

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F304537

LAWRENCE CROW, Employee	CLAIMANT
CITY OF FAYETTEVILLE, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED OCTOBER 16, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 17, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 23, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed between the parties on April 7, 2003.
3. The claimant was earning an average weekly wage of \$502.00 which would entitle him to compensation at the weekly rates of \$401.00 for total disability benefits and \$301.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's low back.
2. Related medical.

3. Temporary total disability benefits from April 8, 2003 through June 23, 2003.
4. Attorney fee.

The claimant contends that he sustained a compensable low back injury which arose out of and in the scope and course of his employment on or about April 7, 2003. He contends he is entitled to temporary total disability benefits from April 8, 2003 through June 23, 2003, has incurred reasonable and related medical which is ongoing, and his attorney is entitled to a controverted attorney fee.

The respondents contend the claimant did not sustain a compensable injury.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 23, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while working for the respondent.

#### FACTUAL BACKGROUND

The claimant was hired to work for the respondent's sanitation department in 1991. This department is now called the Solid Waste and Recycling Department. In April 2003 claimant was working as a floater filling in on various sanitation routes. One of the routes run by the respondent is known as the "Two-Yard Container Division." This is a commercial sanitation route which is run by two employees. Commercial trash containers

on wheels are rolled to the back of a truck where they are hooked up and dumped into the sanitation truck.

Claimant was performing this job with a co-employee named Jerry Mobbley on Monday, April 7, 2003. Claimant testified that sometime between 6 and 7 a.m., he was attempting to move a particular container on which the wheels were not working. The claimant testified that as he was jerking on the container he felt discomfort in his low back area. Claimant testified that the pain went away after approximately 30 minutes and that he completed his shift which ended at 12:00 p.m. Claimant testified that the next day, April 8, 2003, he went to work and his back pain progressively worsened. In fact, claimant's back pain became so bad that between 6 and 7 a.m. he called his crew leader and asked for a back brace. Claimant did not get the back brace until later that day and according to claimant's testimony the brace was so tight around his stomach that it caused him to throw up and have pain in his back and pelvic region. This pain was so great that claimant sought medical treatment from the emergency room at Washington Regional Medical Center on April 8, 2003. Claimant returned to the emergency room the next day on April 9, 2003 and continued to be treated for abdominal problems. On April 14, 2003, claimant sought medical treatment from Dr. McBee, one of his group HMO physicians. Dr. McBee referred claimant to Dr. Whitelaw, a chiropractic physician, who also saw claimant on April 14, 2003. Dr. Whitelaw ordered an MRI scan which revealed herniated discs at the L4-5 and L5-S1 level. As a result, claimant was referred to Dr. Tony Raben who has treated claimant conservatively with epidural steroid injections.

Claimant has filed this claim contending that he suffered a compensable injury to his back while working for respondent on April 7, 2003. He seeks payment of related medical benefits, temporary total disability benefits beginning April 8, 2003 and continuing through June 23, 2003, as well as a controverted attorney fee.

### ADJUDICATION

\_\_\_\_\_ Claimant contends that he suffered a compensable injury to his back while attempting to move a trash container on April 7, 2003. Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back which arose out of and in the course of his employment with the respondent.

My finding that claimant has failed to meet his burden of proof is based upon several factors. Claimant contends that he injured his back while attempting to move the trash container on April 7, 2003. Claimant testified that as he performed this activity, he felt discomfort in his back which lasted approximately 30 minutes. Although claimant was working with a co-employee, Jerry Mobbly, claimant did not mention this injury or discomfort to Mobbly. Furthermore, although a two-way radio was in the truck, claimant did not report the injury to the respondent nor did claimant report the injury when he arrived

back at the respondent's shop at the end of his work shift.

The next day, claimant testified that his back pain worsened as he was performing his job activities. In fact, claimant's back pain was so great that he asked his crew leader, Dan Styles, for a back brace. Despite the fact that claimant felt that he was in need of a back brace, claimant did not inform Styles that he attributed his back pain to an incident which had occurred the day before.

Following claimant's work on April 8 he sought medical treatment from the emergency room complaining of abdominal pains which radiated into his back. A review of the emergency room medical records fails to reveal any mention of the incident on April 7, 2003. Claimant also sought medical treatment from the emergency room on April 9, 2003. While claimant indicated that his pain radiated from his back to his abdomen, the emergency room records again fail to mention any injury having occurred.

As previously noted, claimant sought medical treatment from Dr. McBee on April 14, 2003. Dr. McBee's medical notes of that date indicate that claimant did state that he did a lot of twisting and lifting on the job. However, Dr. McBee's notes do not contain a history of claimant having injured himself at work while moving a trash container. Dr. McBee referred claimant to Dr. Whitelaw, a chiropractic physician, who saw claimant that same day. On a patient information form completed by the claimant, claimant indicated that his back pain was not caused by an on the job injury. At the hearing, claimant contended that he indicated that his back pain was not caused by an on the job injury due to his belief that he had to report injuries within 24 hours.

I also note that a form completed by Dr. Whitelaw on April 14, which is contained at Page 24 of Respondent's Exhibit 1, indicates that claimant's low back pain onset occurred when he "woke" one week ago. As a result of claimant's complaints of pain, Dr. Whitelaw referred claimant for an MRI scan. That MRI scan was performed on April 14, 2003, and revealed disc protrusions at the L4-5 and L5-1 levels. It appears that claimant's

next visit with Dr. Whitelaw occurred on April 16, 2003. Notes from Dr. Whitelaw of that date are contained at Page 26 of Respondent's Exhibit Number 1. Under objective findings on April 16, 2003, Dr. Whitelaw indicated "see MRI Report."

The same day claimant saw Dr. Whitelaw following his MRI scan was the day claimant first reported a potential work related injury to the respondent. On April 16, 2003, claimant completed an accident report attributing his back problems to an incident on April 7, 2003.

In summary, I find that claimant has failed to meet his burden of proving that he suffered a compensable injury to his low back. Claimant did not mention an injury to his co-employee at the time the incident occurred. Furthermore, claimant did not report the injury to the respondent by two-way radio or when he went to the shop at the end of his work shift. The next day claimant testified that his back pain worsened to the point that it was necessary for him to ask for a back brace. However, claimant still did not report a work related injury. Claimant sought medical treatment from the emergency room on April 8 and April 9, 2003. The medical reports from those emergency room visits do not mention any injury at work. When claimant sought medical treatment from Dr. McBee on April 14, 2003, claimant did indicate that his job activities included twisting and heavy lifting. However, Dr. McBee's medical report does not contain a history of an injury having occurred while moving a trash container one week earlier. On that same day claimant also sought medical treatment from Dr. Whitelaw, a chiropractic physician. Claimant completed a patient information form indicating that his back pain was not related to an on the job injury. In fact, Dr. Whitelaw's medical report indicates that the onset of claimant's back pain began when he awoke one week ago. Finally, claimant did not report a work related injury to the respondent until April 16, 2003, after he had undergone an MRI scan and the severity of his back condition became known. Based upon this evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence

that he suffered a compensable low back injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE