

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206336

TONY JOHNSON

CLAIMANT

DANA CORP.

RESPONDENT EMPLOYER

HARTFORD INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JULY 22, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on June 19, 2003. A prehearing conference was held on March 26, 2002 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was a June 3, 2002, employer-employee relationship.
2. The temporary total disability rate is \$392.

The claimant contends that he sustained a compensable back injury as the result of a specific incident on the night of June 2 or June 3, 2002. Alternatively, the claimant

experienced back pain for about a month and the claimant contends the injury was gradual onset. The claimant contends the injury is a compensable aggravation of a pre-existing condition. The claimant contends he is entitled to medical benefits and temporary total disability benefits. Permanency is reserved.

The respondents contend the claimant did not sustain an injury within the course and scope of his employment and claimant cannot meet his burden of proof of establishing compensability. The respondents contend the claim falls in the category of gradual onset and major cause will be required for compensability. The respondents contend the claim was reported on or about June 3, 2002 and the initial medical visit to Dr. Michael Lack was authorized and the claim was controverted in its entirety on June 10, 2002.

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. There was a June 3, 2002, employer-employee relationship.
2. The temporary total disability rate is \$392.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 2, 2002 or June 3, 2002 (the

claimant worked the third shift).

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from June 4, 2002 through December 20, 2002, when he remained in his healing period and unable to earn wages (excluding time he worked).

5. The respondents are entitled to an offset of short term disability paid the claimant during this period pursuant to Ark. Code Ann. §11-9-411.

DISCUSSION

The claimant, 31 years old, began working for the respondent in July 2000. In May and June of 2002, the claimant worked on a machine where he had to move axle parts from a bin to a machine. The parts weighed from 11 to 15 pounds and, according to the claimant, he would handle 10 parts per hour, but this required picking up each part 6 to 7 times. The claimant worked on a metal cutting machine where he also unloaded the machines and put the part onto another machine. The claimant's job required him to be on his feet all day and turn or twist his back to load parts into another machine. The claimant worked on this particular job for about seven months. The claimant testified that he had no back problems before coming to work for respondent. He may have had a few pulled muscles, but no major problems.

According to the claimant, in early May 2002, his back began to hurt, he would feel better over the weekend and each week his condition seemed to become worse. The claimant testified that he requested a back support and he worked with the back brace for a time. The claimant testified that on June 2, 2002, he worked third shift, from 11:00 p.m. to 7:00 a.m., and that was a Sunday. According to the claimant he warmed

up his machine and ran dry cycles for about an hour, then he picked up his first two parts and loaded the machines. He then picked up the third part and a sharp pain shot through his back. The claimant testified that he immediately went to his supervisor and reported his problem. According to the claimant, the supervisor, Tony McDowell, told him to sit down for a while. The claimant sat for a while but then went to the supervisor and told him his back was hurting pretty bad. According to the claimant, Mr. McDowell told him to go lay down in the first aid room and he laid there until the end of his shift. Mark Howell, the safety supervisor, came in and the claimant told him about his pain. An appointment was made with Dr. Lack the same day.

The claimant explained that when he completed the AR-N Form, he put the date of May 5, 2002, as the first time he noticed back pain. The claimant also told Dr. Lack about the onset of pain in May 2002 and then the sharp pain on June 3, 2002. Dr. Lack diagnosed the claimant with a muscle strain and some prescription medication was authorized. According to the claimant, when he sought additional medical treatment, his claim was denied.

According to the claimant, he sought treatment with his family doctor because of severe pain down his right leg. He was referred for a CT scan and was diagnosed with a herniated disc with surgery performed by Dr. Dewayne Eubanks on August 12, 2002. The claimant testified that he returned to work between June 3 and August 12 for about one week but was unable to continue. He testified that he drew short term disability benefits in the amount of \$290 per week. After surgery, the claimant testified that he returned to work part time and drew part time disability benefits. According to the claimant, he re-injured his back while he was back at work when he was taking parts

out of a three-foot bin and placing them in a basket. He returned to Dr. Eubanks and began drawing short term disability benefits again. On December 20, 2002, the claimant took a voluntary layoff. The claimant took the severance package in order to get some educational benefits under the NAFTA Trade Agreement and is currently in school. The claimant stated his surgery was very successful.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find the claimant proved by a preponderance of the evidence that he sustained a compensable injury as a result of a specific incident. I found the claimant to be a credible witness who explained that he had back pain for about a month and then on June 3, 2002, as he picked up the third part to place in his machine, he had a sharp pain shoot through his back and was unable to work the balance of the shift. He reported the incident and laid down and then sought medical

treatment the same day. The claimant saw Dr. Lack and Dr. Lack's June 3, 2002, report corroborates the claimant's account of the back problems for a month and the June 3, 2002, incident. Dr. Lack diagnosed the claimant with a lumbar sprain/strain. A CT of the lumbar spine was performed on June 18, 2002 and this revealed a herniation at L5-S1 with compression of the right S1 nerve root. On August 13, 2002, Dr. Dewayne Eubanks performed a right L5-S1 microsurgical discectomy with MET-Rx. The claimant had no history of back problems until the June 3, 2002, incident. I also found the claimant's account credible when he explained to the claims adjuster before the recorded statement that he had back pain for a month before the June 3, 2002, incident. The claimant stated this conversation was before the claims adjuster started recording the conversation.

I find respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued for his compensable back injury.

The claimant next contends that he is entitled to temporary total disability benefits from June 3, 2002 through December 20, 2002. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, I find the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from June 4, 2002 through December 20, 2002, excluding the actual time the claimant did work for respondent. The claimant testified that between June 3, 2002 and August 12, 2002, he did return to work for about a week and after surgery he worked for about three weeks.

The claimant testified that he re-injured his back again while working on a job that involved removing parts from a cardboard bin and was taken off work again. The claimant took a voluntary layoff on December 20, 2002 and began making plans for taking advantage of some educational benefits under the NAFTA Trade Agreement. The claimant is currently in school retraining for a different line of work. The claimant also drew short term disability benefits while he remained off work. The respondents are entitled to an offset for benefits under this group disability policy pursuant to Ark. Code Ann. §11-9-411.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 2, 2002 or June 3, 2002 (the claimant worked the third shift). The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from June 4, 2002 through December 20, 2002, when he remained in his healing period and unable to earn wages (excluding time he worked). The respondents are entitled to an offset of short term disability paid the claimant during this period pursuant to Ark. Code Ann. §11-9-411.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum with discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**