

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300749

JERRY L. CHILDRESS, EMPLOYEE	CLAIMANT
EAGLE PAPER, INC., EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 17, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Texarkana, Little River County, Arkansas.

The claimant was represented by GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by JOHN P. TALBOT, Attorney at Law, Pine Bluff, Jefferson County, , Arkansas.

OPINION AND ORDER

A hearing was held in this matter on February 17, 2004. A prehearing conference was conducted on December 9, 2003, and a prehearing order was filed on December 9, 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 at all relevant times.
2. The claimant was earning an average weekly wage of \$410.99, which entitles him to a total disability compensation rate of \$274.00, and a partial disability compensation rate of \$206.00.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether claimant sustained an injury which is compensable under the Arkansas Workers' Compensation law.
2. Whether claimant is entitled to temporary total disability compensation for the period extending from December 5, 2002, to a date yet to be determined.
3. Whether the claimant is entitled to reasonably necessary medical benefits.

From a review of the record as a whole, to include the testimony of the claimant, Jerry Childress, Judy Blackwell and Scott Robertson, 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. 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.
4. The respondents controverted this claim in its entirety.

DISCUSSION

The claimant was employed by the respondent/employer as a general laborer and his duties included operating forklifts and bobcats in the yard. The claimant contends that he sustained a compensable injury on approximately December 5, 2002. He describes the occurrence of this injury as follows:

Q. Tell us what happened that you say were you got hurt that day.

A. Well, on that day, I had been operating a Bobcat mainly all day. Around 2:00 or 2:15 that evening, I was operating a Bobcat. You've got to use your hands to operate it. They didn't have no mirror on the Bobcat where you could see in back of you, so you had to turn your head left and right to make sure you don't back over nobody. About that time, I had my head turned, I was turning the Bobcat, and I felt something pop real bad down through my back.

Q. Point to where you felt the pop.

A. Right down through here.

Q. You're pointing between your shoulder blades and right at the base of your neck?

A. Yes, sir.

ORDER

The claimant also testified that he saw a coworker, James Beasley, after getting off the forklift and after this incident occurred. He testified that he told Mr. Beasley that he felt something pop in his neck. He further testified that Mr. Beasley advised him to report the incident to the foreman. In this regard I note that a written statement from Mr. Beasley was introduced into the record by the claimant and I note that Mr. Beasley's statement is not consistent with the claimant's testimony. In this regard Mr. Beasley states the following:

I James Beasley do acknowledge that Jerry was off work prior to the day in question that he states he got hurt on the job. The day he states he got hurt, he rode the bobcat all day, and the next day he verbally stated that he hurt his back riding the bobcat . However, I personally did not see anything that happened to cause an injury

/s/James Beasley

The claimant also testified that he told Ralph May, the maintenance man for the respondent/employer, that he had felt something pop in his neck or back. The record contains a written statement from Mr. May. All that appears on that document is the statement that Mr. May did not see the claimant get hurt on the job. The claimant testified that he then notified his foreman that he had experienced a pop in his back or neck, and that his arms and legs hurt. His foreman allowed him to stay at work an additional thirty (30) minutes until

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it was time for the claimant's shift to end. According to the claimant he then drove home. However, he testified that he experienced pain of such severity that he had to stop and get out to walk around every few miles. The trip from the place of his employment to his home normally takes twenty (20) minutes; however, he testified that the trip took him approximately one hour on the date of the alleged injury. The claimant's girlfriend, Judy Blackwell, who has lived with the claimant for the past twelve (12) years testified that the claimant appeared to be in severe pain when he arrived at home that day. Later that night Ms. Blackwell took the claimant to the emergency room. The December 5, 2002 emergency room report contains the following history of injury:

He presents to the emergency room complaining of left hand pain, which has been intermittent in nature over the last several weeks. This episode has bothered him for about two days. He also has had some right hand pain, which is not as bad. It is worse with movement of his hands and he also has had some neck pain. He states that he feels like the pain shoots down from his neck into his hands. He states he drives a forklift and his pain has been worse since he has been working.

The claimant was seen by Dr. Jason Franks at the emergency room, who diagnosed radicular hand pain with possible disc disease. The claimant subsequently saw his family physician, Dr. Don Hayes, who ultimately referred the claimant to Dr. Jorge Martinez. Dr. Martinez' report does indicate that the claimant described a history of injury that is consistent with a history described

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by the claimant in his testimony at the hearing conducted in this matter. Dr. Martinez' report indicates that a MRI of the cervical spine revealed evidence of a herniated cervical disc associated with spondylosis and spinal canal stenosis at C5-6 with spinal cord compression. Dr. Martinez also caused a MRI of the claimant's lumbar spine to be conducted, which revealed a central disc protrusion at L5-S1 with bilateral spondylosis. Dr. Martinez recommended surgery. Due to the respondents' controversion of this claim that surgery was never performed. However, at the time of the hearing the claimant did testify that surgery was scheduled. Mr. Scott Robertson, a manager for the respondent/employer, also testified at the hearing. Mr. Robertson testified that the claimant occasionally missed work for a pre-existing shoulder condition. In this regard the claimant acknowledged that he had previously experienced problems with his shoulder and the medical records indicated that the claimant had previously been treated for bursitis in his shoulder. Mr. Robertson further testified that he was not aware that the claimant contended that he injured himself as a result of an incident occurring on the Bobcat for approximately two to three months. He did acknowledge that he was aware that the claimant was unable to work, but he testified that the claimant had advised him that he was unable to work due to a sore back. Mr. Robertson also testified that he was not aware until hearing the testimony

at the hearing that the claimant had informed his foreman that he had injured himself at work.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). 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. Significantly, the emergency room report does not indicate that the claimant described the occurrence of an injury in the manner that he now contends occurred. Moreover, the emergency room

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report indicates that the claimant described a gradual onset of problems. In this regard I note that the record contains a number of inconsistencies. For example, the claimant testified that he told Mr. Beasley on the day that the alleged incident occurred that he had experienced a pop in his neck or back. However, the written statement from Mr. Beasley that were submitted into the record by the claimant simply indicates that the claimant verbally advised Mr. Beasley that he had hurt his back the following day. Notably, according to the time frame established by Mr. Beasley's statement, the claimant's statements to him occurred after he became aware at the emergency room of the potential severity of his condition. I also note that the medical records indicate that the claimant has a history of relatively heavy alcohol usage. Accordingly, after considering the evidence submitted into the record, and after observing the demeanor of the claimant during his testimony at the hearing conducted in this matter, I find that the claimant's credibility is diminished and that the weight given to his testimony and statements is likewise diminished. In short, the evidence suggesting that the claimant sustained a compensable injury in the manner that he alleges is found solely in his own statements and testimony. There were no witnesses to this alleged incident; however, the statements made to the claimant at the emergency room regarding the history of his condition is not consistent with the history of injury that he alleged after

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he became aware of the severity and nature of his condition. Consequently, I find that the greater weight of the evidence fails to support a conclusion that the claimant sustained an injury arising out of and in the course of his employment. 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

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

IT IS SO ORDERED

HON. C. MICHAEL WHITE
Administrative Law Judge