

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311455

GILBERT L. BROWN

CLAIMANT

TIC - THE INDUSTRIAL COMPANY

RESPONDENT EMPLOYER

ZURICH AMERICAN INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED SEPTEMBER 9, 2004

Administrative Law Judge LINDA K. MARSHALL.

Claimant is unrepresented.

Respondents are represented by the HONORABLE LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

It was agreed by the parties that an opinion would be written on the record with evidence submitted by the respective parties, since the claimant now lives in Bowdon, Georgia. Documentary evidence was submitted and each party was provided an opportunity to submit a letter brief of their position in support of the documentary evidence. A telephone deposition of the claimant was submitted by the respondents.

A prehearing conference was held and a Prehearing Order was filed on April 29, 2004. The parties agreed to the following stipulations:

1. There was an employer-employee relationship on March 20, 2003.
2. The compensation rate will be the maximum for a 2003 injury.

The claimant contends that he sustained a compensable low back injury on March 20, 2003, as the result of a specific incident. He contends he is entitled to

medical benefits and temporary total disability benefits from March 21, 2003, to a date to be determined.

The respondents contend the claimant did not sustain a compensable injury in the course of and arising out of his employment. The respondents contend any problem the claimant is now experiencing is the result of a pre-existing condition and the claim has been controverted in its entirety.

Issues to be decided:

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits from March 21, 2003, to a date to be determined.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, 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 March 20, 2003.
2. The compensation rate will be the maximum for a 2003 injury.
3. 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.

DISCUSSION

The claimant, 50 years old, worked as a truck driver for the respondent

employer. According to the claimant, he was chaining down a load when his back locked up on March 20, 2003. He waited about 15 minutes and was able to straighten up again and drove his load back to the warehouse and advised Dave Sanders and Trey McMillan that he had to see about his back. The claimant left the work area and went to Carrollton, Georgia and went to the Tanner Medical Center Emergency Room and was hospitalized for three days. The claimant underwent some testing and on April 20, 2003, the claimant underwent back surgery.

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. 2003). 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).

In the present case, 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. While the claimant stated in his deposition that he was tying down a load when he experienced pain such that he was unable to work, he failed to report this

injury to Dave Sanders or to Trey McMillan when he told them he had to go see about his back. The claimant testified in his deposition that he told the doctors at the Tanner Medical Center that his problem was related to a work injury; however, the medical reports do not reflect this account. In fact, the March 21, 2003, medical report completed by Dr. Darin Brummett revealed that the claimant reported to the emergency room “after having progressive two weeks of lower back pain, now gotten to the point of radiating down his right leg.” Resp. Exh. No. 1, p. 6. Dr. Jubal Watts also consulted with the claimant on March 21, 2003 and his report records the following history:

FINDINGS: This 48-year-old white male has a long history of back pain he relates to service in the 1970s. He has been doing construction work and truck driving up here. He has been having increasing leg pain. About a month ago, his back started hurting. He started having lower leg pain with burning pain down his leg. He saw a doctor in Arkansas who did an MRI and told him he needed surgery. He had not improved and he decided to come back and move here and his back started getting worse. It started locking up on him Wednesday, and his radicular pain down his leg got so severe, he presented to the emergency room for admission (Resp. Exh. No. 1, p. 11.)

The claimant saw Dr. Chad Kessler on March 26, 2003 and Dr. Kessler wrote in his report that the claimant came in complaining of severe lumbar back pain and radiating buttock and leg pain that has been going on for many years. Dr. Kessler goes on to say that the claimant has had physical therapy in the past without much benefit but now has severe symptoms. Dr. Kessler states the claimant does not recall a specific injury. Finally, in a report dated April 21, 2003, Dr. Kessler opined that the claimant had “Degenerative disk disease with disk protrusion at L5-S1 and L4-L5, with right L5-S1 radiculopathy.” Resp. Exh. No. 1, p. 18. Surgery was planned in April 22,

2003, and completed. The claimant continues to have pain and another surgery is being considered.

Medical evidence presented by the respondents indicates the claimant sought medical treatment in Malvern on February 14, 2003, with complaints of right leg, thigh and hip pain. The doctor ordered a Doppler test for blood clots which was negative; however, the doctor indicated the claimant had probably disc syndrome. On March 3, 2003, a MRI was performed in Malvern and this revealed a herniated disc at L5-S1 on the right side compressing the right S1 root. Further, the history accompanying this report indicates: "patient with low back pain for 20 years with back pain and tingling to the right leg." Resp. Exh. No. 1, p. 5.

The medical evidence provides that the claimant had his herniated disc as of March 3, 2003, before the March 20, 2003, incident that the claimant contends was the beginning of his problems. While the claimant contends he told the medical providers about the March 20, 2003, work incident, none of the providers have mentioned such in any of the reports.

The Injury/Accident Report signed by the claimant on March 20, 2003, indicates that he sustained an impact injury to his back when he was pushed out of an airplane while in the military. Also, the Initial Statement of Claim for Accident and Sickness Weekly Benefits completed on March 24, 2003, and signed by the claimant indicated he had an accident in 1977 at Fort Benning in Columbus, Georgia where he was hit on the head with a rock and fell and hurt his back and this has worsened over the years.

The documents completed and signed by the claimant following the March 20,

2003, incident and the medical reports simply do not document an account of a work injury on March 20, 2003. Further, the claimant did not report to his employer on March 20, 2003, of a work injury. While the claimant has significant back problems, it seems he has had these for a number of years and has worked with and through them until his condition deteriorated to a point where he was compelled to seek medical attention. The medical records and injury reports simply do not corroborate the claimant's contention that his condition is job related. After considering all the credible evidence, I find 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.

ORDER

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. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**