

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F213362

DENNIS ROBERTSON, Employee	CLAIMANT
NORTHWEST ARKANSAS SHEET METAL, Employer	RESPONDENT
CINCINNATI INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 1, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 29, 2003, and an amended pre-hearing order was filed on February 11, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed between the parties on November 21, 2002 and at all pertinent times.
3. The claimant earned an average weekly wage of \$622.40 which would entitle him to a total disability rate of \$425.00 and a permanent partial disability rate of \$319.00.
4. Respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury on November 21, 2002.

2. Medical expenses.
3. Temporary total disability benefits.
4. Attorney fee.
5. Wage rate.

Given the parties' stipulation regarding the average weekly wage and compensation rate, the wage rate was not an issue at the hearing. In addition, claimant also modified his contentions regarding temporary total disability benefits to request temporary total disability benefits from November 21, 2002 through April 10, 2003.

The claimant contends he was injured on November 21, 2002, when Richard Carr, his supervisor, physically attacked him. He injured his ribs, head, and leg. Claimant contends he is entitled to the payment of medical expenses, temporary total disability benefits from November 21, 2002 through April 10, 2003, and an attorney fee.

The respondents contend that claimant did not suffer a compensable injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties and contained in an amended pre-hearing order filed February 11, 2003, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

FACTUAL BACKGROUND

The claimant worked for the respondent as a journeyman sheet metal worker. In

November 2002 the claimant and respondent were performing sheet metal work at a new Embassy Suites hotel under construction in Rogers. Claimant testified that he was responsible for all duct work and installation on the first floor.

Claimant testified that on November 21, 2002, he was on a scissor lift hanging duct elbows which weigh approximately 150 pounds when Richard Carr, his supervisor, informed him that a truck needed to be unloaded. Claimant testified that he went outside to help unload the truck with other employees of the respondent. Claimant testified that he was standing in line for the third time to unload fittings when Carr came up to him walking fast and grabbed him by the shirt and coat. Claimant testified that Carr lifted him off the ground and was running claimant backwards when Carr tripped over something causing both of them to fall. Claimant testified that Carr landed on top of him and that his head hit a crane. As a result of this altercation, Carr suffered a broken leg. Claimant continued working the remainder of that day but sought medical treatment from the emergency room at Northwest Medical Center the next day, November 22, 2002. Claimant has filed this claim contending that he suffered compensable injuries as the result of the altercation on November 21, 2002. He seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury as the result of an altercation which took place with Richard Carr, his supervisor, on November 21, 2002. Accordingly, claimant's claim is for an injury caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

Most of the testimony presented at the hearing and through the deposition of Richard Carr concerns the circumstances surrounding the altercation between Carr and the claimant; specifically, whether the incident resulted from an unprovoked attack by Carr or whether it was the result of claimant being upset over an incident which occurred between a girl living at his home and an employee of another subcontractor working on the Embassy Suites job site. Also addressed throughout the testimony is the question of whether after Carr started the altercation he immediately stopped it only to be further attacked by the claimant or whether the entire altercation was brought on by Carr's assault.

I do not believe that resolution of these factual issues is important to consideration of this claim. Even if I were to accept claimant's testimony as fact as to what occurred on November 21, 2002, claimant still has the burden of offering medical evidence supported by objective findings establishing an injury as a result of this altercation. I find based upon the evidence presented that claimant has failed to meet his burden of offering objective findings supporting an injury.

The documentary evidence indicates that claimant sought medical treatment from

Northwest Medical Center the day after this altercation on November 22, 2002. Page 9 of Joint Exhibit 1 reflects that claimant's chief complaint of injury on that date was an injury to his ribs. Much of the remainder of that report is illegible. However, Page 10 reflects that claimant was complaining of various complaints including a rib injury, pain in his neck and shoulder, and a bruise on top of his head.

As a result of claimant's complaints numerous x-rays were performed on that date. First, x-rays were taken of claimant's ribs. The x-ray report states in pertinent part:

No pneumothorax, consolidation, effusion, or mass is demonstrated. The bony thorax and upper abdomen appear unremarkable.

IMPRESSION:

Pulmonary emphysema.

X-rays of claimant's cervical spine were also taken which revealed no fractures, lesions, soft tissue swelling or misalignment. In fact, the only thing noted was degenerative changes. X-rays were also taken of the claimant's right knee. The x-ray report indicates that this was read as a normal study with no bony or soft tissue abnormality nor joint effusion noted.

In addition, a CT scan was taken of claimant's head which was also read as normal. Finally, a CT scan of the claimant's cervical spine was taken which was read as normal with no evidence of trauma demonstrated.

Thus, while claimant appeared at the emergency room of Northwest Medical Center on November 22, 2002 with various complaints, all objective testing was negative. Throughout his testimony claimant indicated that he suffered broken or fractured ribs which were diagnosed at the emergency room. However, the emergency room records and more specifically, the x-ray reports, do not reveal any fractures or broken ribs. In addition, while the emergency room report indicates that claimant was complaining of bruising on

the top of his head, the medical reports do not reflect any indication that this bruising was observed by medical personnel.

Following his emergency room visit, claimant sought medical treatment from Dr. William Piechal on December 16, 2002. Claimant indicated that Dr. Piechal was a friend of his. Dr. Piechal's medical report of December 16 reflects many of the same complaints made by claimant at the time of his emergency room visit. However, Dr. Piechal's medical report also fails to reflect any objective findings supporting an injury. Dr. Piechal's medical report indicates that claimant informed him that emergency room personnel documented two fractured ribs as well as a contusion of his head. However, as previously noted, those objective findings are not contained in the emergency room reports.

In short, in order to prove a compensable injury, claimant must offer objective medical findings establishing an injury. Here, even assuming that the altercation took place as testified to by the claimant, there are no objective findings establishing a compensable injury as a result of that altercation. Instead, x-rays and CT scans of the claimant's ribs, cervical spine, right knee, and head were all normal with no evidence of fractures or swelling noted. Given this evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

ORDER

_____ Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE