

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210774

CHARLES WASHINGTON

CLAIMANT

USA TRUCK, INC.
SELF INSURED

RESPONDENT

OPINION FILED SEPTEMBER 4, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by THEODOR STRICKER, Attorney, Jonesboro, Arkansas.

Respondents represented by J. RODNEY MILLS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 31, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 21, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On August 15, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$425.00 for temporary total disability and \$319.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's cervical and lumbar problems.

2. Related medical.

3. Temporary total disability from September 3, 2002, to a date to be determined.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that the injury subject of this claim is compensable. The claimant contends that he is entitled to additional medical benefits, past and future. The claimant contends that he is entitled to attorney fees.

In regard to the foregoing issues the respondents contend that this claim is not compensable. The alleged injuries for which the claimant now seeks workers' compensation benefits did not arise out of or in the course and scope of his employment for the respondent. The medical treatment sought by the claimant is not authorized, reasonable and/or necessary as a result of a compensable injury. No compensable event is the major cause of the claimant's alleged injury or need for medical treatment. The alleged condition for which the claimant now seeks benefits, if it in fact exists, was pre-existing and/or degenerative in nature and did not arise out of a compensable event. In the alternative, the respondent states that if the alleged condition for which the claimant now seeks benefits is found to be compensable, the claimant did not timely report the incident to the respondent, and the claimant is not entitled to any benefits or medical treatment incurred by the

claimant prior to reporting the alleged incident on October 2, 2002.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted driver's log sheets marked Claimant's Exhibit No. 1 and the parties submitted two packets of documentary evidence marked Joint Exhibit No. 1 and Joint Exhibit No. 2, and the deposition of the claimant was submitted by the parties marked Joint Exhibit No. 3. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 49 years old, had graduated from high school and had a couple of college degrees in accounting and business. The claimant testified that he had been working for the respondent approximately five years and, during this period of time, he had received several awards for his service to the respondent.

The claimant testified that on August 15, 2002, he was working for the respondent hauling containers. This particular job, the claimant explained, required the driver to load and unload his products and the claimant testified while unloading these containers he was in an awkward position unloading containers when he felt something strange in his back and he knew that he had sustained an injury. The claimant agreed that he continued to unload his truck and did not report his injury that day. The claimant testified that the next morning he reported to his

dispatcher that he was so sore he could not get up although the claimant testified that he did not realize the severity of his injury at that particular time. The claimant testified that he thought he was sore from lifting but his back problems have gotten progressively worse. The claimant testified that even though he reported his event to the dispatcher he did not go into detail as to what had happened. The claimant testified that he delivered that particular load on time and he continued working for the respondent. The claimant testified that he continued to comment to his dispatcher that he was sore.

The claimant testified that he continued to work for the respondent and when in South Carolina near his home as well as near a delivery point he stopped at his home to rest. The claimant testified that since he had driven the maximum amount of hours that a trucker is allowed to drive, he stopped off at his home to rest. The claimant testified that while he was resting, the respondent took his truck out of his yard and when he first realized his truck was gone he thought someone had stolen it. The claimant testified that after numerous calls he learned that he had been terminated. The claimant testified that it was on August 30 that he had planned to be seen by a doctor but this was the day that his truck was taken and that the situation of his missing truck dominated his time and he did not get to the doctor. The claimant testified that eventually he did go to the doctor in South Carolina. The claimant testified that he went to the Veterans Hospital and in order to get

treatment, he did not report a work-related event because if he had they would not have seen him.

The claimant testified that he has been drawing unemployment since April 2003 and looking for work but, due to the poor economy, has been unable to locate a job. The claimant testified that he still has pain in his low back which runs down into his right leg but this pain is not constant. The claimant testified that he has not undergone an MRI or any testing for his back problems.

On cross examination, the claimant again testified that on August 15, 2002, he did not report to the respondent that he had injured his low back and he did not use his qualcom to communicate an injury. The claimant testified that he went on to his next drop and reported his problem the next day to his dispatcher, reporting that he was sore.

Mr. David Freeman testified on behalf of the respondent stating that he was the claimant's dispatcher on August 15, 2002. Mr. Freeman testified that the claimant did not report to him a job injury. Mr. Freeman stated that the claimant failed to make a delivery and for a period of time could not be located. This witness testified that when the respondent located the claimant's truck, they towed it away. On cross examination, Mr. Freeman again stated that the claimant did not report an injury or problem with his back or even that he was sore. When asked about the claimant's truck being taken, Mr. Freeman stated that he made multiple attempts to contact the claimant. This witness testified that the qualcom in the claimant's truck indicated that the truck had not

been moved all weekend although it is not unusual for the claimant to take his truck home over a weekend.

The medical records set forth that the claimant was treated for a cervical neck problem in 1990 and up into 1991. As a result of this neck problem, the claimant was assessed with a 2 percent impairment rating to his spine on July 5, 1991, by Dr. Walter Kochanski.

The claimant was seen at the Veterans Hospital on November 14, 2002, with complaints of back and leg pain noting no recent trauma. The claimant was seen the following day at the VA noting that the claimant has upper and lower back pain since moving some things in August for which he has been taking Tylenol with some relief.

Ark. Code Ann. §11-9-102(4)(D) sets forth that:

A compensable injury must be established by medical evidence supported by objective findings as defined in Subdivision 16 of this Section.

Subdivision 16 of Ark. Code Ann. §11-9-102(16)(A)(i) sets forth that objective findings are those findings which cannot come under the voluntary control of the patient.

After a review of this record, I find that the claimant has failed to produce any objective medical findings that he sustained a compensable injury on August 15, 2002, while working for the respondent. Complaints of pain have long been held to be insufficient to establish a compensable injury and are not considered objective findings since they come within the control of the claimant. This claim, therefore, should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On August 15, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$425.00 for temporary total disability and \$319.00 for permanent partial disability.

4. The claimant has failed to show any objective medical findings on which to establish that he sustained a compensable injury while working for the respondent on August 15, 2002. See Ark. Code Ann. §11-9-102(16)(A)(i). Also see discussion above.

ORDER

The claimant has failed to establish by objective medical evidence that he sustained a compensable injury while working for the respondent. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE