

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F205292**

<b>ROBERT E. JEFFERSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PEDIATRIC SPECIALTY CARE, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMPANION PROPERTY &amp; CASUALTY, INSURANCE CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 3, 2003**

Hearing before Chief Administrative Law Judge David Greenbaum on November 7, 2003, at Forrest City, St. Francis County, Arkansas.

Claimant represented by Mr. Ronald C. Wilson, Attorney-at-Law, West Memphis, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted November 7, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted on July 16, 2003, and a Prehearing Order was filed on said date, at which time the claim was scheduled for a hearing. At the request of both parties, the hearing was continued on two (2) separate occasions due to problems in presenting all the evidence. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to the reservation of additional issues by the claimant.

The parties stipulated that the employee/employer/carrier relationship existed at all relevant times, including April 3, 2002; that claimant's wages were sufficient to entitle him to a compensation rate of \$130.00 per week for temporary total disability in the event the claim was found compensable; and that respondents had controverted the claim in its entirety.

By agreement of the parties, the principal issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable back injury as the result of a specific event identifiable in time and place of occurrence on April 3, 2002; that respondents should be held responsible for outstanding medical and related treatment, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability for the closed period beginning April 16, 2002, and continuing through September 20, 2002; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability, if applicable. At the hearing, the claimant amended his contentions to include a determination concerning the end of his healing period, entitlement to additional, temporary total disability and any other benefits, if compensability was overcome.

The respondents contended that claimant did not sustain a compensable

injury arising out of and during the course of his employment on April 3, 2002. Additionally, respondents maintained that claimant had not submitted any medical records indicating an injury based upon objective findings.

In addition to the claimant, he called Hattie Love and Angie Register as corroborating witnesses. Respondents called Hattie Love as its only witness. The record in this case is composed solely of the transcript of the November 7, 2003, hearing containing numerous exhibits, together with the claimant's discovery deposition which was introduced as "Respondent's Exhibit B" and retained in the Commission file in bound form.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained an injury which arose out of and during the course of his employment with Pediatric Specialty Care, Inc., on April 3, 2002.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that his physical complaints, medical treatment, and disability, if any, beginning April 16, 2002, were in any way causally related to an incident and/or injury while working for the respondents herein.
5. Respondents have controverted this claim in its entirety.

#### DISCUSSION

This claim turns almost entirely upon the claimant's testimony and credibility. A claimant's testimony is never considered uncontroverted. In fact, the testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

Admittedly, the claimant's testimony that he reported a work-related injury to his employer is corroborated by the testimony of one, Angie Register. However, as will be set out further below, the credibility of Ms. Register has also been challenged by the respondents. Specifically, Ms. Register was terminated by the employer for cause which renders her testimony suspect. In addition, the events surrounding the alleged incident and injury recounted by the claimant and his corroborating witness contain significant inconsistencies. The claimant's own testimony is, at times, inconsistent and self-contradicting. The record is replete with inconsistencies and contradictions. Accordingly, a

summary of the testimony of the various witnesses follows.

Hattie Love was called as a witness by the claimant. Ms. Love has worked for the employer for almost six (6) years. The employer, as the name implies, is a facility that cares for children with special needs. It also provides van transportation for the children it serves. At the time of the within hearing, Ms. Love worked as a food server, as well as a developmental technician. During April, 2002, she also acted as the van supervisor which consisted primarily of seeing that the van drivers transported the children to the proper destination. Ms. Love was the claimant's immediate supervisor at all relevant times, including April 3, 2002. Ms. Love reported directly to the employer's administrator, Gloria Gilliam. Although Ms. Love was considered the van supervisor, it was apparent to me that she had very little authority concerning the supervision of employees, but, rather, merely coordinated the work of the drivers as directed by the administrator. Ms. Love specifically denied the claimant reporting a work-related injury to her on April 3, 2002. It was apparent from the record that Ms. Love had little working knowledge concerning what procedure to follow in the event a work-related injury was reported; however, again, she denied the claimant ever reporting an injury or incident. She did indicate that Ms. Gilliam maintained all written documents and reports. On cross-examination, Ms. Love stated that she supervised eight (8) people and that no one had ever reported an injury to her which would

require her to fill out an injury report. She did state that the employer did require that all incidents regardless of whether an injury occurred involving a child had to be documented and an incident report filed. As reflected further below, despite the claimant's assertion that his injury occurred when he slipped and almost fell while carrying a child to be loaded on a van, the claimant did not file a report. Finally, Ms. Love denied the claimant ever reporting experiencing physical problems or requesting medical treatment to her.

Angie Register was also called as a witness by the claimant. Ms. Register was a receptionist for the employer during April, 2002. She stated that she recalled the claimant holding his back and reporting injuring his back on April 3, 2002, while, at the same time, maintaining that the claimant continued working because Ms. Love indicated that the employer was short-staffed. Ms. Register maintained that the claimant reported the incident to Ms. Love in her presence and was told that an accident report needed to be filled out. Ms. Register's testimony appeared to be extremely vague. However, on cross-examination, she acknowledged that all incidents on vans involving children required an incident report to be filled out and that she did not recall that the alleged accident involved an incident with a child. On further cross-examination, Ms. Register acknowledged that she was terminated for cause by the respondent during June, 2002. (Tr.23-27)

The claimant, Robert E. Jefferson, testified in his own behalf. The

claimant is forty-eight (48) years old. He has a ninth grade education. The claimant began working for the respondent during the later part of 2001. The record reflects that the claimant worked part-time as both a van driver and as a maintenance man. The claimant maintained that he sustained a work-related injury on April 3, 2002. The claimant's confusing and somewhat self-contradicting testimony concerning the alleged incident and injury is set out, in part, below:

A And I punched in and everything, you know. I went in and passed by the kitchen. Ms. Love asked me would I come in there a minute because a lot of stuff from UPS had come in. She asked me would I help her put the stuff up. I told her, yes, I would. So I came in and I helped her put some stuff up and everything, put some food and different stuff in the kitchen. Then it got time to unload, I mean, load the kids up. So I told her, I said, "I'm fixing to go load the kids up now," and she said, "Okay." I went down there and I asked the teacher, I said "Is --" -- I can't think of the little girl's name -- "Is she ready to be loaded? I'm going to be loading her first." She said, "No, we're going to be getting her ready. You can take the wheelchair and stuff out and put in the van. By the time you come back, we'll have her ready." I said, "Okay." I carried the wheelchair and some of the parts -- I folded the wheelchair up and carried the different parts and put in the van. When I came back, when I came back to pick up the child, they had her wrapped up in a blanket because it was raining. When I came out the door -- we loaded the kids from the side of the building, from the side door. When I stepped up on the van, I had her in this arm here.

JUDGE GREENBAUM: I'm sorry, I didn't understand what you're saying. Slow down and speak up so that we can understand what you're saying.

THE CLAIMANT: Yes, sir.

JUDGE GREENBAUM: It's important that we get a proper history and that the court reporter takes this down so that everybody will agree what the record says. Okay?

THE CLAIMANT: Yes, sir. I picked the child up and carried her out the side door. It was raining. I put the blanket over her head. I stepped up on the steps of the van and fixing to turn and put her in the seat, but I had her in the wrong arm. I usually have her in the left arm. I just carry her straight across to the seat. When I was turning to put her on the van, I knew that I had fell, I was falling. When I fell, I fell and hit the bottom of the van, part of my body hit the steps. And when I fell, I put the kid in my left arm. I reached back up on the van and grabbed the leg of the seat. It kind of like broke my fall, but I still fell out the van, but I didn't fall completely on the concrete and everything. So I kind of like, you know, pushed up, used some of my weight to push up to, you know, get my balance, get my footing and everything, and then I put the kid up on the van. I felt some burning in the low part of my back, and I felt some in the back of my neck. So I kind of like sat outside the van –

BY MR. WILSON:

Q Let me stop you right there for a minute, Mr. Jefferson. Tell Your Honor what parts of your body struck the van.

A My lower part of my body hit the step.

Q The lower part of your back? Speak up.

A The lower part of my back hit the step. My upper back hit the – seems like the bottom of the van. My head hit something. I don't know whether it was – if it was the wheelchair or something. My head hit something pretty hard. All I know is something popped in my neck. I don't know what it – I can't be sure what I hit because it happened so fast and everything. But I sat out there for a while. I couldn't leave the child in the van by herself. We were told not to, which common sense will tell you don't leave a child in the van by herself. So I sat out there. So

I got off the step and sat in this little chair we had sitting to hold the door. So I sat in the chair. So I'm waiting on Mitch Williams to come to the – Mitch Collins to come to out. So he come out – it took him a while to get out and everything. So he finally came out. He asked me what was wrong and I told him I had fell on the van.

JUDGE GREENBAUM: I'm sorry, slow down.

#### EXAMINATION BY THE COMMISSION

BY JUDGE GREENBAUM:

Q Who asked you?

A Mitch Collins.

Q Mitch Collins?

A Yes, sir.

Q Who is Mitch Collins?

A He was my co-worker.

Q And what did you tell Mitch Collins?

A I told him I slipped and fell off the van with the baby and I hurt my back.

Q Who else was on the van at the time this incident occurred?

A Just the child. I had –

Q One child?

A Yes, sir, the child I fell with.

Q Okay. And you told Mitch Collins what happened?

A I told him, "I slipped and fell out the van and I know I hurt

my back.” He said, “Did you hurt the baby?”

Q Okay. Slow down because – he asked you if you had hurt it?

A Did I hurt the baby.

Q Did you hurt the baby, and what did you tell him?

A I said, “No, I didn’t hurt the baby. I hurt myself.” I said, “But I’m glad I didn’t hurt the baby.” He said, “You need to go in there and report it to Hattie so she can write it up.”

Q Okay. Did you do that?

A Yes, sir. When I got up from the chair and everything when Mitch came out, somehow the chair slid back and the door closed, and that made me have to go all the way back around, because when the door closes, it locks. I had to go all around the building and come in the front door. Then when I stepped up, Angie, Ms. Register, she was at the window, but she was on the phone. I knocked on the window and I asked her, I said, “I need to get in.” She said, “What’s wrong, Robert?” I said, “Girl, I just fell and I hurt my back,” and she said, “You did?”

Q Okay, slow down. Slow down and speak up.

A Yes, sir.

Q I don’t need all the, you know, every bit of the detail.

A Yes, sir.

Q And I take it the co-worker stayed in the van or stayed –

A Stayed there.

Q Stayed there while you went and reported this to Ms. Register, right?

A Yes.

Q Was the first one?

A Yes, sir.

Q And then what did you do?

A I asked her could she open the door and let me in because she have to buzz me in.

Q And did she buzz you in?

A She buzzed me in.

Q Then after she buzzed you in, what did you do?

A I went to the kitchen first to see if Ms. Love was in the kitchen. She was in the kitchen the last time I saw her. She wasn't in the kitchen. So I asked the lady that was in the kitchen – what was her name? Oh, I can't think of her name offhand. Anyway –

Q Did you see Ms. Love?

A Yes, sir.

Q What did you tell her?

A I told her that I had fell off the van and hurt my back. I told her I slipped with the little girl. She said, "You didn't hurt the little girl, did you?" I said, "No, I didn't hurt the little girl." The first thing that came out of my mouth. I said, "No, I didn't hurt the little girl." She said, "Where is she at?" I said she is in the van with Mitch. She said, "Well, let's go and report the accident to Ms. Gilliam." We go around the corner to report the accident to Ms. Gilliam. Ms. Gilliam's door was closed, so she went to knocking on the door like this (demonstrating), and Angie looked and she said, "Is Gloria in?" She said, "No, Gloria is gone for the rest of the day." (Tr.38-44)

The record reflects that the claimant performed his regular duties

between April 3 through April 16, 2002, without requesting medical treatment. The claimant maintained that the first and only time that he told Ms. Love that he needed to see a doctor was April 16, 2002, which was also the same day his employment was terminated by the administrator, Ms. Gilliam. Although the claimant maintained that he was terminated after seeing a doctor, this assertion appears suspect in view of the claimant's course of conduct and the fact that he was a probationary employee as will be discussed further below.

Although the claimant stated that he first requested medical treatment from Ms. Love on April 16, 2002, he also stated that he had already made an appointment with the doctor on said date. The claimant asserted that he reported the alleged injury to Ms. Love and that she knew he was having physical problems which she specifically denied. Another portion of the claimant's self-contradicting and confusing testimony in response to questions from this administrative law judge follows:

Q Slow down. Did you tell her why you were having these physical problems or did you assume that she already knew?

A She already know [sic] because I had told her about the accident and everything. So she said, "Well, you probably need to go on and see a doctor then since you're getting numb and everything." I said, "Yeah, I made an appointment to go see him this morning."

Q At this point had you filled out any paperwork at all?

A No. She said she had put the report and everything on Ms. Gilliam's desk. She said she was waiting on Ms. Gilliam to get

back with me, because, “Ms. Gilliam, you know how Ms. Gilliam is, it might be two –” –

Q No, I don’t [sic] anything about Ms. Gilliam.

A That’s what she told me, “You know how Ms. Gilliam is, you know, it might be – she’s slow about doing things. She might take her two or three weeks before she gets around to calling you in the office and get you to fill out everything.”

Q Did you ever talk to Ms. Gilliam?

A Yes, I did.

Q When would that have been?

A I talked to Ms. Gilliam – it had to be around like the – between the 5<sup>th</sup> and the 7<sup>th</sup>, something like that. She asked me, she said –

Q The 5<sup>th</sup> and 7<sup>th</sup> of what month and year?

A April, 2002.

Q So you talked to her a few days after this accident?

A Yes, sir.

Q Okay. Well, what –

A She asked me, “Robert, I heard about your accident and everything.” I said, “Yes, ma’am.” She said, “How are you doing?” I said, “I’m doing pretty good.” She said, “You think you’re going to be able to make it, or do you need to go to the doctor?” I said, “I can probably go on and try to work. It might straighten itself out.” She said, “Have you ever hurt your back before?” No, she said, “I know this ain’t the first time that you ever hurt your back,” and she kind of like laughed. We kind of like laughed, and I said, “No, this is not the first I’ve hurt my back.” And she said, “You think you are going to be all right?” I said, “Oh, yes, ma’am. I’m taking medication that I got at the

drugstore. So far I'm doing pretty good." I said, "I'm going to go on and try to work."

Q So a few days after this accident you had talked to the administrator?

A Yes, sir.

Q And basically the conversation was that you were going to be okay, and you didn't ask for any medical treatment from her either, is that right?

A No, because to me at that time, at that present time, I don't know, I thought they might have already sent it in. I didn't ask her about it and everything because I thought, you know, everybody know what – she know what I had – already know I had got hurt. I thought that they had sent it in, because we had an [sic] verbal agreement that I would work until I couldn't – until I see if my problem, you know, kind of escalated, and then I have to go on to the doctor, and then I'd just go on and take off and go. (Tr.47-49)

The claimant first obtained medical treatment from Dr. Claude Stevens at the Traylor Chiropractic Clinic in West Memphis, Arkansas, on April 16, 2002. The claimant received chiropractic treatment from April 16 through September 20, 2002. The record reflects that on the same day the claimant first sought medical treatment, his employment with the respondent was terminated. In addition, the employer's first report of injury was prepared on that date, reflecting that April 16, 2002, was the date the administrator was first notified about the alleged injury. The claimant also filled out an application for unemployment compensation on that day. (Tr.59)(Resp. Ex. C)

As reflected by the claimant's own testimony, the alleged injury occurred

during an incident involving the loading of a child into a van. No incident report was filled out by the claimant at the time of the alleged incident. The record reflects that the claimant had previously been counseled and written up for failure to properly secure a child, resulting in an injury to the child on March 7, 2002. The claimant acknowledged that he knew an incident report was required to be filled out whenever a child was involved. The claimant also admitted that he had been written up again on April 2, 2002, the day before his alleged injury, because he used profane language and played inappropriate music on the van. Clearly, the claimant was a probationary employee. Although the reason for the claimant's termination, was not explained at the hearing because of the absence of Ms. Gilliam, it can be inferred that perhaps the claimant was terminated for failure to, again, write up the incident when he reported his alleged injury on April 16, 2002. The record further reflects that the claimant has a prior history of neck, as well as low back injuries as the result of at least three (3) prior admitted injuries. The claimant acknowledge sustaining injuries on or about 1978, 1987, and 1997. The record reflects that the claimant is not motivated to work. Despite his assertion that he had not sustained any injuries as significant as the within claim, the record indicates that he has exaggerated all of his prior injuries, including the immediate, alleged injury. The claimant was off work for approximately five (5) years due to back and neck problems following a motor vehicle accident in 1978, after

experiencing a pop in his back which was the identical history contained in the claimant's first notice of injury that he filled out on April 18, 2002. The claimant apparently had another workers' compensation claim in 1987 which involved neck and back pain and which kept him off work for five (5) years between 1987 and 1992. The claimant apparently applied for and drew unemployment compensation. The claimant was then involved in another motor vehicle accident in 1997 at which time he again voiced complaints similar to those he allegedly experienced following this claim. (Tr.62-67)(Cl. Ex. B)

I feel compelled to point out that based upon my observations of the claimant's character and demeanor, he did not appear to be in a credible witness. On direct-examination, and when questioned by me, the claimant appeared to answer spontaneously. However, on cross-examination, when questioned concerning the foregoing accidents and injuries, the record reflects that the claimant's memory became extremely poor and his answers became vague and cautious. I further noted that the claimant did not appear to be in any physical distress while sitting in the hearing for almost two (2) hours.

Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that I made the following observations after reviewing volumes of medical evidence. First, and most revealing, is that the claimant's multiple complaints following the immediate claim appear identical to the multiple,

physical complaints voiced following his prior injuries which kept him off work for more than ten (10) years and which I frankly believe were exaggerated. Further, the histories given to the claimant's medical providers following the within claim concerning the nature of the injury are inherently inconsistent. In fact, the description of the injury provided by the claimant in his notice of injury, as well as his initial complaints about hearing something snap in his low back, causing pain in the low back on the right side, is inconsistent with the primary complaints made to the medical providers which included multiple complaints, but related primarily to the neck and upper extremities. (Cl. Ex. A, p.15)(Cl. Ex. B)

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of 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 medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
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.

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. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

\_\_\_\_\_The Workers' Compensation Act requires that the claimant bear the burden of proving the compensability of his claim by a preponderance of the evidence. In my opinion, the claimant has failed to prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with Pediatric Specialty Care, Inc., which was caused by a specific incident identifiable in time and place of occurrence on April 3, 2002, as alleged. Again, the record is simply replete with inconsistencies and contradictions. The claimant is not a credible witness. The record reflects that he has an extremely poor work history and has exhibited a lack of motivation to work. All of the claimant's physical complaints voiced following his termination on April 16, 2002, are similar to those complained about following his prior injuries.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d

111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

Respondents did contend that the claimant has not submitted any medical records indicating an injury supported by objective medical findings. Admittedly, the record does contain a MRI study ordered by Dr. Stevens on June 7, 2002, which revealed a mild centrally herniated disc at C4-5; however, I do not find that the claimant has proven that said finding is directly and causally related to any work-related injury. It would require sheer speculation and conjecture to attribute this finding to the alleged injury as opposed to the claimant's prior injuries. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge