

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E904458

EUGENE HANKINS, JR, EMPLOYEE	CLAIMANT
SKELTON ELECTRIC CO., EMPLOYER	RESPONDENT
FEDERATED MUTUAL, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 11, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Batesville, Independence County, Arkansas.

The claimant was represented by Phillip M. Wilson, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on April 25, 2003. A prehearing conference was conducted on February 18, 2003, and a prehearing order was filed on March 12, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. Employer/employee/carrier relationship existed on April 3, 1999;
2. Claimant sustained a compensable injury to his cervical spine on April 3, 1999;
3. Claimant was earning an average weekly wage of \$356.00,

which entitles him to a total disability compensation rate of \$243.00 and a partial disability compensation rate of \$180.00;

4. Respondents have controverted liability for any benefits related to an injury to the claimant's lumbar spine.

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 a compensable injury to his lumbar spine;
2. Whether the claimant is entitled to compensation for a 5% permanent physical impairment;
3. Whether the medical treatment provided for the claimant's lumbar spine is reasonably necessary for treatment of his compensable injury.

From a review of the record as a whole, to include the testimony of the claimant, Carol Hankins and Roy Skelton, witnesses, 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 failed to prove by a preponderance of the evidence that he sustained an injury to his lumbar spine that arose out of and in the course of his employment;
4. The claimant failed to prove by a preponderance of the

evidence the elements necessary to establish a compensable injury to his low back;

5. In light of finding number 4, the claimant failed to prove by a preponderance of the evidence that he is entitled to any benefits for a low back injury;
6. The respondents controverted liability for an injury to the claimant's low back.

DISCUSSION

The claimant performed various duties for the respondent employer. On April 3, 1999, he was on top of an assembly line pulling electrical line through a conduit, when the line broke. This caused the claimant to spin around "in a complete circle". However, he grabbed a wire rack, which prevented him from falling. He contends that he immediately experienced pain in his cervical spine and in his lumbar spine. He testified that he reported the incident to Roy Skelton, his supervisor, and he testified that he informed Mr. Skelton that he had injured both his cervical and lumbar spine. However, Mr. Skelton testified that the claimant only reported injuring his low back. In addition, the first report of injury that was filed with the Commission and which was admittedly filled out in the claimant's handwriting only reports a cervical injury. In this regard, the claimant testified that he completed two first reports of injury and that the first report did list both conditions. Mr. Skelton testified that only one first report of injury was filed.

The claimant was first treated by Dr. Roland Reynolds on April 5, 1999, and Dr. Reynolds' report indicates that the claimant related only a history of injuring his cervical spine. In this regard, the claimant testified that he reported

both conditions to Dr. Reynolds and that Dr. Reynolds told him he had to choose one condition or the other but that he could not claim both conditions.

Consequently, the claimant testified that he choose the cervical condition because it was causing him more problems. Dr. Reynolds treated the claimant conservatively with medication and physical therapy. I note that the physical therapist's notes do not indicate that the claimant ever complained of low back pain. In addition, the claimant was seen at the Butler Chiropractic Clinic, and the reports of that visit indicate that the claimant was complaining of injuring his cervical spine at work. The claimant was also seen by Dr. David Marzewski, a neurosurgeon, and Dr. Marzewski's report also indicates that the claimant only reported a history of injuring his cervical spine.

On April 15, 1999, Dr. Reynolds performed a spinal tap to rule out other causes of the claimant's problems, and the medical records indicate that the claimant did complain of low back pain subsequent to that time. The claimant has also been seen by Dr. Terrence Braden, a physical medicine and rehabilitation specialist, and Dr. Braden's report indicates that the claimant related a history of low back pain starting subsequent to the spinal tap. The claimant was also seen by Dr. William Ackerman, a pain specialists, on January 27, 2000, and Dr. Ackerman's report indicates that the claimant reported a history of injuring his lumbar spine at the time of the April 3, 1999, incident.

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));
- (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.

In the present claim, I find that the claimant failed to prove by a preponderance of the evidence that he sustained an injury to his lumbar spine that arose out of and in the course of his employment. As discussed above, the claimant contended at the hearing conducted in this matter that he injured his back during the April 3, 1999, incident. However, the history contained in the initial medical records is not consistent with the testimony. Moreover, the only mention of any low back complaints found in the initial medical records indicates that the claimant's low back complaints did not begin until after the spinal tap. In fact, the first indication in the medical records that the claimant related a history of injuring his low back during the April 3, 1999, incident is found in Dr. Ackerman's January 27, 2000, report. The claimant's testimony regarding the onset of his low back problems on April 3, 1999 is also inconsistent with the testimony of Mr. Skelton. However, the claimant's spouse did testify that he was complaining of low back pain when he came home on April 3, 1999.

In short, the claimant has presented conflicting statements with regard to the onset of his low back pain, and I find that these conflicting statements raise questions about the claimant's credibility. Accordingly, I find that the weight of the claimant's testimony is diminished. Furthermore, after weighing all of the evidence in the record impartially, I find that the claimant failed to prove by the greater weight of the evidence that his lumbar back complaints are causally

related to the April 3, 1999 incident, as he contends. Therefore, I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury to his low back.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

C. Michael White
Administrative Law Judge