

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F000821

RICHARD SIMBACH, Employee	CLAIMANT
HARRISON DAVIS CONSTRUCTION CO., Employer	RESPONDENT
AMERICA FIRST C/O CUNNINGHAM LINDSEY, Carrier	RESPONDENT

OPINION FILED AUGUST 28, 2003

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

Claimant appearing *pro se*.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 23, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 21, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties on or about March 8, 2000.
3. Respondents have controverted this claim in its entirety.

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

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits,

The claimant contends he suffered a compensable injury to his back on March 8,

2000 and is entitled to medical and temporary total disability benefits.

The respondents contend the claimant did not sustain a compensable injury as defined by the Arkansas Workers' Compensation Act.

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 witness and to observe his 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 at the pre-hearing conference conducted on May 21, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 38-year-old gentleman who is a high school graduate. In addition, claimant also attended some community college. The claimant worked for the respondent as a laborer on its concrete crew. Claimant testified that on March 8, 2000, he and other individuals on the respondent's crew loaded tools into a truck from a job trailer. Thereafter, he and other employees got in the back of the truck to ride to the job site. As he was getting out of the truck he "severely hurt" his back. Claimant testified that he does not know if he twisted his back, if he suffered a stroke, or if perhaps lightning struck a puddle of water he was stepping in.

Claimant testified that he mentioned this injury to a secretary three days later when he picked up his paycheck. He also testified that he could barely walk for approximately

two months thereafter.

With respect to medical treatment, claimant testified that he went to St. Mary's Hospital approximately four or five days after this incident. In addition, claimant also testified that he has been evaluated and treated by his family physician.

Since his employment with the respondent, claimant testified that he worked for approximately two weeks for Gold and Son Excavation Company. In addition, claimant has performed various short-term jobs.

Claimant has filed this claim contending that he suffered a compensable injury to his back while working for respondent. He seeks payment of temporary total disability benefits and medical benefits.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his back while getting out of a truck while working for respondent on March 8, 2000. Thus, claimant contends that he suffered a compensable injury which is the result of 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 identi-

fiable 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 to his back while working for the respondent.

In order to prove a compensable injury, claimant has the burden of offering medical evidence supported by objective findings establishing an injury. In this particular case, the only medical report offered into evidence is a report from Dr. John Huskins dated February 27, 2003. That medical report does contain a history of the claimant having injured his back at work some two years ago and also notes an objective finding of muscle spasms of the cervical, thoracic, and lumbar spine. However, given claimant's testimony that the date of injury was March 8, 2000, these objective findings were not observed by Dr. Huskins until almost three years later. Furthermore, on cross-examination, claimant testified that he believes he actually worked for the respondent from July 15, 1999 through August 20, 1999. Therefore, Dr. Huskins' observation of muscle spasms would have occurred almost four years after the alleged injury.

In summary, in order to prove compensability, claimant has the burden of offering medical evidence supported by objective findings establishing an injury. Here, at best, the objective findings of muscle spasm were not observed by Dr. Huskins until almost three years after March 8, 2000. Furthermore, to the extent that claimant actually last worked for the respondent in August of 1999, the objective findings were not observed for at least three and one-half years later. Accordingly, given this evidence, I find that claimant has not met his burden of proof.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered

a compensable injury to his back while employed by respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

---

GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE