

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402616

OSCAR ALARCON	CLAIMANT
JOHN MCBRIDE CONSTRUCTION CO.	RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 4, 2004

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

Claimant appeared pro se.

Respondents represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 26, 2004, 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 July 2, 2004. 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 February 27, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant earns \$9.50 per hour for a forty-hour week.

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

1. Compensability to the claimant's left elbow injury.

2. Related medical.

In regard to the foregoing issues the claimant contends that he injured his left elbow and arm on February 27, 2004, and is entitled to medical treatment for his injuries.

In regard to the foregoing issues the respondents contend that the claimant did not suffer a compensable injury on February 27, 2004.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order dated July 2, 2004, and marked Commission's Exhibit No. 1.

DISCUSSION

The claimant testified that he was working on Friday, February 27, 2004, and got hurt. The claimant testified that he was helping the crane operator send some 200 to 300 pounds of rock over the top of a bank and that another employee tried to come up and help him but that he, (the claimant), told him he did not need his help. The claimant testified that he told the other employee he could do it himself all right and that he tried to lift the rock by himself and could not hold it and he hurt his finger. The claimant testified he did not feel anything at the time but after he got home and a couple of days later he could not feel his arm and his elbow hurt. The claimant testified that he could feel "some kind of temperature on my arm." The claimant testified that he had not been to the doctor because he did not have money to pay for it. The claimant testified that he went to the respondent to get money to go to the doctor to take care of his injury but that the respondent would not help him.

The claimant testified that he reported his injury to the owner of the business as well as the owner's son.

On cross examination, the claimant agreed that his injury happened on a Friday and that he did not work over the weekend. The claimant stated that he reported his injury to the respondent on Monday and that the next day he tried to talk to the respondent but he was not in.

Mr. John McBride testified on behalf of the respondent. Mr. McBride testified that he owned the respondent business and that it is a small construction business doing masonry contracting mostly brick and block as well as stone. Mr. McBride testified that the claimant did work for the respondent in February 2004. Mr. McBride testified that the first he knew of the claimant contending that he had injured himself was when he called about his pay on March 9, 2004. Mr. McBride testified that the claimant worked for the respondent business up through March 2. Mr. McBride testified that he would see the claimant almost every day while he was working between February 27 and March 2 and he does not have any recollection of the claimant ever coming up to him and mentioning anything about being hurt on the job. Mr. McBride stated that the last day the claimant worked for the respondent was on March 2, 2004, and the claimant had come to work that day and worked approximately two hours and then he walked off the job.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that he sustained a compensable injury to his left arm

on February 27, 2004. Arkansas law requires that there be objective medical evidence on which to establish a compensable injury and there is no medical evidence in this case to establish that this claimant has sustained a compensable injury while working for the respondent on February 27, 2004.

FINDINGS & CONCLUSIONS

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

2. On February 27, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant earns \$9.50 per hour for a forty-hour week.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on February 27, 2004. Arkansas law requires that there be objective medical evidence on which to establish a compensable injury. See Ark. Code Ann. §11-9-102(4)(D).

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on February 27, 2004. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE