

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F301306

PHILLIP WHITE

CLAIMANT

WEYERHAEUSER COMPANY  
SELF INSURED

RESPONDENT

OPINION FILED SEPTEMBER 26, 2003

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

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 7, 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 April 25, 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 July 5, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$358.00 for temporary total disability and \$268.00 for permanent partial disability.

4. The parties acknowledge that the claimant filed his claim with the Arkansas Workers' Compensation Commission on February 10, 2003.

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

1. Compensability of the claimant's injury to his low back.
2. Related medical.
3. Temporary total disability from July 7, 2002, to a date to be determined.
4. Attorney's fees.
5. The respondents have raised the defense of lack of notice until the filing of the claim with the Commission on February 10, 2003.

In regard to the foregoing issues the claimant contends that in the early morning hours of July 5, 2002 (approximately 1:00 a.m. to 2:00 a.m.), the claimant was loading pallets off the process line at the Fort Smith Plant near Planters Road in Fort Smith, Arkansas. The claimant was working the third shift that began on Tuesday, July 4, 2002, the third shift being 11:00 p.m. to 7:00 a.m. The claimant sustained an injury to his low back. The injury sustained, during and within the course of the claimant's job duties, progressed to a point where he was required to seek emergency room treatment at Sparks Regional Medical Center on the evening of July 7, 2002. The claimant was admitted at 11:00 p.m. on July 7, 2002, to Sparks Regional Medical Center for inpatient treatment. The claimant was diagnosed by CT of the lumbar spine

with a moderate sized left post lateral focal disc herniation at L5-L5. Surgical intervention ensued on July 10, 2002, to the lumbar spine with lumbar discectomies via interlateral laminotomy. On July 12, 2002, the claimant was discharged from inpatient treatment with instructions to remain off work for one month until seen by the neurosurgeon, Dr. Arthur Johnson. (See page 73 of medical exhibits.) The claimant continued follow up medical care through Dr. Thomas E. Cheyne and was continued to stay off work as a result of his condition. On December 26, 2002, Dr. Cheyne recommended a follow up visit with Dr. Arthur Johnson, the neurosurgeon, and ordered a repeat MRI of the lumbar spine. The MRI was performed on December 11, 2002, showing disc protrusion at L3-L4 and post surgical changes at L4-L5. On January 7, 2003, a follow up visit was made with Dr. Arthur Johnson, the neurosurgeon, suggesting additional procedural recommendations, including a follow up diskogram recommendation. The Plaintiff is seeking additional medical treatment through his treating physicians, which has been denied as of this date. The claimant has been unable to return to any type of work at the respondent's place of employment. The claimant is claiming temporary total disability benefits from July 7, 2002, to a date yet to be determined. The claimant is requesting additional medical treatment and attorney's fees on all controverted benefits.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to the requested benefits because claimant cannot establish that he sustained accidental injuries

identifiable by time and place of occurrence causing internal or external harm to his body which arose out of and in the course of his employment with respondent employer, on or about July 6, 2002. Respondents respectfully reserve the right to supplement this pre-hearing questionnaire upon completion of discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical evidence marked Respondents' Exhibit No. 1 and additional documentation marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he had a high school education and any other training which he has received has been just on the job. The claimant testified that he lives with his mother and father as well as with his sixteen-year-old son. The claimant testified that he began working for the respondent on February 25, 2002. The claimant agreed that at the time of his orientation he was put through a program by Ms. Shearer. The claimant stated that Ms. Shearer showed him the forms and video tapes to go along with them and that she discussed them pretty thoroughly. The claimant agreed that he then signed off on each area as she went through them. The claimant admitted that he read a little bit of the material which Ms. Shearer presented to him and he listened to her as well as viewed the video tapes. The claimant testified that initially he

began working on the first shift to receive training but then he was assigned to the third shift as a utility person. The claimant explained that the third shift comes on at 11:00 p.m. and goes off at 7:00 a.m.

The claimant testified that on July 5, 2002, he was working on the curtain coder on the unloading end. The claimant agreed that the respondent produces cardboard boxes and the machine that he was working on was designed to coat the cardboard with wax material. The claimant testified that as the cardboard boxes come out of the waxing machine they come down a conveyor belt, hit a little wall and began stacking up. The claimant guesstimated that these stacks would weigh approximately 160 pounds and he had to pull the product with his right hand and push with his left hand while he was in a squatting position agreeing that the torso of his body was being twisted. The claimant testified that on July 5, 2002, he had been working a couple of hours when he felt a pop when he moved. The claimant testified that at first it felt like a pop and then just a little bit of a pulling. The claimant stated that when he stood up it was kind of sore but he did not think that there was anything wrong but as time went on it became more sore. The claimant testified that he was thinking that there was just a little bit of time left until he could go home and since he was to be off for the weekend, he could lay down or go to bed and be ready to go to work on Sunday. When asked, the claimant testified that this event occurred sometime between lunch and his last break. The claimant testified that, because of his injury, he needed help to complete

his work and that Mike Neal helped him with the forklift. The claimant testified that he told Mr. Neal that, "I think I pulled something," and then he asked Mr. Neal to help him. The claimant testified that he has never had to ask anyone for assistance with his job before. The claimant testified that at the end of his shift he punched out and headed for the door. The claimant was asked if there were supervisors available and the claimant responded that he was sure that there was but he did not look for any.

The claimant testified that he drove himself home, continued to get sore and had a hard time standing up and getting out of his truck. The claimant testified that instead of eating like he usually did, he just went right on to bed. The claimant stated that he told his parents that he had hurt something and was going to lie down. The claimant testified that he stayed in bed Friday only getting up for dinner and to take a shower and then went right back to bed. The claimant testified that by the time he got up to take his shower the pain had begun to go down into his legs and they were tingling and burning. The claimant testified that Saturday all he did was to get up to eat and he spent most of the day on the couch or in the bed. The claimant testified that the pain got so bad on Saturday that he contemplated going to the hospital stating that the pain in his leg was like a burning stinging sensation that went up through his hip and into his low back. The claimant testified that he took some Tylenol and Ibuprofen but he did not do any yard work that day. The claimant

testified that by Sunday he could not walk and kept trying to get his left leg to stretch out. The claimant testified that his left leg had drawn up to the point where he could not even straighten it out and his father took him to the emergency room at Sparks. The claimant testified that when they got to the hospital he was put in a wheelchair and taken to a room, examined by a physician and given some shots. The claimant testified that when he was admitted into the ER he reported to the nurse that on July 5, 2002, he heard a pop in his back. The claimant also agreed that when he was talking with one of the doctors in the emergency room he reported that his back pain started on Friday night. The claimant also agreed that he reported to Dr. Johnson that he was lifting some boxes on Friday night, three days prior to admission, turned and felt a pop in his back and started having pain that gradually started down to his left lower extremity. The claimant testified that he was taken to radiology for x-rays and then Monday after he was seen by Dr. Arthur Johnson and an MRI and other tests were run. The claimant testified that Dr. Johnson operated on his low back and he remained in the hospital until July 12, 2002.

The claimant testified that when he was discharged from the hospital, his father picked him up, took him to the pharmacy and then they proceeded on to the respondent's business. The claimant testified that he gave Ms. Shearer the slips and everything that he had. The claimant testified that at the time he was at the respondent's office he was just getting off of Morphine and he had had a couple of Darvocets so he was feeling pretty good considering

he had just had surgery. The claimant stated that his father did not come in with him.

The claimant was shown Respondents' Exhibit No. 2, page 10, and after looking at this form agreed that it was his signature on the page but it was not his handwriting filling out the form. The claimant testified that he did not know whose handwriting filled out the form and he does not know who filled out the form that he got hurt doing yard work on Saturday, July 6. The claimant testified that he did not tell anyone that he got hurt doing yard work because he does not do yard work. The claimant testified that he does not remember if he took the form with him that day but he does remember Ms. Shearer explaining to him about short term disability. The claimant testified that the reason that he went to the respondent's business was to take in his paper work showing that he had been in the hospital and will need to be off work. The claimant testified that he tried to get the respondent informed by taking doctor's slips by after each visit.

The claimant testified that he underwent a second back surgery on July 16, 2003, and he is still recuperating. The claimant testified that he understood that this second surgery was necessary because one of his vertebrae slipped to the side and that a steel rod and bolts had to be put in to hold it in place. The claimant agreed that from the time he went into the emergency room to present he has never been released by his physician to return to full duty work. The claimant testified that he kept the respondent

informed as to his status up until he was terminated but since his termination he has not taken them any off work slips.

On cross examination, the claimant agreed that Mike Neal did not see his injury happen. The claimant testified that he spoke with his supervisor, Paul Moore, early in his shift remembering that Mr. Moore told him that he thought that he had gotten his second shift bid job. The claimant testified that he had not reported to any of his supervisors that he had hurt himself because he did not realize that he had hurt himself as bad as he did, stating that he thought he had pulled or strained a muscle. The claimant agreed that he has not filled out any accident reports at any time involving this particular injury but agreed that he is now aware that he should have filled out an incident report. The claimant agreed that the first time he told anyone or made anyone aware at the respondent's business that his injury was work related was when he filled for benefits in February 2003. The claimant agreed that he had brought in off work slips to Ms. Kay Shearer several times after his injury and at none of these times did he advise her that his injury was work related.

Mike Neal testified on behalf of the claimant stating that he was working for the respondent in July 2002 as a material handler. Mr. Neal agreed that he remembered a time on July 5, 2002, in the early morning hours of their shift, when the claimant approached him and asked him for help with his job. Mr. Neal testified that the claimant told him that he thought he had done something to his back and was having a hard time doing his job. Mr. Neal testified

that you could tell that the claimant was "having a rough time. You could tell he was struggling to do his work and he's never had any problem doing his job before." Mr. Neal testified that the claimant was having a hard time walking and bending over and you could tell that he was in pain and hurting.

On cross examination, Mr. Neal testified that he and the claimant are casual friends and that he has seen him socially outside of work. This witness also testified that he is no longer working for the respondent, having been terminated due to being in jail for a domestic dispute.

The claimant's father, Charles J. White, testified on behalf of his son. Mr. White testified that his son was living with him in July 2002 and remembers the claimant coming in from work in the morning reporting that he had hurt his back. Mr. White testified that he asked his son if he had reported his incident and the claimant had replied that there was no one there to report it to. Mr. White testified that his son went to bed and stayed in bed the rest of Friday and was in bed all day Saturday except to go to the bathroom. This witness testified that when the claimant could not get up at all, he was taken to the emergency room at Sparks Hospital. Mr. White testified that as soon as the claimant was checked out at the emergency room, he was admitted as a patient to the hospital. Mr. White testified that he called his wife and told her to call the respondent and tell them that the claimant would not be at work. This witness testified that when the claimant was discharged on Friday, July 12, he picked him up from the hospital

and drove him to the respondent's office to get his check. Mr. White testified that his son was able to get around but that he was on medication and stated that, "everything don't work right with him when he's on that." Mr. White testified that his son, the claimant, has not done yard work in a long time, explaining that since he is retired that is all he has to do and if someone else does it he does not have anything to do. Mr. White stated that definitely the claimant did not do any yard work.

The claimant's mother, Oleta White, stated that when her son came in from work on July 5 in the morning he was kind of limping, slow and he said he thought he hurt his back at work and was in a lot of pain. Mrs. White testified that her son laid around and did not go anywhere for the entire weekend. Mrs. White testified that she telephoned the respondent after she had information from the doctor to report that her son would not be at work because he was going to be operated on. Mrs. White testified that her son did not do any yard work that weekend further stating that the claimant's father does all the yard work because he thinks that no one can run his equipment without tearing it up and it gives him something to do and he needs that.

Mr. Paul Moore testified on behalf of the respondents stating that he had been the production supervisor for the past three years but, in all, has worked for the respondent eleven and a half years. Mr. Moore testified that the claimant worked in his department and all work related injuries are to be reported to him. Mr. Moore agreed that the whole stack of boxes which the claimant would be

working with would probably weigh around 160 pounds but the claimant would not be required to lift this 160 pounds. This witness testified that the claimant would only have to lift the scruff which is a piece of cardboard which they put under the stack. Mr. Moore testified that on July 5 the claimant did not report to him a work related injury. This witness testified that at the end of the claimant's shift he saw the claimant leaving and went down to tell him that on Sunday when he returned he would be starting the new job which he had bid. Mr. Moore testified that the claimant did not mention or report any work related injury at this time. This witness testified that the first he was aware that the claimant had some sort of condition with his back was around 11:30 on Sunday night when he was called that the claimant would not be in because his back was sore. Mr. Moore was asked if the claimant had ever told him at any time that he injured himself while working for the respondent and this witness responded, "no."

On cross examination, Mr. Moore testified exactly how he can remember that he spoke with the claimant concerning his bid job at the end of the claimant's shift.

Judy Ainsworth testified that she worked as a utility person with the claimant on July 5, 2002. Ms. Ainsworth testified that when she started work, approximately a year earlier, she was given a rather thorough orientation where you are told to report work related injuries and then that the plant has weekly safety meeting where they are reminded of this information. Ms. Ainsworth testified that she was not present the night the claimant alleges

he was injured and she did not know that the claimant had a back condition until a week or so after she had missed seeing him at the plant and someone had told her that he was off having surgery. Ms. Ainsworth testified that the claimant had told her on a break one time that as soon as his probationary period was over he was going to have surgery and draw his short term disability and look for another job.

On rebuttal, the claimant testified that he was involved with a conversation with Ms. Ainsworth where surgery was talked about but it was Mike Neal who had indicated that he needed surgery and was waiting for his insurance to take effect. The claimant also testified that he had spoken with Paul Moore about his bid job but Mr. Moore had told him that he had tried to catch him the morning before he had left but had missed so he had to wait until the evening when he reported to work to speak with the claimant about his new job. The claimant was asked, "that conversation did not take place after your injury?" and the claimant responded, "no."

The emergency room records from Sparks Regional Medical Center set forth that the claimant was seen on July 7, 2002, reporting that he heard a pop in his back on July 5, 2002, there was a slight pain at that time and the pain has since worsened in his back and is radiating into his left leg and that his left leg feels asleep. These initial reports also set forth that his recent injury occurred while he was lifting and turning and felt a pop in his back. Dr. Arthur Johnson writes on July 8 that the claimant was at work on Friday lifting some boxes that weighed approximately 40 to

50 pounds, turned and felt a pop in his back and started having pain in his back that gradually started rotating to the left lower extremity. Dr. Johnson writes that the pain has gotten increasingly worse to the point that he has developed some numbness in his leg, was seen in the emergency room yesterday and admitted to the hospital because of severe pain and because of a large disc herniation found on the CT scan. The clinical summary sets forth that the claimant has never had back pain in the past. The CT scan of the claimant's lumbar spine shows that he has a large disc herniation on the left at L4-5 with significant nerve root compression. On July 10, 2002, Dr. Johnson operated on the claimant's low back, performing a left 4-5 lumbar diskectomy via interlaminar laminectomy. The claimant was discharged from the hospital on July 12, 2002, following his lumbar laminectomy and it was recommended that he be off work for one month until August 12, 2002. The claimant was prescribed Percocet to take one to two every four hours as needed. Dr. Thomas Cheyne writes on August 14, 2002, that he has seen the claimant for follow up for his lumbar diskectomy. The claimant was prescribed Darvocet and to return to see Dr. Johnson in one month. The claimant was instructed not to do any bending twisting lifting pushing or pulling other than very minimal that does not strain his back at all. Dr. Cheyne notes that the claimant can now drive and his incision looks good. Dr. Johnson writes on October 10, 2002, that the claimant states that he still has significant pain in his lower back and also has pain radiating to the left lower extremity. Dr. Johnson recommended

physical therapy and gave him a prescription for a Neuroten and Loratab. Dr. Johnson rescheduled an appointment for two months and the claimant was to remain off work. On December 6, 2002, Dr. Cheyne saw the claimant noting that he continues to have significant pain and more recently has numbness and tingling into the left thigh noting that the claimant did not respond well to therapy. A medro dose pack was prescribed and a repeat MRI scan as well as Lorcet Plus for pain was prescribed. The claimant underwent an MRI of his lumbar spine on December 11, 2002. The results of this test reveal that he has a left paracentral/lateralizing disc protrusion at L3-L4. The spinal channel and bilateral neuroforamina remain patent and this test also reveals post surgical changes at L4-L5 with enhancing granulation tissue present on the left but there is no evidence of residual or recurrent disc herniation. It is also noted that the claimant has early degenerative changes of the lower lumbar spine. Dr. Cheyne writes on December 17 that he has reviewed the claimant's MRI scan and it indicates that the claimant has an interval development of left para central lateralizing disc protrusion at the L3-4 level for which he recommended and scheduled LESIs. Dr. Cheyne prescribed Celebrex, allowed him to work with restrictions and scheduled an appointment with Dr. Johnson. Dr. Johnson writes on January 7, 2003, that the claimant did not get complete relief following his lumbar diskectomy at L4-5 and he still has some pain radiating to the left lower extremity. Dr. Johnson notes that the claimant has had an exacerbation of his pain

and was found to have new disc herniation in the foramen on the left at L3-4. Dr. Johnson ordered a diskogram of the claimant's L3-4, 4-5 and 5-1 to determine if he has significant components from his previous surgical procedure. The claimant was prescribed Lorcet Plus. Dr. Cheyne writes on January 17, 2003, that he has seen the claimant and the claimant is scheduled for a diskogram and then to see Dr. Johnson on March 3. Dr. Cheyne notes that he and the claimant had a lengthy conversation about the claimant's situation and the possibility of him having surgery after he is seen by Dr. Johnson. Dr. Cheyne opines that the claimant will either have a simple diskectomy or possibly a transforaminal lumbar interbody fusion.

After a complete review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a sudden onset back injury while working for the respondent on July 5, 2002. Mr. Neal testified that on the night of the incident the claimant requested assistance with his work and Mr. Neal's observation of the claimant was that he was in trouble and in pain and needed help to complete his job which he had never required before. Both the claimant's parents testified that when he came in from work he reported that he had hurt his back and went to bed and stayed there until he was taken to the emergency room on Sunday. It is further noted that the claimant reported to the emergency room personnel that he had injured his back at work while lifting and turning and he restated this to Dr. Johnson on Monday, July 8, 2002. The claimant, however, has testified that he did not

report a work related back injury to the respondent until he filed his claim for benefits on February 10, 2003. Therefore, no benefits for this compensable injury will be the respondents' responsibility until after February 10, 2003. The respondents, therefore, shall pay for all medical treatment for his claimant's compensable injury subsequent to February 10, 2003, as well as temporary total disability to this claimant from February 10, 2003, to a date to be determined. It is noted in the medical records that the claimant was released to return to work with restrictions but that the respondent could not accommodate his restrictions, therefore, the claimant will be entitled to temporary total disability as a result of his compensable injury. The claimant, in his testimony, has testified that he has undergone a second back surgery and certainly during this recuperative period of time the claimant would be temporarily and totally disabled. The respondents, therefore, should pay temporary total disability to this claimant from February 10, 2003, to a date to be determined.

#### FINDINGS & CONCLUSIONS

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

2. On July 5, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$358.00 for temporary total disability and \$268.00 for permanent partial disability.

4. The parties acknowledge that the claimant filed his claim with the Arkansas Workers' Compensation Commission on February 10, 2003.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury while working for the respondent on July 5, 2002. See discussion above.

6. The claimant did not give notice to the respondent that he had sustained a work related injury until he filed his claim for benefits on February 10, 2003. Therefore, the claimant shall not be entitled to benefits prior to February 10, 2003.

7. The respondents should pay for the cost of this claimant's medical treatment for his compensable injury subsequent to February 10, 2003.

8. The respondents should pay temporary total disability to this claimant subsequent to February 10, 2003. See discussion above.

9. The respondents have controverted this claim in its entirety.

10. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on July 5, 2002.

The claimant failed to give notice of his work related injury to the respondent until he filed his claim with the Arkansas Workers' Compensation Commission on February 10, 2003.

The respondents should pay for all the reasonable and necessary medical treatment for his claimant's compensable injury subsequent to February 10, 2003.

The respondents should pay temporary total disability to this claimant from February 10, 2003, to a date to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE