

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F213339**

<b>CHARLIE JARRETT, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MASSMAN TRAYLOR JOINT VENTURE, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ST. PAUL GUARDIAN INSURANCE COMPANY, INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 8, 2003**

Hearing before Administrative Law Judge Dail Stiles on October 31, 2003, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Kenneth A. Harper, Attorney at Law, Monticello, Arkansas.

Respondents represented by Mr. A. Gene Williams, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 31, 2003, to consider the claimant's claim of retaliatory discharge.

It was stipulated that the claimant sustained a compensable injury to his left lower extremity on October 3, 2002. It was further stipulated that the claimant was laid off from the respondent employer on October 17, 2002.

The claimant contends he was terminated on October 17, 2002, because he had been hurt and filed a workers' compensation claim as a result of an injury of October 3, 2002.

The respondents contend that the claimant was laid off on October 17, 2002, because of a reduction of force.

**STATEMENT OF THE CASE**

The claimant worked as a laborer for the respondent employer.

On October 3, 2002, while working pouring concrete, the claimant was struck by the handle of a concrete bucket and sustained an injury to his left leg. The claimant received medical treatment and returned to work.

The claimant testified that prior to his getting injured, he attended a safety meeting one morning when Greg Hayes with the respondent employer stated, "If you guys don't be more careful and watch what you're doing, you guys get hurt, we're going to get rid of this crew and get in another crew."

The claimant stated that he was told by Jermane Langley, who had been the claimant's foreman at one time, on October 17, 2002, the day he was laid off, that the claimant and some other people were being laid off because they got hurt.

The claimant stated later in the afternoon of October 17, 2002, he was told by a man named Walker who the claimant stated was a supervisor, "They are laying you guys off because work is getting slow." The claimant was asked on direct examination if he had ever been contacted by the company for a call back to work, he said no.

The claimant was asked on cross-examination if he had ever called the company to see about getting his job back, and the claimant answered no.

### **FINDING OF FACT**

The claimant does not demonstrate by a preponderance of the evidence of record that his layoff of October 17, 2002, was the result of his becoming injured on October 3, 2002, and filing and/or pursuing a workers' compensation claim.

### **DISCUSSION**

Ark. Code Ann. §11-9-107, entitled Penalties for Discrimination for Filing Claim, is controlling and states in pertinent part:

(a)(1) Any employer who willfully discriminates in regard to the hiring or tenure of work or any term or condition of work of any individual on account of the individual's claim for benefits under this chapter, or who in any manner obstructs or impedes the filing of claims for benefits under this chapter, shall be subject to a fine of up to ten thousand dollars (\$10,000) as determined by the Workers' Compensation Commission.

(2) This fine shall be payable to the Second Injury Trust Fund and paid by the employer and not by the carrier.

(b)(1) In addition, the prevailing party shall be entitled to recover costs and a reasonable attorney's fee payable from the fine.

(2) Provided, however, if the employee is the nonprevailing party, the attorney's fee and costs shall, at the election of the employer, be paid by the employee or deducted from future workers' compensation benefits.

In the instant case, the claimant does not demonstrate by a preponderance of the evidence of record that his layoff was due to the fact that he had filed a workers' compensation claim or that he had pursued the claim.

The stated reason for the claimant's layoff was that the work had slowed, and that the layoffs were had as a means of reducing the work force at that time.

The claimant does not meet his burden of proof in this case.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

---

DAIL STILES  
Administrative Law Judge