

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F301333

MARVIN D. VANOVEN, EMPLOYEE	CLAIMANT
CITY OF BRADFORD, SELF INSURED EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 17, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in White County, Arkansas.

The claimant was represented by Burt C. Newell, Attorney at Law, Hot Springs, Arkansas.

The respondents were represented by J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on July 21, 2003. A prehearing conference was conducted on May 13, 2003, and a prehearing order was filed on May 15, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employee-employer-carrier relationship existed on September 14, 2002.

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2. Claimant was earning sufficient wages to entitle him to a total disability compensation rate of \$350.00 and a partial disability compensation rate of \$247.00.

3. The respondents have controverted the claim in its entirety.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant sustained a back injury that is compensable under the Arkansas Workers' Compensation Law.

From a review of the record as a whole, to include the testimony of the claimant, witnesses, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. I find that the preponderance establishes that the claimant sustained an injury arising out of and in the course of his employment, which was caused by a specific incident that is identifiable by time and place of occurrence.
4. A preponderance of the evidence establishes that the injury caused internal or external harm to the body which required medical services and resulted in disability.

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5. The preponderance of the evidence establishes an injury with medical evidence support by objective findings.
6. claimant proved by a preponderance of the evidence the elements necessary to establish a compensable injury.
7. The respondents controverted this claim in its entirety.

DISCUSSION

The claimant was employed by the City of Bradford as a police officer on September 14, 2002. He was attempting to arrest an intoxicated driver when he injured his back. In this regard, the claimant testified that he had “attempted to run [the claimant’s] hands behind his head and pull his arms up and spin him around on the back of the patrol unit to subdue him.” The claimant also testified that the suspect kicked just as the claimant was twisting, catching the suspects leg under the bottom of the patrol car. The claimant testified that this caused him to stop in “mid-twist” and fall. He landed on his left hip and felt a pop in his back, and he felt an immediate sharp pain in the back of his right leg.

Claimant initially sought treatment from Dr. Glen Knowles, a general practitioner, and Dr. Knowles ultimately referred the claimant to Dr. Ron Williams, a neurosurgeon. Dr. Williams had previously operated on the claimant’s back at L4-L5 in 1984. According to the testimony of the claimant

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and Dr. Williams, the claimant's symptoms in 1984 involved pain radiating into the claimant's left extremity. The claimant testified that he did not experience any other problems with his back after he recovered from the 1984 surgery, other than an occasional stiffness and minor soreness. He also testified that he worked for a number of employers as a law enforcement officer, and as a prison guard for the Arkansas Department of Correction and that he had never experienced any difficulty performing his job duties as a result of back problems after the 1984 injury and prior to the September 14, 2002 incident.

The claimant continued to work for the respondent/employer through February of 2003. During that period of time he performed the duties of acting chief and, in this capacity, he testified that he was able to avoid activities that caused problems with his back. However, in February of 2003 a new Mayor was elected and a permanent police chief was appointed. Consequently, the claimant was required to return to other duties which he was unable to perform due to the problems that he was experiencing with his back. With regard to these problems the claimant testified that the condition of his back has gradually worsened since September 14, 2002. He also testified that he experiences severe pain in his low back that radiates into his left leg and that these problems affect his ability to engage in most activities. In the present claim I find that the claimant has proven by a preponderance of the evidence

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to the elements necessary to establish a compensable injury. In this regard there is no evidence presented to contradict the claimant's testimony with regard to the occurrence of this incident, or with regard to the problems that he subsequently experienced. Consequently I find that the preponderance establishes that the claimant sustained an injury arising out of and in the course of his employment, which was caused by a specific incident that is identifiable by time and place of occurrence. I further find that a preponderance of the evidence establishes that the injury caused internal or external harm to the body which medical services and resulted in disability.

The respondents' controversion of this claim is based on their contention that the injury cannot be established by medical evidence supported by objective findings as required by the statute, specifically the respondents contend that the claimant's back problems pre-existed September 14, 2002 and are not causally related to that incident. In this regard, Dr. Williams caused a MRI to be performed which revealed degenerative spondylolisthesis at L4-S1 and Dr. Williams testified that the claimant's symptoms are for an injury at L5-S1. In this regard I note that the claimant's prior surgery was at L4-5 and involved complaints involving his left extremity. Consequently, the problems that arose on September 14, 2002 involve a different level of his lumbar spine and a different extremity.

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Moreover, while Dr. Williams testified that the claimant's symptoms are related to the degenerated spondylolisthesis, he also opined that the symptoms of the spondylolisthesis was "aggravated" by the September 14, 2002 incident. Dr. Williams opinion in this regard is based on the fact that the claimant was asymptomatic prior to September 14, 2002,

In short, the medical evidence contains objective findings of spondylolisthesis, while the September 14, 2002 did not cause this spondylolisthesis the uncontradicted evidence establishes that the claimant was asymptomatic prior to September 14, 2002, with the exception of relatively minor and short periods of stiffness and soreness. Consequently, I find that the objectively demonstrated spondylolisthesis is sufficient to establish an injury with the medical evidence supported by objective findings as required by the Arkansas Workers' Compensation Law. Consequently, I find that the claimant proved by a preponderance of the evidence the elements necessary to establish a compensable injury. The respondents controverted this claim in its entirety

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall

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earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809

(Repl. 1996).

IT IS SO ORDERED .

Hon. C. Michael White
Administrative Law Judge