

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302425

GEORGE FODOR	CLAIMANT
SPRING MEADOWS, INC.	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 22, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 22, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 7, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On October 25, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$267.00 for temporary total disability. This compensation rate is based on an average weekly wage of \$400.00 for this claimant.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's low back injury of October 25, 2002.

2. Related medical.

3. Temporary total disability from December 2, 2002, to a date to be determined.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he sustained an injury to his lower back when he slipped and fell on a wet ramp while opening the garden shed.

In regard to the foregoing issues the respondents contend that this claim was not reported until October 30, 2002. The claimant was told to go to the company doctor but instead went to a chiropractor. He has no objective medical findings and was released to full duty on November 19, 2002.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a letter from CCMSI marked Claimant's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1. The parties submitted a packet of medical information marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 45 years old and had completed the twelfth grade. The claimant testified that he began working for the respondent in February 2002 and was initially hired

as a maintenance person. The claimant testified that after working for approximately one week he was put in charge of the grounds. The claimant agreed that the respondent's business is a retirement housing center.

The claimant testified that on October 25, 2002, he was standing on the storage shed ramp in the process of getting the lawn mower out when he slipped and fell on his tail bone. The claimant testified that he reported this event to David Gingray, his supervisor, within the next ten minutes after his fall. The claimant testified that he then went to the respondent's office and spoke with the office manager, Lela Robins, and told her that he had fallen and that Mr. Gingray had sent him in to ask her if he could go to the doctor. The claimant testified that he was told that there was no company doctor so he called the managers of the complex, Pat Farmer, and asked her to send him to a doctor. The claimant testified that Ms. Farmer told him that, "well, see how you feel in a couple of days and then we'll--we'll see about getting you to a doctor." The claimant testified that he took a half day off because he had been told to go home, relax and see if he felt better.

The claimant testified that after his fall he had pain in his lower spine, buttocks as well as his left leg. The claimant testified that he reported to Dr. Kirk Johnson on October 30, 2002, that he had fallen while at work. The claimant testified that he also reported to the doctor that he was walking in his kitchen the day before, turned and felt an extremely sharp pain, a much more

severe pain than he had experienced before. The claimant testified that after the kitchen event he had pain in both legs, more so on his left than on his right. The claimant testified that he had felt numbness from his initial fall but not the shooting leg pains. The claimant testified that the numbness, tingling and pain had not completely gone away from the time of his initial fall until he was seen by Dr. Johnson. The claimant testified that he continued to work after October 25, 2002, and that his pain and symptoms actually got a little worse until he went to see the doctor. The claimant testified that prior to October 25, 2002, he had not lost time from work or had to change jobs because of any back problems and he had not been receiving any type of medical treatment for his back. The claimant testified that he received treatments by the doctor up through November and then he had to terminate his treatments because the bill was getting so high. The claimant testified that by March his symptoms had become so severe he just could not take it anymore so he contacted the chiropractor to see if he possibly could receive additional treatment. The claimant testified that by the time he went back to see the doctor in March, he had severe low back pain as well as pain into both his legs. The claimant testified that on March 3 when he went back to see the doctor he could barely walk.

The claimant testified that he continued to work, although with difficulty, up until December 2, 2002. The claimant testified that it was difficult for him to bend and lift and that Mr. Gingray helped to do some of the things that he normally would do by

himself. The claimant testified that he had to work slower and he had to ask for help with some of the tasks required of him. The claimant testified that during those periods of time that he was not doing yard work he was helping Mr. Gingray paint the apartments. The claimant agreed that he was able to help out with the painting but again this was done at a slower pace than he would have normally worked.

The claimant testified that on December 2, 2002, the respondent laid him off from work. The claimant testified that no reason was stated for his lay off even though he asked for one. The claimant testified that he has looked for work but that jobs which at one time he was able to do he is not able to do at the present time. The claimant testified that he began drawing unemployment in the amount of \$215.00 per week remembering that he went and filed for this benefit on the day he was laid off.

On cross examination, the claimant testified that when he slipped and fell on the ramp on October 25, 2002, he immediately had pain which shot all the way up to his head. The claimant stated that he sat there for a little while before he even tried to get up. The claimant testified that as soon as he could get up he reported his fall to David Gingray. When asked the claimant testified that when he slipped he landed between his left buttock and his tail bone and he also scraped his hand. The claimant further explained that after he reported his injury the respondent let him off for the rest of the day to rest but he was to come back to work and did come back to work the next day. The claimant

testified that it was unclear if he had any sick leave or not and he could not afford to take off of work. The claimant stated that he came back the next morning and reported to the respondent that his back was really hurting but he would do what he could. The claimant testified that he also reported to the respondent that he would like to see a doctor and the respondent told him that they would find him a doctor. The claimant was asked about the sharp pain which he experienced while in his kitchen and the claimant responded that, "my back was already hurting really bad, and as I turned, the pain was so sharp that I actually hit the ground." The claimant testified that he already had numbness in his left leg but the sharp tingling and sharp pains which went down into his left leg happened when he turned in the kitchen.

The claimant testified that the chiropractor had submitted his bills to Blue Cross which was the respondent's group carrier but that Blue Cross eventually denied the bill because it was work related. The claimant testified that the respondent told him that it would be turned over to workers' compensation but he had learned that it had also been denied. The claimant was asked about the chiropractor's record dated November 18, 2002, which released the claimant to return to regular duty work. The claimant testified that Pat Farmer had told him that he had to get a full release from the doctor and that she did not want me going to the doctor anymore. The claimant testified that he told the chiropractor that he had to have a full release or he would lose his job. The claimant testified that when he returned to see the chiropractor in

March 2003 there had been no aggravating incident to cause him to go back just the continuation of his symptoms from his original fall.

The medical records set forth that the claimant was seen by Dr. Johnson on October 30, 2002, where it is noted that the claimant was seen for acute severe low back pain which began a week or so ago originally having a very sore lower back but yesterday when he turned in the kitchen he felt a sharp pain in his lower back which then radiated into his legs. The x-rays revealed that the claimant has mild degenerative changes about the lumbar spine and there is hyperlordosis as visualized posteriorly and there is facet imbrication associated with the hyperlordosis in the lower lumbar area. The doctor writes that the most significant finding is that of rotation of the lower lumbar spine to the left and inferiority of the ilium with posterior and external rotation of the pelvis on that side. The claimant was diagnosed with acute lumbosacral disc syndrome with hyper acute paravertebral muscle spasms, myofacitis and possible radiculitis. The claimant continued to be treated by the chiropractor on November 1, 4, 6, and 9. On November 11 the doctor notes that there is severe stiffness in the claimant's back which appears to be muscular noting that the claimant is suffering from paravertebral muscle spasms and fatigue. On November 18, 2002, it is noted that the claimant continues to make a little improvement and he has no new clinical findings, although he is not fully recovered. The doctor returned the claimant to regular duty work. The claimant then was

seen on November 20 and 25. On November 25 the doctor notes that there is not any change in the claimant's level of recovery and has no additional problems or complications. The doctor writes that the claimant's prognosis is unchanged and the diagnosis is the same and that treatment should continue with a follow up in two days.

The claimant was seen at the chiropractor's office on March 3, 2003, where it is noted that the claimant presents with acute severe low back pain and this time radiating into the entire length of the leg posteriorly laterally and into the big toe and second and third toes. It is noted that this began more or less spontaneously four days ago when he turned suddenly. After examination, the doctor notes that the claimant has acute lumbar sacral disc syndrome with hyper acute paravertebral muscle spasms, myofacitis and radiculitis. The claimant continued to be seen by the chiropractor on March 4, 5, and 10 of 2003. Dr. Kirk Johnson writes on March 11, 2003, in response to the claimant's attorney that when he initially saw the claimant he found that the claimant suffered from acute lumbosacral disc syndrome with hyper acute paravertebral muscle spasms, myofacitis, and possible radiculitis. Dr. Johnson writes that the claimant continued under his care until November 25, 2002, when the care was discontinued at the insistence of the claimant's employer. The doctor notes that at that time the claimant was not released from care as he had not fully recovered. Dr. Johnson writes that on March 3, 2003, the claimant returned with the same complaint of low back pain and treatments were continued. The claimant continued under Dr. Johnson's care

throughout March, April, May and the medical records indicate that the claimant was last seen on June 2, 2003.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury while working for the respondent on October 25, 2002. The claimant has testified to a work related injury which he reported immediately and for which he requested medical attention. The claimant sought medical treatment on his own after his back condition worsened. Dr. Johnson notes, on the claimant's initial visit, that the claimant has had a sore lower back for several days with an increase in symptoms the day before. X-rays of the claimant's lower back indicate hyperlordosis as well as rotation of the lower lumbar spine to the left and inferiority of the ilium with posterior and external rotation of the pelvis on that side. The doctor also notes that the claimant has hyper acute paravertebral muscle spasms. The claimant, therefore, has proven that he sustained a compensable injury by describing a specific incident resulting in injury to his low back which has been verified by objective medical findings and which his treating physician relates to his job injury. The claimant however has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from the date of his layoff to a date to be determined. The claimant's treating physician has not recommended that the claimant refrain from working although initially it was encouraged that he limit his lifting and bending activities as much as possible. The claimant himself has indicated

that once he was laid off by the respondent he began looking for work and even has filed for and been receiving unemployment benefits in the amount of \$215.00 per week from the date of his layoff. Therefore, the claimant has not proven that he is temporarily totally disabled from December 2, 2002, to a date to be determined but he has established his entitlement to additional medical treatment for his compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On October 25, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$267.00 for temporary total disability. This compensation rate is based on an average weekly wage of \$400.00 for this claimant.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on October 25, 2002. See discussion above.

5. The claimant is entitled to medical treatment for his compensable injury at the expense of the respondent.

6. The claimant has failed to prove by a preponderance of the evidence his entitlement to temporary total disability from December 2, 2002, to a date to be determined. See discussion above.

7. Based on my findings, this is a medical only claim at this time.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on October 25, 2002, while working for the respondent. Therefore, the respondents should pay for the cost of this claimant's medical treatment for his compensable injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE