

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F111491**

**IKE NUNN**

**CLAIMANT**

**RAY FOWLER FRAMING**

**RESPONDENT EMPLOYER**

**ONE BEACON INSURANCE**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JULY 17, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE BILL E. BRACEY, JR., Attorney at Law, Blytheville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Jonesboro, Arkansas on June 3, 2002. A prehearing conference was held on April 9, 2003 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, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on August 23, 2000.
2. The compensation rate is \$187.

The claimant contends that he sustained a specific incident back injury on August 23, 2000, when he was lifting a 2 by 6 by 24-foot beam. The claimant contends he is entitled to medical benefits and temporary total disability benefits from August 24, 2000, to a date to be determined. Attorney's fees are also requested.

The respondents contend the claimant was not injured in the course and scope of his employment. The respondents also contend there are no objective medical findings nor proof of temporary disability. Further, respondents contend the accident was substantially occasioned by the use of drugs.

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 an employer-employee relationship on August 23, 2000.
2. The compensation rate is \$187.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable lumbar strain injury to his back on August 23, 2000.

**DISCUSSION**

The claimant, 27 years of age, was working as a laborer or framer for the respondent employer on August 23, 2000. According to the claimant, he and other co-employees were carrying a 2 by 6 by 24-foot laminated beam. There were two people on each end; however, the person helping the claimant hold his end went to help the others set their end in place, which left the claimant holding his end alone. The claimant had to lift the beam about seven feet and later that evening his back started

bothering him. The claimant told his boss at work the following morning that he had hurt his back. The claimant's boss took him to the chiropractor the next day and the claimant's boss paid for the chiropractor treatments.

According to the claimant he next saw Dr. Frankum and then Dr. Terry Hunt. Dr. Hunt ordered a MRI. The claimant testified that he had pressure in his back and he would get sharp pains down his leg and he had right leg numbness. The claimant testified that he had no previous back trouble and has been working some odd jobs to pay his bills. The claimant has pain through the belt line.

The respondents paid for the claimant to see Dr. Guy L'Heureux for an independent medical evaluation and Dr. L'Heureux did not recommend surgery.

Under cross examination, the claimant testified that he left Arkansas and moved to Oregon about three months after the August 23, 2000, incident and remained in Oregon about 18 months. The claimant admitted to being a drug user in his past and he admitted he smoked marijuana the night before his work incident. The claimant admitted using amphetamines about three months before the incident. The claimant also admitted using amphetamines the night before he went to the doctor for his back.

The claimant confirmed that he has been working odd jobs since he returned to Arkansas. He testified that he has worked in construction, such as stripping roofs off, but he cannot work every day because of his back.

The claimant did testify under redirect that he was "straight" on the day of the incident. He further testified that he had a tendency to smoke marijuana after he got off work.

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, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable back strain on August 23, 2000. The claimant testified about lifting the 2 by 6 by 24-foot beam and experiencing back pain at the end of the day. The claimant initially sought chiropractic treatment and underwent a MRI on November 1, 2000. The MRI revealed a small herniated disc at L5-S1 with no compression fracture. On April 29, 2003, the claimant underwent an independent medical evaluation with Dr. Guy L'Heureux and another MRI was performed on April 4, 2003. Dr. L'Heureux opined:

Responding to question #1: I do not find any objective findings that would corroborate the claimant was injured August 23, 2000 and that would support his complaints at this time. (Cl. Exh. No. 1, p. C-25.)  
\* \* \*

#4: On the November 1, 2000 MRI, there was a small bulging disc at L5-S1. As it happens very often, this small bulging disc disappeared over the last few years and has left him with slightly narrower disc space and a dissicated disc, but no more sign of herniated disc. The new MRI does show very clearly that there is now only a small bulging disc at L3-4 and dessication at L5-S1. (Cl. Exh. No. 1, p. C-26.)

Dr. L'Heureux opined the most recent MRI does not reveal a disc herniation at this time. Dr. L'Heureux concluded that the claimant demonstrated signs of symptom magnification and no permanent impairment rating was given. I find the weight that the claimant's testimony is entitled to receive is greatly diminished by his lack of veracity.

Alternatively, the respondents contend that the claimant's work incident was substantially occasioned by the use of drugs. Ark. Code Ann. §11-9-102(4)(B)(iv). Since the claim was denied, this contention is not addressed.

The claimant contends that he is entitled to temporary total disability benefits from August 24, 2000, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must sustain a compensable injury and 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, the claimant has failed to prove a compensable injury; therefore, all benefits are denied.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable lumbar strain injury to his back on August 23, 2000. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

---

**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**