

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF REVIEW**

IN THE MATTER OF:

Zachary Bolling,
CLAIMANT

JCN: 2021018967

D.O.I.: 03/10/2021

and

Quanta Services, Inc.,
EMPLOYER

ORDER

PARTIES:

Claimant, Zachary Bolling, by counsel, Kelly Elswick-Hall
Employer, Quanta Services, Inc., by counsel, Daniel G. Murdock

ISSUE:

The claimant protested an Order of the Claim Administrator dated May 19, 2021, which rejected his application for workers' compensation benefits.

DECISION:

It is ORDERED that the Order of the Claim Administrator dated May 19, 2021, be REVERSED and the claim be held compensable for electrical shock and sequelae of electrical shock. Additionally, the claim is REMANDED to the Claim Administrator to address temporary total disability and other benefits.

RECORD CONSIDERED:

See attached.

FINDINGS OF FACT:

1. The claimant was employed by Quanta Services, Inc. as a groundman; he alleged on March 10, 2021, that he was shocked by a transmission line.
2. The employer introduced into the record treatment notes from Carilion Clinic Roanoke Memorial Hospital from March 10, 2021, to March 16, 2021. The claimant received treatment from multiple providers. The hospital received information that the claimant was transported from his worksite after he had seizure-like activity and collapsed.

The EMS reported no trauma, injury or burns. The claimant's wife provided information to the hospital that the claimant had been involved in a motor vehicle accident some five years before where he hit his head. Since the accident, the claimant had been experiencing spells. The claimant received a battery of diagnostic tests and was seen by Dr. C. Musser. Dr. Musser is a cardiac electrophysiologist who was consulted for the claimant's arrhythmia. He indicated at the time that he did not believe that the claimant had been electrocuted. Dr. J. Hillyard, a cardiology fellow, assessed the claimant as syncope versus seizure and stated that he was unclear as to what the true etiology of the event was. The claimant represented that he had been electrocuted but the assessment for the claimant was acute encephalopathy – resolved; cardiac/arrhythmogenic syncope versus vasovagal syncope; aka – resolved; reactive leukocytosis; mildly elevated CK improved; elevated liver enzymes; CT head without contrast negative for acute intracranial findings; echocardiogram within normal limits.

3. The employer introduced into the record a report from the EMS attending the claimant on March 10, 2021. The notes indicate that the claimant was witnessed to have a seizure and was thereafter unresponsive. An assessment showed no evidence of trauma to the claimant's head, neck, chest or extremities.

4. The claimant introduced into the record a progress note dated March 11, 2021 by Sarah J. Stewart, D.O., who said she spoke with the claimant and his wife, and they said the claimant was working on a line that was not grounded, and he felt a shock go into his left index finger before he went down. A physical examination of the claimant's left index finger noted dried blood, and there was a 2-cm region of erythema over the left olecranon and 2-cm lesion in the toe web space on the left foot between the fourth and fifth digits.

5. The claimant introduced into the record an incident investigation report from AEP Transmission dated March 11, 2021, indicating that the claimant's work crew was tasked with moving a 345kv conductor which had been de-energized and grounded. There were three crew members, two were holding onto the conductor while a third was tasked with installing a grip. One crew member (the claimant) began to show symptoms of a seizure approximately 30 seconds into assisting with the catching of the conductor. Later that day, it was discovered that there was a measurable amount of induced voltage (500v-600v) on the grounded conductor where the crew had been working. The report suggested that it was unlikely that the claimant could have been negatively affected by the presence of induced voltage on the conductor as the other crew members in contact with the conductor were not affected.

6. The employer introduced into the record reports from Summers County ARH Family Care Clinic dated March 23 and April 6, 2021. The claimant was being seen for a follow up after his recent hospitalization.

7. The claimant underwent an examination by Dr. B. Vaught on April 12, 2021, with a chief complaint of memory impairment. The claimant represented to Dr. Vaught that he thought he had experienced an electrical injury but was not sure. He was diagnosed with amnesia.

8. The claimant introduced into the record a July 8, 2021, statement by Jason Bryant. He did not see the claimant until the claimant was on the ground.

9. Shawn Fisher was deposed by the parties on September 23, 2021; he identified himself as having worked with the claimant at Service Electric as a lineman. His understanding was that the ground crew at the time of the claimant's injury was hooking grips to the wire. The wire was already dead because they had grounded it. Later, the line was tested and reading 600 volts. Mr. Fisher testified that when the line was lowered, he had tested it and its voltage was zero. It was not connected to any power at that time. When the line had been retested and measured at 600 volts, two hours had passed since the claimant's incident of injury.

10. The claimant introduced into the record the deposition of Freddy Ray Boggs, Jr. dated October 21, 2021. Mr. Boggs testified that they put a bucket truck on the mountain and that Shawn Fisher had tested the line and when it tested "good", he put grounds on it. While the crew was putting grips on after grounding the wire, he heard Michael Lawson hollering at the claimant to let go. Mr. Boggs saw the claimant hanging onto a conductor, onto a wire, and when he let go of it, he fell to the ground. Later, Mr. Boggs noticed one of the grips was not on the conductor and when he went to put it on there again, he got shocked. He indicated it was the same line that the claimant had been working on. The line was tested at 600 volts. It was still connected to the ground rod. Mr. Boggs testified that induction on a line can build up quickly when wind is blowing across a line and because the line was long, it would build up fast.

11. The claimant introduced into the record an affidavit from Jessica Bolling (wife of the claimant) dated October 27, 2021. The affiant represented that when she went to the hospital, the claimant was unresponsive. She told the care provider that he had experienced a concussion with headaches as a result of a car wreck in 2015. In 2016, he had an episode of passing out with concussion/headache. The claimant took medications for anxiety/ADHD. She stated that when the claimant regained consciousness, he represented that he had been shocked. The affiant represented that they had not been told that Freddy Ray Boggs had gotten shocked by the line later.

12. Dr. Carl Musser, Jr. signed an affidavit on November 29, 2021, stating that he was a cardiac electrophysiologist. He had provided consultation and evaluation of the claimant while he was at Carilion Roanoke Memorial Hospital. He had not been advised that after the claimant had been shocked that another person holding the powerline later that day had also been shocked and the line was measured to have had 600 volts in it. His testing showed no structural reason for the cardiac event suffered by the claimant. The cause of the claimant's heart problem was not determined upon his discharge and no life-threatening arrhythmias have been observed since the placement of an implantable loop recorder. Having learned about another worker being shocked and the measurement of 600 volts and the lack of any other structural abnormality to account for the cardiac event, it was Dr. Musser's opinion that the claimant had sustained an electric shock which was the cause of his cardiac and respiratory event on March 10, 2021.

13. The employer has designated a deposition by Jessica Bolling, wife of the claimant, dated December 21, 2021. She reiterated that she did not know that Freddy Ray Boggs had been shocked until her husband returned to work in April. Prior to this incident, Mrs. Bolling testified that she never saw the claimant have a seizure, although he had a lot of anxiety attacks. He had a few spells like he was about to pass out. She testified that the claimant was taking several medications including Vyvanse and Lexapro. She confirmed that he had also received a prescription in 2020 for phentermine from a weight loss clinic.

14. The employer introduced into the record the deposition of the claimant dated December 21, 2021. He confirmed that he worked for Service Electric as a ground man. In describing the incident of injury, he indicated that including himself, three men were working on grounding a line. At the point he collapsed, he felt tingling throughout his whole body and tried to get someone's attention. He couldn't let go of the line. He testified that he told his doctors that he had been electrocuted but his coworkers told him that there was no possible way. Prior to the incident of March 10, 2021, the claimant confirmed having problems with anxiety and panic attacks but denied any seizures or loss of consciousness. The claimant denied taking phentermine around the time of his incident of injury.

15. Dr. Carl W. Musser, Jr. was deposed by the parties on January 27, 2022. He confirmed that he was a cardiac electrophysiologist which was a specialty within cardiology. He had been consulted because the claimant had experienced some type of cardiac catastrophe but no particular diagnosis had been made. He had been informed that the line the claimant had been holding had been grounded and others were working on the line. That information led Dr. Musser to believe that the claimant had not received an electrical shock. He placed a heart rhythm monitoring device in the claimant. Since the implantation, no abnormalities have been detected. Dr. Musser testified that he had reviewed depositions of the claimant's coworkers. He further testified that his understanding was the claimant was taking buspirone, Vyvanse and Lexapro as medications. Dr. Musser indicated that an uncommon reaction through the drug interaction was an interference in a person's heartbeat. No evidence of this phenomenon was detected on the claimant's EKG. Dr. Musser indicated that he had some engineering background at a basic level. Dr. Musser indicated that the fact situation led him to wonder how reliably grounded the line truly was if one was obtaining variable readings. Dr. Musser testified that he would normally presume that anyone holding the line would have received some degree of current from the line. Dr. Musser indicated that while in most instances one would expect the others to be affected by the current, he indicated there was an issue of the path of least resistance in the current traveling on the wire and how the individuals were situated relative to where the current was coming from and their contact with the ground would be a variable. Dr. Musser stated that his understanding was that electricity would follow the path of least resistance. He testified that when taking all factors into consideration and the inability to characterize any arrhythmias in the claimant, he believed that the most likely explanation would have been that the claimant received an electrical current through the line. Dr. Musser testified that 600 volts would be enough to cause an individual's heart to stop.

16. The claimant introduced into the record correspondence from the claim administrator dated April 20, 2022. This correspondence identifies Liberty Mutual Managed Healthcare plan as the medical manager in this claim.

17. The employer introduced into the record a file review by Dr. Chuan Fang Jin dated June 6, 2022. Dr. Jin reviewed the medical records at the request of the employer and represented that it was more likely than not that the claimant had a seizure that caused the cardiac arrhythmia/arrest. Dr. Jin noted that an electrocution injury can involve not only cardiac issues but also neurological and musculoskeletal issues. She also indicated that there were no entry or exit wounds noted during the claimant's evaluations at Carilion.

18. The employer introduced into the record a report by John Averrett dated June 10, 2022, who identified himself as an electrical engineer with 25 years of experience. He stated that in this case, the conductors had been properly isolated from the general source as confirmed by Shawn Fisher when he read zero volts with his meter at the onset of the project. His professional opinion was that if the claimant had been shocked while the other crew members were also holding onto the conductor, they would have also been shocked as the current would've split proportionally to the resistance. He indicated that it was impossible for only one person to receive a shock if four people were holding a line. He acknowledged the fact that 600v was measured on the conductor approximately three hours after the incident. He said this brings into question how fast supposed induced voltage from wind can build up on an isolated conductor. He said that because this same scenario could not be replicated the following morning, it raised a question in his mind of whether there was detectable voltage on the line at the time of the claimant's incident.

19. The employer introduced into the record a record review by Dr. Marsha Bailey dated July 22, 2022. She represented that she disagreed with Dr. Musser and that she believed that the claimant's incident was the result of a dangerous and most likely unintentional prescription stimulant overdose which lowered his seizure threshold and resulted in the syncope.

20. Closing arguments were submitted by the claimant on January 19, 2022, May 3, 2022, and August 3, 2022.

21. A closing argument was submitted by counsel for the employer on August 4, 2022.

DISCUSSION:

Standard of Review

W. Va. Code § 23-4-1g provides that, for all awards made on and after July 1, 2003, the resolution of any issue shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality, and reliability that the evidence

possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

Compensability

This case is before the Board of Review based on a protest to the Order regarding the compensability of the claim. W. Va. Code § 23-4-1 provides for benefits to employees who receive an injury in the course of and as a result of their covered employment. Three elements must coexist in compensability cases: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. *Barnett v. State Workmen's Compensation Commissioner*, 153 W.Va. 796, 172 S.E. 2d 698 (1970); *Jordan v. State Workmen's Compensation Commissioner*, 156 W.Va. 159, 191 S.E. 2d 497 (1972).

The claimant has protested the Order of the Claim Administrator dated May 19, 2021, which held that the claimant had not sustained an injury by accident arising out of and in the course of his employment. The fact is that the claimant did sustain a cardiac incident on March 10, 2021. The question as developed by the designated record is the etiology of the incident.

The record contains an incident investigation report initiated by AEP Transmission and a separate report by John Averrett, an electrical engineer with 25 years' experience. The conclusion from these reports is that the line was safe at the time the claimant was handling it and the claimant could not have been shocked. However, Mr. Averrett acknowledged that there was a question in his mind of whether or not there was detectable voltage on the line at the time of the claimant's incident.

The record contains no evidence that the claimant, a young man, had a prior history of heart problems. Nonetheless, on March 10, 2021, his heart stopped after the incident herein above described. His cardiologist, Dr. Carl Musser, first in an affidavit and then by deposition represented that the claimant had been most likely shocked, thus causing the claimant's heart distress.

It is noted that Dr. Musser is a cardiac electrophysiologist which is a sub-specialty within the field of cardiology. Of all the physicians of record weighing in upon the etiology of the claimant's heart distress, he is clearly the most qualified to address this issue. For the purposes of this Order, Dr. Musser's opinions on the etiology of the claimant's heart distress is adopted.

The issue has also been raised that from a scientific perspective, it is not possible that the claimant sustained an electrical injury. However, another worker was shocked by the same line later the same day. The line was tested at 600v. Dr. Musser said that 600 volts would be enough to cause a person's heart to stop. After considering the evidence and the closing arguments, the Board concludes that Dr. Musser's opinion that the claimant sustained an electric shock that led to his hospitalization on March 10, 2021, is reliable.

CONCLUSIONS OF LAW:

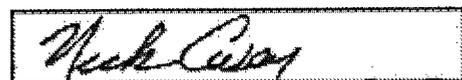
A preponderance of the evidence establishes that the claimant sustained an electrical shock in the course of and resulting from his employment.

Therefore, it is ORDERED that the Order of the Claim Administrator dated May 19, 2021, be REVERSED and the claim be held compensable for electrical shock and sequelae of electrical shock. Additionally, the claim is REMANDED to the Claim Administrator to address temporary total disability and other benefits.

APPEAL RIGHTS:

Under the provisions of West Virginia Code § 23-5-12a, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or final action of the Board of Review. **The appeal shall be filed with the West Virginia Intermediate Court of Appeals (304-558-3258).**

Date: October 3, 2022



Nick Casey, Chairperson

cc: QUANTA SERVICES INC
DANIEL G MURDOCK - COUNSEL FOR EMPLOYER
ZACHARY BOLLING
KELLY ELSWICK-HALL - COUNSEL FOR CLAIMANT
HELMSMAN MANAGEMENT SERVICES, INC.

JCN: 2021018967
Date: October 3, 2022

Record Considered

Issue:

The Claimant's protest to the Claims Administrator's order of May 19, 2021, regarding REJECTION OF CLAIM.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 3/11/2021
Submit Date: 11/2/2021
Author: DR. SARAH J. STEWART/PROGRESS NOTES

Document Type: Not Specified
Document Date: 3/11/2021
Submit Date: 11/2/2021
Author: INCIDENT INVESTIGATION REPORT

Document Type: Not Specified
Document Date: 7/8/2021
Submit Date: 11/2/2021
Author: STATEMENT/JASON BRYANT

Document Type: Not Specified
Document Date: 9/23/2021
Submit Date: 11/2/2021
Author: DEPO/SHAWN FISHER

Document Type: Not Specified
Document Date: 10/21/2021
Submit Date: 11/2/2021
Author: DEPO/FREDDIE BOGGS

Document Type: Not Specified
Document Date: 10/27/2021
Submit Date: 11/2/2021
Author: AFFIDAVIT/JESSICA BOLLING

Document Type: Not Specified
Document Date: 11/29/2021
Submit Date: 12/1/2021
Author: AFFIDAVIT/DR. CARL W. MUSSER, JR.

Document Type: Not Specified

Document Date: 1/27/2022
Submit Date: 3/17/2022
Author: DEPO/DR. CARL MUSSER, JR.

Document Type: Not Specified
Document Date: 4/20/2022
Submit Date: 5/3/2022
Author: CLAIMS ADMINISTRATORS ORDER/APPROVING
BENEFITS

Employer Evidence

Document Type: Not Specified
Document Date: 3/10/2021
Submit Date: 6/10/2022
Author: CARILION CLINIC LIFE-GUARD/TRANSPORT
REPORT

Document Type: Not Specified
Document Date: 3/10/2021
Submit Date: 6/10/2022
Author: ROANOKE MEMORIAL HOSPITAL/MEDICAL REPORT (3/10/21 TO 3/16/21

Document Type: Not Specified
Document Date: 3/23/2021
Submit Date: 6/10/2022
Author: SUMMERS CO ARH FAM CARE CLINIC/MEDICAL REPORTS (3/23/21 TO 4/6/21

Document Type: Not Specified
Document Date: 4/12/2021
Submit Date: 6/10/2022
Author: DR. BARRY VAUGHT/PROGRESS NOTES

Document Type: Not Specified
Document Date: 12/21/2021
Submit Date: 3/28/2022
Author: DEPO/CLAIMANT

Document Type: Not Specified
Document Date: 12/21/2021
Submit Date: 3/28/2022
Author: DEPO/JESSICA BOLLING

Document Type: Not Specified
Document Date: 6/6/2022

Submit Date: 6/10/2022
Author: DR. CHAUNFANG JIN/FILE REVIEW REPORT

Document Type: Not Specified
Document Date: 6/10/2022
Submit Date: 6/10/2022
Author: JOHN AVERRETT, PE & LEED AP/OPINION & REPORT

Document Type: Not Specified
Document Date: 7/22/2022
Submit Date: 7/25/2022
Author: DR. MARSH LEE BAILEY/IME REPORT

CLOSING ARGUMENTS:

Party Submitted: Claimant
Letter Date: 5/3/2022
Party Submitted: Claimant
Letter Date: 8/3/2022
Party Submitted: Employer
Letter Date: 8/4/2022
Party Submitted: Claimant
Letter Date: 1/19/2022