

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211409

HAROLD F. WINKLES

CLAIMANT

**COLSON CASTER CORP.
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED JULY 16, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE RICHARD LUSBY, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on June 3, 2003. A prehearing conference was held on March 12, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following:

1. There was an employer-employee relationship on September 3, 2002.
2. The compensation rate is \$279.

The claimant contends that he sustained a compensable work injury on September 3, 2002 and he worked one more week until September 10, 2002 and was taken off work and did not return to work until seven days ago. The claimant contends

he is entitled to medical benefits and temporary total disability benefits from September 10, 2002 to May 27, 2003. Permanency is reserved.

The respondents contend that the claimant did not sustain a back injury arising out of and in the course of his employment. Alternatively, if the claim is found compensable, respondents ask that the claimant be held to strict proof in establishing the period of temporary total disability entitlement.

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 Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on September 3, 2002.
2. The compensation rate is \$279.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the course of and arising out of his employment on September 3, 2002.

DISCUSSION

The claimant, 35 years old, worked as a plating technician for the respondent employer. According to the claimant, on September 3, 2002, he was running the auto cell plater and was shutting down for lunch. The claimant testified that he was taking a

rack of parts out and going to hang them, the rack caught on a control panel pole and came back into his knee and he stepped off the platform stiff legged. He testified that he experienced immediate pain and he reported the incident to Jeff Eldridge and Tim Fanning. He continued working the balance of the day and then the rest of the week. According to the claimant, he worked a lighter job starting the day after the incident, September 4, 2002.

The claimant first went to see his family doctor, Dr. Ken Carpenter, and ultimately had a MRI performed. The claimant next sought treatment with Dr. Edward Cooper who prescribed some medication. According to the claimant, the company sent him to Dr. Michael Lack about the middle of October 2002. Dr. Lack ordered physical therapy and he pursued that for three or four weeks. According to the claimant, his visits with Dr. Lack stopped after the employer fired him for the drug test. The claimant confirmed that the drug test was given a long period after his work incident. The claimant confirmed that he returned to see Dr. Cooper after Dr. Lack would not see him again. The claimant underwent surgery November 22, 2002, performed by Dr. Cooper. According to the claimant, the doctor released him to return to work around Christmas 2002, to light duty. The claimant testified that he returned to work for another employer toward the end of May 2003.

The claimant was questioned about a sofa lifting incident outside of work. According to the claimant, he has a truck and he helped a friend move a loveseat on September 9 or 10, 2002. The claimant testified that he and the friend's girlfriend and the friend lifted the sofa out of the truck and sat it on the curb. The claimant did confirm that he mentioned that he had aggravated his back lifting the loveseat.

Under cross examination, the claimant confirmed that he injured his back stepping from a catwalk to the ground, where the catwalk is about a foot and a half from the floor. The claimant confirmed that he reported to Jeff Eldridge about five minutes after the incident that he hurt his back and went immediately to Tim Fanning's office and reported the injury and the injury happened the day after Labor Day. The claimant confirmed that when he reported to Tim Fanning about a week after the incident that he now needed to see a doctor, Mr. Fanning allowed him to go see his family doctor. The claimant also confirmed that Dr. Carpenter's September 16, 2002, report indicates "lower back pain, goes through hip and leg of right leg. Somewhat better from 8/22, but lifted friend couch and developed right hip pain to knee." (T., p. 27.) The claimant confirmed that the report did not mention a work injury. The claimant was next questioned about a form for sickness and accident pay he completed where he described his illness as lower back pain. The form asked whether or not this resulted from employment and the claimant confirmed he answered, "Possibly," and later changed the answer to "Yes." (T., p. 29.)

Harold Wayne Clemmons, a friend of the claimant, testified that he asked the claimant to help him move a loveseat. Mr. Clemmons testified the claimant had a truck and he had someone to help him load and unload the loveseat because the claimant told him he had hurt his back at work. Mr. Clemmons testified that the claimant and Mr. Clemmon's girlfriend lifted the loveseat from the truck to the ground.

Tim Fanning, production supervisor for the respondent, testified that the claimant did not report a work injury in September 2002. Mr. Fanning testified that if an employee had come to him a week after a work incident and said he needed to see a

doctor, an accident report would be completed and Mary from HR would be contacted. After a review of the attendance records, Mr. Fanning testified that he was on vacation both September 3 and 4, 2002. Mr. Fanning testified that he first became aware of the claimant contending a work injury when Mary in HR came to him about a discrepancy on the sickness and accident pay forms. An investigation was begun and Mr. Fanning testified that he spoke with Jesse Castaneda and William Harrison and took statements from them.

Under cross examination, Mr. Fanning testified that the claimant came to him one morning and said he had injured his back moving a couch over the weekend. Mr. Fanning believed the date was September 16, 2002. Mr. Fanning testified that the last day the claimant worked was when he came in and reported he had hurt himself moving furniture.

Jesse Castaneda, an employee in the Plating Department of the respondent, testified that the claimant came in on a Monday and said he had hurt his back moving a couch over the weekend. Mr. Castaneda testified that he dictated a statement to that effect to Mr. Fanning. Mr. Castaneda testified that the claimant never mentioned to him anything about hurting his back on the job.

William Harrison, an employee in the Plating Department of the respondent, testified that the claimant told him he had hurt his back over the weekend moving a couch. No mention was made of a work incident. Mr. Harrison testified that he also dictated a statement regarding the couch incident to Mr. Fanning.

Jeff Eldridge, group leader in the Plating Department of respondent, testified that the claimant did not come to him in September 2002 and report a work injury of

stepping from a catwalk. Mr. Eldridge testified the claimant said his back was bothering him because of running the plater but he thought it was something a while back.

Mary Hamrick, health and safety specialist, nurse, for respondent, testified that neither Mr. Fanning nor anyone else reported a work injury of Harold Winkles. Ms. Hamrick was familiar with a form that Mr. Winkles completed for a non-work-related injury. According to Ms. Hamrick, when she saw the word “possibly” about a job injury, she contacted Mr. Winkles and he changed the answer to “Yes” regarding a work injury. She contacted Mr. Fanning.

Under cross examination, Ms. Hamrick testified she works part time at Northeast Arkansas Urgent Care. Ms. Hamrick testified that she did see the claimant the day he went to see Dr. Carpenter but she did not see his file.

Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. §11-9-102(4) (Repl. 2002) are controlling and the following requirements must be satisfied:

- (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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish the compensability of the claim and compensation must be denied. See, *Jerry Reed v. ConAgra Frozen Foods*, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable back injury on September 3, 2002. The claimant testified that he reported the incident to both Jeff Eldridge and Tim Fanning; however, both men have denied the claimant reporting a specific incident injury in early September 2002. Further, two co-employees have testified and provided written statements that the claimant told them of his back problems after lifting a sofa over the weekend. The first medical report in evidence is a September 16, 2002, report from Dr. Carpenter, which makes no mention of a work injury but instead mentioned the couch lifting incident and indicates the claimant is better from August 22. While there is no report in evidence noting an August 22 visit, Dr. Carpenter makes reference to that date. I simply was not persuaded that the claimant sustained a compensable injury on September 3, 2002, as he has testified. There was too much conflicting testimony from his co-workers and supervisors as well as the medical evidence did not initially document the claimant's account of a work injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the course of and arising out of his employment on September 3, 2002. The claim for benefits is respectfully denied.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**