardner was under no physical stress at the time the symptoms appeared on April 15. Nor was Gardner under any mental stress at the time as the driving conditions were normal and he had plenty of time to get his load delivered.

When the claimant gave a history to the Culbertson Hospital emergency room, the Sierra Medical Center, and Dr. Seibel, he told them he had been driving his truck when his symptoms started, mentioning nothing about any allegedly stressful work securing a load. Gardner turned all of his medical bills into his group health carrier for payment, never seeking to have any of the care covered under workers' compensation. Further, he applied for and received short term disability benefits through CFI for part of his time off. His application for those benefits was received into evidence as Exhibit 5. The application contained a question: "Did disability result from employment?" which the claimant had answered in the negative.

There were three medical opinions received into evidence on the issue of causation. The claimant offered the opinion of Allen J. Parmet, M.D. by deposition. The employer offered the opinions of Dennis A. Estep, D.O., and Ray E. Lash, M.D., both by way of written report under Section 287.210.7.

Dr. Allen Parmet's field of specialty is occupational medicine. Dr. Parmet evaluated the claimant and reviewed his pertinent medical records. Parmet diagnosed the claimant as status post myocardial infarction with a right coronary artery obstruction. Dr. Parmet's opinions regarding causation were elicited by claimant's counsel on direct examination as follows:

Q. Doctor, do you have an opinion or opinions regarding the cause of the condition today you just described?

A. Yes.

Q. What are your opinions?

A. This condition is multi-factorial. That is he has risk factors that are genetic, behavioral and occupational. His genetic risk factors are being a male, he had acquired high blood pressure. Behavioral was that he had—he was a smoker and not an exerciser. His occupational risk factors here are an intermittent heavy exertion in the course of his work which was I guess actually April 14, 2001 as well as the warm temperatures. He was working and the altitude of El Paso.

Q. Okay. In your opinion, Doctor, was the exertion, the heavy exertion, the dehydration and hypoxia that Mr. Gardner encountered that day, did that place significant precipitating or triggering factors of the myocardial infarction?

A. These would be the significant precipitating factor, the last straw so to speak that caused him to finally occlude the artery that was clearly already partially blocked due to the other factors he had in his background.

It was Parmet's opinion that Lawrence Gardner had sustained a permanent partial disability of 25 to 30 percent of the body as a whole as a result of his myocardial infarction.

Dr. Parmet admitted on cross-examination that he is not a cardiologist and has no particular training or experience in the field. Parmet agreed the claimant had blockage present in his coronary artery before any work activity in April of 2001, and, given that fact and his multiple risk factors, it was probable as of April 1, 2001, that Gardner would have a heart attack at some point regardless of his activities. Regarding the claimant's high blood pressure and need for medication, Dr. Parmet testified:

Q. If he'd come to your office April 1, 2001 you would have put him on high blood pressure medication?

A. Yes. I also would have taken him off the driving until he got back on and controlled.

Finally, Dr. Parmet also testified, in response to a question from CFI's counsel:

Q. Would you agree that Mr. Gardner's underlying coronary disease was the substantial factor in his myocardial infarction?

A. Yes.

Dr. Ray Lash reviewed the pertinent medical records of the claimant and authored a report dated March 6, 2003. Dr. Lash is a Fellow in the American College of Cardiology. Dr. Lash's opinion regarding any causal connection between the claimant's work activity and his heart attack was:

In my opinion, the work conditions were not a cause of his myocardial infarction. Myocardial infarction is a condition caused by occlusion of coronary arteries. Essentially all myocardial infarctions are caused by underlying atherosclerosis of the coronary arteries, which is a process that occurs over time. In general, there is gradual buildup of the obstruction, with subsequent rupture of the plaque itself, exposure of the internal contents of the plaque to the bloodstream, and subsequent clotting and occlusion of the vessel. The atherosclerosis itself is associated with the underlying risk factors of tobacco abuse, hypertension, and a sedentary lifestyle, all of which describe Mr. Gardner's condition. There is nothing about a short period of modest physical exertion that would precipitate that process. In fact, it is his [sic] highly likely that he would have suffered a myocardial infarction whether or not he had been hammering, or even working at all.

Further, Dr. Lash stated that, in light of the claimant's successful surgery, a normal stress test in September 2001, and the fact that he has no permanent restrictions, he could find no evidence of any permanent disability.

Dr. Dennis Estep is board certified in occupational medicine. He likewise reviewed the claimant's medical records, and his report setting out his opinions was dated December 19, 2002. Dr. Estep's ultimate opinion on the question of the cause of Lawrence Gardner's heart attack was stated as follows:

It is my opinion that there is no relationship with Mr. Gardner's myocardial infarction and his employment in his activity in the workplace. It is not a triggering event nor is it the substantial cause of his myocardial infarction. It is my opinion that Mr. Gardner was in his normal daily activity after he had driven on 4/13/01 and at the terminal in the evening he began developing his myocardial infarction and then with activity began noticing some symptomatology and over the course of the next 24 hours this symptomatology did allow him to seek medical treatment. It is my opinion that the workplace was not a substantial cause or trigger event to his myocardial infarction.

The threshold issue I must address is whether the claimant sustained an injury by accident which arose out of and in the course of his employment. Section 287.120, R.S.Mo., provides for workers' compensation benefits for "personal injury or death of the employee by accident arising out of and in the course of his employment, . . ."

Section 287.020, R.S.Mo., defines the operative terms used in §287.120:

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.
  3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.
- (2.) An injury shall be deemed to arise out of and in the course of employment only if:
- (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and
  - (b) It can be seen to have followed as a natural incident of the work; and
  - (c) It can be fairly traced to the employment as a proximate cause; and
  - (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life; . . .

The claimant bears the burden of proving all the elements of his claim. *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228,241 (Mo. App. 2003). All elements must be proven by reasonable probability. *McDermott v. City of Northwoods Police Department*, 103 S.W.3d 134,138 (Mo. App. 2002) .

Under the framework of Chapter 287, Lawrence Gardner's myocardial infarction is compensable only if his work at CFI was a substantial factor in its occurrence as opposed to merely being a triggering or precipitating factor. That common thread (substantial factor) runs through both the definition of "injury" and the requirement of "arising out of and in the course of employment".

Whether Mr. Gardner's work activities at CFI were a substantial factor in causing his heart attack is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo. App. 1999) Upon review of all the evidence presented in this case, I find claimant has not carried his burden of proving that his work activity at CFI was a substantial factor in causing his heart attack. I am compelled to reach this decision primarily by the expert medical opinions presented in this case. The claimant produced the opinion of Dr. Allen Parmet. Viewing Dr. Parmet's opinions in isolation, I have serious doubts whether they would be sufficient to meet claimant's burden. However, when I then consider the opinions of the employer's two medical experts, the overwhelming weight of the expert opinions leads to a denial of benefits.

The opinions of Dr. Parmet elicited by the claimant's own attorney on direct examination are of questionable strength. Dr. Parmet was asked about the cause of Gardner's myocardial infarction and responded as follows:

Q. What are your opinions?

A. This condition is multi-factoral. That is he has risk factors that are genetic, behavioral and occupational. His genetic risk factors are being a male, he had acquired high blood pressure. Behavioral was that he had – he was a smoker and not an exerciser. His occupational risk factors here are an intermittent heavy exertion in the course of his work which was I guess actually April 14, 2001 as well as the warm temperatures. He was working and the altitude of El Paso.

Q. Okay. In your opinion, Doctor, was the exertion, the heavy exertion, the dehydration and the hypoxia that Mr.

Gardner encountered that day, did that place significant precipitating or triggering factors of the myocardial infarction?

- A. These would be the significant precipitating factor, the last straw so to speak that caused him to finally occlude the artery that was clearly already partially blocked due to the other factors he had in his background.

Dr. Parmet's opinion can be fairly read as stating that the work conditions were significant triggering factors, or the "last straw" that led to the heart attack. Dr. Parmet did not state at any point on direct examination that the claimant's work conditions at CFI were a substantial factor in causing the heart attack. However, on cross-examination by CFI's attorney, Dr. Parmet made the following important concession:

Q. Would you agree that Mr. Gardner's underlying coronary artery disease was the substantial factor in his myocardial infarction?

A. Yes.

Further, the significance Dr. Parmet placed on the pre-existing, underlying condition is underscored by his testimony that prior to the heart attack he would have taken Gardner off the road and not let him drive until he got his blood pressure under control.

Thus, there is affirmative evidence from the claimant's expert that a non-work factor was the substantial factor in causing the heart attack and no evidence that work was a substantial factor. While a factor can be both a triggering event and a substantial factor (see, *Cahall v. Cahall*, 963 S.W.2d 368 (Mo. App. 1998) ) there is simply no testimony from Dr. Parmet that the work conditions were anything other than a triggering event. Therefore, Dr. Parmet's opinions fail to establish causation.

In contrast to the testimony of Dr. Parmet, the employer presented two medical opinions on the issue of causation. The first opinion is that of Dr. Lash, whose qualifications include a fellowship in cardiovascular disease as well as board certification in that field. Dr. Lash stated "In my opinion, the work conditions were [not] a cause of his myocardial infarction." Dr. Lash goes on to explain the general pathology of a heart attack, pointing out that "Essentially all myocardial infarctions are caused by underlying atherosclerosis of the coronary arteries, which is a process that occurs over time." He goes on to note that "The atherosclerosis itself is associated with the underlying risk factors of tobacco abuse, hypertension, and a sedentary lifestyle, all of which describe Mr. Gardner's condition." Lash finds the short period of claimant's physical activity on the job insufficient to have led to a heart attack and states it is "highly likely" Gardner would have suffered the heart attack regardless of his activity.

The employer's second medical expert was Dr. Dennis Estep. Estep is board certified in occupational medicine. Dr. Estep noted that Lawrence Gardner was "at significant risk for myocardial infarction" because of his multiple risk factors, including:

1. Obesity
2. Hypertension that he admits that he quit taking his hypertension medication for one year even though he noted on his DOT exams that he did take it on a routine basis.
3. He is a known smoker and gives a history to the Emergency Room of at least a 20 pack-year smoking history.
4. He does have a sedentary life-style as an over-the-road driver.
5. He is a male less than 70 years of age.

He further pointed out that the type of work the claimant was performing at the relevant time did not involve heavy lifting, substantial exertion nor exposure to increased temperatures. It was Dr. Estep's opinion that "there is no relationship with Mr. Gardner's myocardial infarction and his employment in his activity in the workplace. It is not a triggering event nor is it the substantial cause of his myocardial infarction." Dr. Estep also makes an important observation from the laboratory data in the claimant's medical records, to-wit: "In El Paso following evaluations it was noted by Dr. Pease that he was 36 hours into the myocardial infarction as noted by his history and physical at 1628 hours on 4/15/01." From that laboratory data Dr. Estep opines that Mr. Gardner's myocardial infarction began "late on 4/13/01, it continued on 4/14/01 and he finally sought treatment on 4/15/01." Mr. Gardner's testimony of his activity of late April 13, 2001, would put him simply relaxing or sleeping in his truck at the CFI terminal in El Paso, Texas. It would appear Mr. Gardner's heart event actually began on the day before the activity to which his expert ascribed it (and two days before the date listed in his claim for compensation).

Both Dr. Lash and Dr. Estep are clear and unequivocal in their opinions that Lawrence Gardner's work activity was not a substantial factor in causing his heart attack. Their opinions are consistent in identifying the claimant's heart attack as the result of the natural progression of his underlying coronary disease. Dr. Parmet has not given a contrary opinion, only stating that work was a

precipitating factor . Case law provides that when there are conflicting medical opinions the fact finder must determine whose opinion is most credible. See *Kelley v. Banta & Stude Construction Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. 2001). I find this case similar to *Gausling v. United Industries*, 998 S.W.2d 133 (Mo. App. 1999). In *Gausling*, while there were conflicting medical opinions about the work relatedness of the claimant's heart attack, the appellate court affirmed the Industrial Commission's denial of benefits which relied on the opinion of the employer's expert that work was not a substantial factor in causing the heart attack.

Because I find the opinions of the employer's medical experts more credible and convincing, I find that Lawrence Gardner's employment activities at CFI were not a substantial factor in causing his myocardial infarction. As a result, I find that Mr. Gardner did not sustain an injury which arose out of and in the course of employment and I deny all benefits.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Karen Wells Fisher  
Associate Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Renee Slusher  
Director  
Division of Workers' Compensation