

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308077

GEORGE A. ABBOTT, EMPLOYEE	CLAIMANT
RITCHIE ROOFING, INC., EMPLOYER	RESPONDENT
TRANSPORTATION INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

**OPINION FILED APRIL 1, 2004**

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

The claimant was represented by RHONDA McCAULEY, Attorney at Law, Fort Smith, Sebastian, Arkansas.

The respondents were represented by FRANK B. NEWELL, Attorney at Law, Little Rock, Pulaski, Arkansas.

**OPINION AND ORDER**

A hearing was held in this matter on January 13, 2004. A prehearing conference was conducted on November 25, 2003, and a prehearing order was filed on December 1, 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 employer/employee/carrier relationship existed on July 17, 2003.
2. The respondents have controverted this claim in its entirety.

3. The parties shall attempt to stipulate to a compensation rate by the time of the hearing.

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 an injury that is compensable under Arkansas Workers' Compensation Law.
2. Whether the claimant is entitled to medical benefits.
3. Whether the claimant is entitled to temporary total disability compensation.
4. The claimant's correct compensation rate.

From a review of the record as a whole, to include the testimony of the claimant, Steve Cronin, Steve Keaster and Anthony Kuntz, 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. The respondents controverted this claim in its entirety.
4. The claimant failed to prove by the greater weight of the evidence that he sustained an injury arising out of and in

the course of his employment on July 23, 2003 as he contends.

5. The claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.

### **DISCUSSION**

The claimant has done heavy manual labor for the respondent-employer for approximately seven years. According to his testimony he injured his back on July 23, 2003 while lifting a keg of asphalt. His testimony indicates that he was unable to lift the keg and that ultimately he fell to the ground where he stayed for approximately five to six minutes. He testified that he then notified Steve Cronin. However, he testified that Mr. Cronin told him that there was nothing wrong with his back and directed him to return to work. Mr. Cronin testified at the hearing and acknowledged that the claimant had, in fact, mentioned that his back was hurting. However, Mr. Cronin also testified that the claimant had stated early that day that he had slipped while moving a pool and that he was "kind of stove up" as a result of this incident. Mr. Cronin further testified that the claimant had previously borrowed a hand air pump from him so that he could air up a swimming pool that he had purchased for the children of his girlfriend. While Mr. Cronin does acknowledge that the claimant told him later in the day that his back was hurting, he testified that the

claimant did not report injuring himself while lifting a keg of asphalt as he now contends.

The claimant also contends that he advised Steve Keaster that his back was hurting and that Mr. Keaster told him that he would get some Doans pills for him. Mr. Keaster also testified at the hearing and Mr. Keaster testified that the claimant told him that his back was hurting and asked if he would get him some Doans pills. Mr. Keaster testified that the claimant did not tell him why his back was hurting and he did not ask the claimant.

Anthony Kuntz testified at the hearing. Mr. Kuntz was a coworker of the claimants and Mr. Kuntz testified that the claimant told him and other coworkers that he had hurt his back while moving a swimming pool. The claimant denied injuring his back in any way other than the manner he described at the hearing and he denied telling anyone that he had hurt his back in any other manner.

Notably, the claimant first sought medical treatment for problems related to his back on July 24, 2003, when he sought treatment at the emergency room. The report of that visit indicates that the claimant related a history of pain across his lower back which began on July 17, 2003. The report also indicates that the pain had progressively worsened since that time. Significantly the report indicated that the claimant denied any specific injury.

The claimant next sought treatment at the emergency room on July 29, 2003, and that report indicates that the claimant did relate his problems to lifting a heavy keg of asphalt on July 23, 2003.

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)(A)(i) (Cumm. Supp. 1997) 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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));
- (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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));
- (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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be

denied. Reed, supra.

In the present claim I find that the claimant failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. In this regard, Mr. Cronin, Mr. Keaster and Mr. Kuntz each testified that the claimant initially related his problems to moving a swimming pool when he first began complaining of back problems. Moreover, the testimony of Mr. Cronin as well as Mr. Keaster indicates that the claimant did not notify them that he had injured his back while lifting a keg of asphalt as he now contends. Moreover, the medical records indicate that when the claimant first sought medical treatment on July 24, 2003, he related a one week history of back pain and he informed the medical care providers that he was not aware of any distinct injury which caused the back pain.

In short, the claimant's testimony regarding the alleged occurrence of this injury on July 23, 2003, while lifting a keg of asphalt is inconsistent with the testimony of Mr. Cronin, Mr. Keaster and Mr. Kuntz. More significantly, his testimony regarding the occurrence of this incidence on July 23, 2003 is inconsistent with the medical records created when he sought medical treatment from the emergency room on July 24, 2003. Consequently, I find that the claimant failed to prove by the greater weight of the evidence that he sustained an injury arising out of and in the course of his employment on July

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23, 2003 as he contends.

\_\_\_\_\_Accordingly, I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.

**ORDER**

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

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HON. C. MICHAEL WHITE  
Administrative Law Judge