

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302838

DOUGLAS BOYD

CLAIMANT

PINK BUD NURSING HOME

RESPONDENT

CHURCH MUTUAL INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 5, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondent represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 7, 2003 in Fort Smith, Arkansas. A pre-hearing order was entered in the case on May 22, 2003. Immediately prior to the hearing, the parties announced they had agreed on the appropriate compensation rates. Immediately prior to the commencement of the hearing, the claimant announced that there was a change in the periods wherein he was seeking temporary total disability benefits. Thus, amendments were made to the second stipulation and the second issue. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On September 4, 2002, the relationship of employee-employer-carrier existed between the parties.
2. On September 4, 2002, the appropriate weekly compensation rates are _____ \$185.00 for total disability and \$154.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his back on September 4, 2002.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from December 3, 2003 through December 21, 2002 and from December 23, 2002 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends that he is entitled to reasonable and necessary medical treatment, as well as TTD benefits from September 5, 2002, through December 21, 2002, and from December 22, 2002 through a date yet to be determined, as well as reasonable and necessary medical treatment, and a statutory attorney's fees.

In regard to these issues, the respondents contend:

- (a) Claimant did not sustain a compensable injury on September 4, 2002.
- (b) Claimant is not entitled to an award of medical benefits.
- (c) Claimant is not entitled to an award of temporary total disability benefits.
- (d) Respondents will assert a defense under Ark. Code Ann. §11-9-102(4)(D) that claimant did not sustain any injury established by medical evidence supported by objective findings

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained a "compensable injury" to his back, which was the result of a specific incident at work on September 4, 2002. Although not contained in the pre-hearing order or discussed at the pre-hearing conference, it appears from the record that the claimant may also be contending that he sustained an aggravation or injury to his back as the result of a specific incident that occurred while he was performing his employment duties for the respondent

on December 22, 2002. The burden rests upon the claimant to prove the occurrence of the alleged compensable injury or injuries.

In order to meet this burden, the claimant must show that his alleged compensable injury or injuries satisfy all of the necessary requirements for a “compensable injury” imposed by the Act for a “compensable injury.” Should he fail to prove even one of these requirements, then he has failed to prove a “compensable injury”, and his claim must be denied and dismissed.

The first of these requirements is contained in Ark. Code Ann. §11-9-102 (4) (D). This subsection requires that the claimant prove by medical evidence, the actual existence of the physical injury or condition alleged to be compensable. He must further prove that the actual existence of this physical injury or condition is based upon or supported by “objective findings,” as that term is defined by Ark. Code Ann. §11-9-102 (16).

In the present case, the medical evidence “establishes” the actual existence of a physical injury or condition involving the claimant’s lower back. This injury takes the form of a lumbar strain or mechanical low back pain. However, the diagnosed presence of this physical injury or condition appears to be based solely upon the claimant’s subjective complaints. There is no evidence of any “objective findings” to support the existence of this diagnosed injury or condition. There is no evidence of the independent observation of any “objective” abnormalities, such as swelling, redness, muscle spasms, or abnormal reflexes. There is also no radiographic evidence of any abnormalities involving the claimant’s low back or lumbar spine.

After consideration of all of the evidence presented, I find that the claimant has failed to prove by the greater weight of the credible evidence the actual existence of a physical injury or condition involving his back or lumbar spine that satisfies the requirements of Ark. Code Ann. §11-9-102 (4) (D). Thus, the claimant has failed to prove

that he has sustained a “compensable injury” as that term is defined in the Act. His claim for benefits attributable to such an injury must be denied and dismissed in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including September 4, 2002, the relationship of employee-employer-carrier existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$185.00 for total disability and \$154.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a “compensable injury” to his back on September 4, 2002 and/or December 22, 2002. Specifically, he has failed to prove the actual existence of any physical injury or condition affecting this portion of his body that is supported by “objective findings,” i.e. the independent observation of findings beyond the claimant’s voluntary control.
5. The respondents have denied the occurrence of a “compensable injury” to the claimant’s back on September 4, 2002 or any other date. The respondents controvert this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE