

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204100

TONY Z. YEARTA

CLAIMANT

BARLOWORLD FREIGHTLINER

RESPONDENT EMPLOYER

TRAVELERS

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 2, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared pro se.

Respondents represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on August 19, 2003, in Jonesboro, Arkansas. A prehearing conference was held on January 9, 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 stipulations:

1. There was an employer-employee relationship on October 17, 2001.
2. The compensation rates are \$160/154.

DISCUSSION

The claimant, 50 years old, worked for the respondent employer as a janitor, beginning in May 2000. According to the claimant, he was in charge of heavy lifting, trash barrels, waxing floors, mechanic's helper and heavy building maintenance. According to the claimant, he was lifting a heavy barrel to dump and something snapped in his back and pain went down his hip and leg. According to the claimant, he immediately reported his injury to his supervisor, Mr. Moore. The claimant testified that he told Mr. Moore he needed to go to the doctor and asked if he could go to his own doctor. The claimant testified he went to the doctor the same day and told him of his back pain; however, the doctor diagnosed him with a hernia and scheduled him for surgery. On the day of the surgery, the surgeon examined him again and advised there was no hernia and referred him back to his doctor. The claimant underwent a MRI on February 28, 2002 and the claimant testified he presented a copy of the report to Kathy Tidwell, the office manager. The claimant last worked for the respondent employer in January 2002.

According to the claimant, he told Warren Moore on October 18, 2001, that the doctor said he had a hernia. The claimant testified that Mr. Moore took a pocket knife out of his pocket, opened it up, and told him, "I'll fix that hernia for you, Tony." (T., p. 29.) The claimant testified that he told Kathy Tidwell about his hernia diagnosis and she suggested he get it fixed.

Ms. Kathy Tidwell, office manager for the respondent employer, testified that the claimant did not report a work injury to her.

Warren Moore, parts manager for the respondent employer, testified that the claimant did not report a work injury to him on October 17, 2001. Mr. Moore testified that he never came at the claimant with a knife. The claimant testified that there are guns kept in the parts department. Mr. Moore denied having any guns in the building.

Mr. Moore testified that his first notice of a work injury filed by the claimant was a claim of a back injury from the insurance company dated April 26, 2002. Mr. Moore reiterated that the first mention of a back injury of the claimant was the notice from the insurance company and denied the claimant had ever mentioned to him about a back injury lifting a trash barrel.

Greg Griggs, parts salesman for the respondent, testified that he recalled the claimant mentioning a hernia but not a back injury. Mr. Griggs did not recall a barrel lifting incident.

Wendell Davis, shop foreman for the respondent employer, testified that he recalled the claimant talking to him about his diabetes and pain in his feet and legs but not in his back. Mr. Davis also testified he remembered the claimant mentioned his hernia. Mr. Davis testified that he supervised the claimant when he worked in his area, but the claimant did not report a lifting incident to him.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a

preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment on October 17, 2001. The claimant did seek medical attention on October 17, 2001, with Dr. Timothy Shown with the chief complaint noted as right hip, leg and testicle pain. This office note reflects the claimant has had this pain for the past six months and denies any trauma or injury. The office note does indicate the claimant complained also of back pain; however, the claimant was referred for hernia surgery. On October 31, 2001, the claimant was seen again by Dr. Stacey Pogue and there was no mention of back problems in this progress report but his hernia was mentioned as unchanged and his new problems were depression and anxiety and a prescription for Zoloft was provided. Finally, on January 22, 2002, Dr. Stacey Pogue indicated she would be doing some tests to determine the origin of the claimant's back pain. The March 7, 2002, history provided in Dr. Pogue's report mentions the claimant advising that last year he lifted heavy barrels filled with iron u-joints and fan motors and other things and he had the sudden onset of pain in his back. The diagnostic MRI performed on February 28, 2002, provides the following impression: "Bilateral pars defects, L5, with 25% subluxation." Cl. Exh. No. 1, p. 14. Dr. Pogue's March 7, 2002, progress report does

mention that she has reviewed the MRI report and lists as a new problem: “Herniated lumbar disk with radiculopathy (ICD-722.10).” Resp. Exh. No. 1, p. 3.

After considering all the medical evidence and the testimony, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on October 17, 2001. The claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). While the claimant testified he reported the lifting incident, the supervisor, Warren Moore, denied any such report. Further, the claimant testified he told the office manager and several co-employees about the lifting incident and his back injury and all the employees called to testify denied any knowledge of the claimant’s lifting incident or back injury.

While there are objective findings of a back problem in the claimant’s medical evidence, the claimant has failed to provide a medical opinion addressing compensability stated within a reasonable degree of medical certainty. See, Ark. Code Ann. §11-9-102 (16)(B). The objective findings standing alone were not sufficient to make a causal connection of the claimant’s condition and a work injury. While the claimant may be experiencing back problems, I did not find the claimant to be a credible witness and find that he did not sustain his burden of proving his condition was causally related to his employment. I found the supervisor and other employees of the respondent to be more credible about the claimant’s failure to timely report a back injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on October 17, 2001, arising out of and in the course of his employment. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE