

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F006818**

**GLENN BROWN**

**CLAIMANT**

**WEST MEMPHIS SCHOOL DISTRICT  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED AUGUST 27, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE KATHLEEN L. CALDWELL, Attorney at Law, Memphis, Tennessee.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Forrest City, Arkansas on July 11, 2003. A prehearing conference was held on February 18, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on May 19, 2000.
2. The compensation rates are \$278/209.

The claimant contends that he sustained a compensable work injury in May 2000. The claimant contends he is entitled to medical benefits and temporary total disability benefits from May 26, 2000 to a date to be determined, as well as attorney's fees.

The respondents contend the claimant did not suffer a compensable specific incident or gradual onset injury on or about May 4, 2000 or May 19, 2000. The respondents further contend the claimant's current problems preexisted any work-related injury and are not associated with any traumatic or acute injury and there are no objective findings to support a traumatic injury on either of the dates stated. The respondents assert the affirmative defense of notice. Notice was not provided until June 9, 2000. Alternatively, if the claim is found to be compensable, respondents should be given credit for the claimant's salary, which was paid through August 18, 2000, as well as credit for short-term disability benefits paid to the claimant in the amount of \$180 per week through November 2000, in addition to long-term disability benefits paid in the amount of \$960 per month after short-term disability ceased.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on May 19, 2000.
2. The compensation rates are \$278/209.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable specific incident injury on or about May 19, 2000.

## DISCUSSION

The claimant testified that he was 44 years old with a date of birth in 1948 and worked as a custodian at the respondent employer since January 1982. The claimant completed the fourth or fifth grade of school and is unable to read and write. The claimant is able to sign his name. According to the claimant, before his May 2000, injury, he was not experiencing any back problems and was lifting weights of 50 to 60 pounds. While the claimant does not know the exact date of his injury, he testified that the kids were out of school. The claimant testified that he and Robert Reed and James Lewis were taking out old books that needed to go to the dumpster. The books were placed in a large garbage barrel on wheels and the barrel was taken to the dumpster. According to the claimant, as he was squatting down to lift the barrel of books to dump in the dumpster, he felt pain in his low back. The claimant testified that he went to the office and reported the incident to Mr. Burton but went back and tried to work. The claimant testified he did not go to the doctor that day but saw Dr. James Alexander on a Monday following the incident.

According to the claimant, he has pain from his low back going into his legs and he has numbness in his legs. The pain in his left leg is constant but the pain in the right leg is not as bad.

Under cross examination, the claimant verified that he made a report of a head injury on May 19, 2000, when he hit his head on a shed. The claimant verified he went to the superintendent's office, reported the incident, told someone who filled out the form what happened and was sent to Dr. Pierce. The claimant verified the date of June 19, 2000, on the AR-N Form for the back injury. Another AR-N Form was completed

on May 19, 2000, for a May 4, 2000, head injury. The claimant testified that he could not remember when the incident lifting barrels occurred, he just knew that school was out. The claimant testified that Mr. Reed, his co-worker, was about three or four feet from him when he injured his back lifting the barrel.

Robert Lee Reed, a former employee of the respondent employer, testified that he was a custodian for the respondent back in May 2000. Mr. Reed's account of the claimant's injury was that two people were lifting the barrels of books into the dumpster and as the claimant was trying to lift the barrel with him, the claimant felt pain and dropped the barrel. Mr. Reed testified the claimant had not complained of back pain before the May 2000, incident. Mr. Reed testified that he heard Mr. Burton ask the claimant not to leave since he would be alone. According to Mr. Reed, the claimant did not return to work after the lifting incident. Mr. Reed verified that he no longer works for the school because of drugs and he was accused of stealing. Mr. Reed also verified that he has a workers' compensation claim where he hurt his back lifting a garbage can and that was on May 10, 2001.

Woodrow Burton testified that he was the Principal of West Memphis High School and was familiar with the claimant. Mr. Burton testified that the claimant called him on June 1, 2000 and asked for the day off to go to the doctor but no mention was made of a work-related incident. On June 5, 2000, the claimant called Mr. Burton again and reported he still had a bad back and was having more tests. Again, no mention of a work-related incident. According to Mr. Burton, he next heard from the claimant on June 9, 2000, and he advised that he wanted to make a workers' compensation claim. Mr. Burton told the claimant to go to the superintendent's office to complete the forms.

Mr. Burton verified that the claimant came to his office on May 19, 2000 and told him he had hit his head and was hurt. Mr. Burton verified that he sent the claimant to the superintendent's office to complete paperwork and the claimant was sent to Dr. Pierce. Mr. Burton testified that he had knowledge of the claimant's pre-existing back problems through casual conversation discussing his own back problems and surgery. According to Mr. Burton, the claimant stated he had back problems from doing concrete work for many years. Mr. Burton verified that school ended in 2000 about May 24 or 25.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claimant could not remember the date that he sustained his back

injury while lifting barrels. The claimant testified at the hearing that school was out for the year; however, the medical reports reveal a date of May 19, 2000, as his date of injury. The school principal testified that the claimant reported a work injury of back pain on June 9, 2000, and the AR-N Form signed by the claimant was June 19, 2000, with no specific date of injury. There was another report of a head injury and this AR-N Form was signed by the claimant on May 19, 2000, reporting a May 4, 2000, injury. There was no mention of any back problems on the form signed on May 19, 2000. The first report of a doctor's visit was June 2, 2000, following a May incident. A MRI of the lumbar spine revealed degenerative disc at L4-5 with diffuse annular bulge of plus 2. The claimant pursued some epidural injections. Dr. Jack Goodman was deposed on May 5, 2003, and he opined that merely looking at the MRI, he could not discern whether any of the findings were acute versus chronic. Dr. Goodman further opined that the arthritis in the claimant's facet joints, as well as the spinal stenosis, would be more of chronic type problems, whereas the disc bulges may or may not have been chronic. Dr. Goodman could not identify any objective findings after his review of the claimant and the MRI findings to substantiate conclusively an injury from lifting the barrels.

If the claimant was injured on May 19, 2000, from lifting barrels, it would just seem plausible that he would have reported that injury on May 19, 2000, when he completed the paperwork for the May 4, 2000, head injury. I also did not find the eye witness credible, Robert Reed. His testimony seemed to develop as the questioning went on. He was hesitant to answer and repeatedly seemed to buy additional time to

develop his answer. Also, Mr. Reed's account of the incident did not agree with the claimant's account of what happened.

While I believe the claimant does have back pain and problems, the preponderance of the evidence did not support a compensable specific incident injury arising on or about May 19, 2000. The medical evidence also did not present objective findings to support a traumatic injury on or about May 19, 2000.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable specific incident injury on or about May 19, 2000. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**