

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207304 & F207305

ANTHONY H. CONNORS, EMPLOYEE	CLAIMANT
REMINGTON ARMS COMPANY, INC., EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, CARRIER	RESPONDENT

OPINION FILED JANUARY 27, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 29, 2003, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROLL. WORLEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on September 18, 2000 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$324.00/\$243.00, in the event this claim, F207304, is found to be compensable.

The parties also stipulated to an employer-employee-carrier relationship on January 2, 2002 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$307.00/\$230.00, in the event this claim, F207305, is found to be compensable.

The claimant received SunLife disability benefits from September 18, 2000 to July 2, 2002 totaling \$19,983.95 and from July 3, 2002 to July 1, 2003 totaling \$15,821.94, and his medical expenses of \$10,812.38, have been paid by the group carrier, AAMCO. Respondents seek an offset in the event of any award. The claimant is also under a child support order from Pulaski County.

The claimant contends he injured his back at work on September 18, 2000 pushing a buggy when the wheel fell off. He seeks payment of medical expenses, temporary total disability benefits from September 19, 2000 to January 1, 2002 and attorney's fees. The claimant reinjured his back at work on January 2, 2002, in a lifting incident. He seeks payment of medical expenses, temporary total disability benefits from January 4, 2002 to September 6, 2002, a 12% anatomical impairment rating to the body as a whole, as assessed by Dr. Russell on September 6, 2002, and attorney's fees.

The respondents contend the claimant did not suffer a compensable back injury arising out of and in the course of his employment. The claimant's condition and need for treatment is the result of preexisting multilevel degenerative disc disease or the result of intervening events (motor vehicle accidents on June 24, 2002 and February 10, 2003/falls at home in November, 2000 and March 2002). The claimant cannot meet his burden of proof regarding the causal connection for compensability or the major cause for permanency. At the hearing, the respondents expanded their contentions to include a lack of supporting medical documentation to prove the claim for temporary total disability benefits or treatment for a work-related injury. The respondents also contend any

claim for benefits associated with a October 21, 1999 injury is barred by the statute of limitations.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant and Allen Green, director of safety, health and security.

The claimant, age 40 (D.O.B. January 30, 1963), began work for the respondent-employer in 1994 as a wash operator. His job duties involved washing shells, loading them into buckets and transporting them to the next station to be weighed. He is required to lift weights up to 200 pounds (tote pans) and push loaded buggies on wheels weighing up to 15,000 pounds.

In 1995, he injured his back pulling a buggy off the elevator. He was treated with muscle relaxers and returned to work with no permanent impairment.

On September 18, 2000, the claimant reinjured his back when a wheel came off the buggy as he tried to pull it off the elevator. He experienced a sharp pain down the left side. He reported the incident to supervisor, Mike Jones and was taken to the nurse's station and referred to one of the company's three physicians, Dr. Peterson. The claimant was prescribed muscle relaxers and excused from work for two weeks.

The claimant returned to work but remained symptomatic. At his own expense, he saw his family physician, Dr. House, who ordered an MRI scan. Dr. House then referred the claimant to neurosurgeon, Dr. Anthony Russell. The claimant underwent three surgeries and anticipates a fourth surgery (fusion).

The claimant advised his supervisor and the plant nurse that he would be off work but no workers' compensation paperwork was completed. He continued to receive his regular salary for

six months before he was changed to disability benefits (\$711.00 mo.) from Sun Life. At the time of the hearing, the claimant was still receiving long term disability benefits.

After the first surgery (October 16, 2000), the claimant returned to work from February 13, 2001 to January 3, 2002. He reinjured himself lifting a tote pan on January 2 or 3, 2002. He again reported the incident to his supervisor and was sent to the plant nurse and company physician. A repeat MRI scan was performed and the claimant returned to Dr. Russell. A second surgery was performed February 12, 2002 and the third surgery took place on September 17, 2002.

The claimant remains symptomatic with back and leg pain. He has not returned to work since the second surgery and he remains under Dr. Russell's care. He has applied for Social Security Disability benefits.

The claimant's health history includes a motor vehicle accident on June 24, 2002 while traveling to Louisiana to watch his son play baseball. He was x-rayed at the emergency room, given pills and told to follow up with his physician when he returned to Arkansas. He then saw Dr. Russell for neck and back symptoms. The claimant also has a history of falling at home on two occasions, injuring his back on November 30, 2000 and March 18, 2002.

On cross-examination, Ms. Worley emphasized that plant nursing records show reports of the March 29, 1995 and December 19, 1996 back injuries with periodic treatment through 1999. The records also show a October 21, 1999 injury when a wheel fell off the buggy. The claimant disputed this date. The claimant was seen by the company doctor on August 17, 2000 with complaints of waking up with back pain.

Allen Green testified he was aware of two work-related injuries reported by the claimant on March 29, 1995 and October 21, 1999. He received conservative treatment and was able to return

to full duties after each incident. Periodically, the claimant would report to the plant nurse with back pain but he was not aware of any other work related injuries on September 18, 2000 or January 2, 2000 as alleged by the claimant. Mr. Green also explained the procedure for reporting injuries and the plant weight limit of 50 pounds for a single individual. Anything in excess of 50 pound requires the help of co-workers or motorized assistance.

DOCUMENTARY EVIDENCE

The plant nursing records show a back injury on March 29, 1995 while “pulling buggy off elevator (full buggy) tried pulling buggy to one side and hurt back lumbar area.” The company doctor diagnosed muscle strain based on spasm and prescribed light duty for one week. He was seen in follow-up on April 11, 1995 with noted improvement and his work restrictions were lifted.

Another entry dated December 19, 1996 shows a back injury after pulling a buggy that hung up on the corner of the elevator. He was given ice packs and aspirin.

An entry dated December 12, 1997 mentions Dr. House excusing him from work for “back trouble extending to his legs.” The claimant was given light duty.

An entry dated October 21, 1999 shows an incident where the wheel came off the buggy and the claimant twisted and hurt his back. Spasm was noted and he was given ice packs. The pain was worse on the left side. Dr. Peterson prescribed physical therapy with light duty for two weeks.

On August 17, 2000 the claimant described back pain on awakening and was seen by his family physician. “Dr. House believes this injury is related to October 95 injury.” Dr. House’s records were not introduced into evidence. An MRI was set for August 29, 2000. Surgery was scheduled October 11, 2000 for multilevel HNP’s. The claimant returned to work at light duty.

The claimant was seen again on March 20, 2001 with back pain after lifting a tray. On January 3, 2002 he was barely able to ambulate. "Employee states he has not been lifting anything today, that the pain began for no apparent reason." On January 8, 2002, "pain is back that began without provocation 1-3-02." He complained of back and left foot pain and surgery was scheduled for a "large lumbar disc herniation" on February 12, 2002.

MEDICAL EVIDENCE

An MRI dated August 29, 2000 showed multilevel degenerative disc disease with stenosis and herniations at L3-4, L4-5, and L5-S1 with nerve root impingement on the right.

Dr. Russell recorded improvement following surgery until the claimant slipped on the porch of his home and noted the "reonsset (sic) of pain primarily on the low back and hips... This pain is not quite as severe as what he had previously but it is still certainly bothersome."

Dr. Kevin Bay the company physician, examined the claimant on January 3, 2002 noting "marked spasm in the paraspinous musculature... He got totally better after the surgery (September 2000) and has had minimal difficulty until this happened. There is no injury or change in activity at work."

The claimant returned to Dr. Russell on January 16, 2002 complaining of low back and left hip and leg pain after walking through the plant. A repeat MRI scan showed a large herniation on the left at L4-L5 with nerve root compression.

Dr. Russell saw the claimant again on March 18, 2002 after a fall at home with back and left leg pain and significant muscle spasm. A repeat MRI scan on April 26, 2002 showed multilevel degenerative disc disease with moderate fibrosis (scar tissue) at the surgical site L4 left or a possible

recurrent HNP, right sided stenosis, spondylitic ridging and facet hypertrophy.

After the MVA (rear-ended on the freeway) on June 24, 2002, the claimant complained of back and neck pain. "Shooting pain back both legs with paresthesia's bottom of both feet, same as prior sx's before his lum/lam (lumbar laminectomy)." Tenderness noted in the neck and back was diagnosed as a sprain. When he returned to Arkansas, he was prescribed medication and physical therapy. A repeat MRI on July 16, 2002 showed a large disc herniation at L4-5 on the left with bulge and stenosis at L3-4. An annular bulge and stenosis was noted at the surgical site L5-S1.

On September 6, 2002 Dr. Russell completed an AR-3 assessing a 12% rating to the body as a whole for an August, 2000 injury when a wheel fell off a buggy at work with recurrent HNPs necessitating surgery.

Dr. Russell's Report of 7-28-03:

Mr. Connors returns today in follow-up still having quite a bit of back pain. The MRI scan indicated the presence of a high lumbar disk, which I still feel is asymptomatic but in this young patient I have cautioned against further surgery. Clearly the ongoing problems experienced by Mr. Connors are directly related to his original injury and each subsequent problem that he has had can be traced back to the original injury, which he suffered multiple disk abnormalities. Despite his young age I believe that Mr. Connors chances to return to heavy physical activity are minimal at best and would expose to marked increased risk of problems in the future. He would be an excellent candidate for some type of retraining at his age if feasible. Further surgery could lead to a significantly debilitating problem and I am strongly reluctant to proceed with that route. Mr. Connors will be seen back in follow-up.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the

evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

According to the plant’s nursing logs, the claimant has been treated for back pain every year beginning in 1995. He has reported numerous incidents at work related to heavy lifting, pushing or pulling. Dr. Russell attributes the overall poor condition of the claimant’s youthful back to his manual labors. Dr. Russell also characterizes the multiple surgeries as necessitated by “recurrent” HNPs. And Dr. Russell does appear to be aware of the claimant’s falls at home and the MVA before he assessed causation.

However, trying to reconstruct the time-line has led to some confusion. The claimant is contending he was injured on September 18, 2000. Despite numerous entries in the nursing logs, there is no report of an injury on this date. The rating Dr. Russell gave for an August, 2000 injury correlates to a nursing log showing back pain upon awakening at home.

The claimant is also contending he was injured on January 2, 2002 lifting a tote. A corresponding entry in the nursing log the following day confirms his complaints of back pain but again, there is no mention of a specific injury. The claimant later told Dr. Russell he was just walking through the plant.

I am constrained to find that the claimant has failed to prove that he sustained an injury arising out of his employment, caused by a specific incident, identifiable by time and place of occurrence.

1. The Workers' Compensation Commission has jurisdiction of this claim in which there was an employer-employee-carrier relationship on September 18, 2000 and January 2, 2002.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge