

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F108951 & F213404

JASON L. ERDELEN, EMPLOYEE	CLAIMANT
SIMS FLOOR COVERING, EMPLOYER	RESPONDENT NO. 1
TRINITY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
INTERSTATE TIRE, EMPLOYER	RESPONDENT NO. 2
CROCKETT ADJUSTMENT INSURANCE CARRIER,	RESPONDENT NO. 2

OPINION FILED NOVEMBER 26, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Russellville, Polk County, Arkansas.

The claimant was represented by MS. LAURA J. MC KINNON, Attorney at Law, Russellville, Arkansas.

The respondents no. 1 were represented by MR. MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

The respondents no. 2 were represented by MR. PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas

OPINION AND ORDER

A hearing was held in this matter on August 29, 2003. A prehearing conference was conducted on June 10, 2003, and a prehearing order was filed on that same date. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. The employee/employer/carrier relationship existed between the claimant, the respondent/employer, and respondent carrier #1 on August 1, 2001.
2. The employee/employer/carrier relationship existed between the claimant, the respondent/employer, and respondent/carrier #2 on October 21, 2002.
3. Respondent/carrier #1 accepted the compensability of an injury that occurred on August 1, 2001, and paid benefits at a compensation rate of \$221.00.
4. Respondents #2 have controverted any liability for benefits.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Law on October 21, 2002.
2. Whether the claimant sustained a recurrence of the compensable August 1, 2001, injury on October 21, 2002.
3. Whether the claimant sustained an aggravation of a pre-existing condition on October 21, 2002, which is compensable under the Arkansas Workers' Compensation Law.

During the hearing, the claimant amended the date reflected in his contentions to claim an injury during mid-September, 2002.

From a review of the record as a whole, to include the testimony of the

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claimant, Jason Erdelen, and witnesses Melissa Erdelen and Sam Lawson, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. The claimant has proven by a preponderance of the evidence the elements necessary to establish a compensable injury while employed by respondent employer no. 2.
4. Respondents no. 1 controverted liability for any further benefits, and respondents no. 2 controverted the claim in its entirety.

DISCUSSION

On August 21, 2001, the claimant was employed by respondent employer no. 1, a company owned by his in-laws. On that date, he sustained an injury to his low back that was accepted as compensable. He was initially treated for this injury by Dr. Ted Honghiran, a general practitioner, and Dr. Honghiran's records indicate that his clinical examination of the claimant was consistent with a herniated nucleus pulposus. This was confirmed by a MRI,

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which revealed a left paramedian disc protrusion at L5-S1 and right paramedian disc protrusion at L4-5. His records also indicate that the claimant was complaining of severe pain in his lower lumbar spine with left leg pain. Dr. Honghiran ultimately referred the claimant to Dr. Wilber Giles, a neurosurgeon, who diagnosed a lumbar disc syndrome. The claimant's complaints had subsided by the time he was examined by Dr. Giles on September 18, 2001, he was released to return to work. Dr. Giles opined that the claimant was not a surgical candidate.

The claimant did in fact return to work, and he testified that he did not experience any further back problems until August of 2002, when he was involved in a four wheeler accident. This testimony was corroborated by the claimant's wife. After this incident, the claimant was treated at the emergency room, and the report of that treatment indicates that the claimant was complaining of low back pain which radiated into his left leg. In this regard, I note that the claimant denied experiencing any radicular pain after that incident in his testimony at the hearing conducted in this matter.

The claimant began working for respondent employer no. 2 on September 11, 2002. His duties involved driving a truck and loading and unloading tires. According to his testimony, he fell at some point when a ramp he was standing on slipped. He testified that he fell approximately eighteen

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inches to two feet, and that he twisted as he fell. He further testified that he landed on his left side. In addition, he testified that he did not immediately experience pain but, apparently, soon afterward, he began experiencing a pain like he had never experienced before. This incident was witnessed by a co-employee, and Mr. Sam Lawson, owner of respondent no. 2, testified that this co-employee acknowledged that an incident did occur where the claimant fell when a ramp slipped.

There has been some confusion over the date on which this incident occurred. It was initially contended that the incident occurred on October 21, 2002. However, the claimant sought medical treatment from Dr. J. Crouch on October 16, 2002, and he reported injuring himself at work as the result of a fall approximately 3 to 4 weeks previously. In any event, the claimant did not report the incident until November 7, 2002, when his wife notified Mr. Lawson. The claimant testified that he did not report the incident because he was afraid of losing his job.

As discussed above, the claimant was first seen by Dr. Crouch on October 16, 2002, and Dr. Crouch opined that the claimant had a probably ruptured disc with radiculopathy. However, he treated the claimant conservatively. He saw Dr. Smith at the same clinic on October 21, 2002, and Dr. Smith indicates that he discussed the seriousness of the situation with the

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claimant at that time. Then, on November 6, 2002, one day before the injury was reported, he saw Dr. Berner at the clinic, and Dr. Berner recommended referral to Dr. Zackary Mason, a neurosurgeon. Dr. Mason caused a MRI to be performed, and this study revealed an extruded fragment at L5-S1, on the left. Dr. Mason recommended surgery.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));

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(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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));

(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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

The Court has found that Act 796 did not change the law with regard to preexisting injuries. Thus, when an injury arises out of and in the course of employment, the original employer or carrier is responsible for every natural consequence that flows from the injury. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). Consequently, when subsequent complications are the natural and probable result of the original injury, the employer remains liable. On the other hand, if the subsequent complications result from an independent intervening cause, the employer is relieved of liability for compensation benefits. However, the intervening incident must

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independently contribute to the claimant's condition before the employer is relieved of liability. Bearden, supra.

The Arkansas Supreme Court discussed this issue as follows in Burks, Inc. v. Blanchard, 259 Ark. 76, 531 S.W.2d 465 (1976) (quoting 4 Arthur Larson, The Law of Workmen's Compensation § 95.23 (1990)):

If the second injury takes the form merely of a recurrence of the first, and if the second incident does not contribute even slightly to the causation of the disabling condition, the insurer on the risk at the time of the original injury remains liable for the second. . . . This group also includes the kind of case in which a worker has suffered a back strain, followed by a period of work with continuing symptoms indicating that the original condition persists, and culminating in a second period of disability precipitated by some lift or exertion.

Likewise, the Arkansas Court of Appeals made the following comments in Halstead Industries v. Jones, 270 Ark. 85, 603 S.W.2d 456 (Ark. App. 1980):

When the symptoms of a back injury persist and culminate in a second disability without the intervention of a new injury the second disability is properly classified as a recurrence of the first injury, and the insurance carrier at the time of the original injury remains liable.

In the present claim, I find that a preponderance of the evidence establishes that the claimant sustained a new injury while employed by respondent no. 2, Interstate Tire. In this regard, I find that a preponderance of the evidence establishes that the claimant recovered from his injury at respondent no. 1 and that he was able to perform jobs involving heavy manual

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labor with no difficulty. In addition, he did not seek any medical treatment for his back after his release by Dr. Giles. In addition, I find that a preponderance of the evidence establishes that an incident did in fact occur in which the claimant fell in the course of his employment with respondent no. 2. This is corroborated by the statements of his coworker, which Mr. Lawson acknowledged. Furthermore, after that time, the claimant's condition worsened to the point that he was no longer able to work. Moreover, the medical evidence as well as the testimony presented at the hearing establishes that the claimant's symptoms differed from his prior symptoms in severity. In addition, the MRI performed after the incident in 2002 revealed extruded disc material, a finding that was not present after the August 21, 2001, injury.

I also find that the claimant has established by a preponderance of the evidence the elements necessary to establish a compensable injury. As discussed above, I find that the preponderance of the evidence establishes that the claimant sustained an injury arising out of and in the course of his employment with respondent number one, that is identifiable by time and place of occurrence. The medical evidence establishes this injury, as well as the existence of internal damage, with objective medical findings, specifically the finding of extruded disc material. Consequently, I find that the claimant

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has satisfied his burden of establishing a compensable injury.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809 (Cumm. Supp. 1997).

IT IS SO ORDERED.

C. MICHAEL WHITE
Administrative Law Judge