

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F008843

PHILLIP DAVIS, EMPLOYEE

CLAIMANT

CAMACO, INC., EMPLOYER

RESPONDENT

**SPECIALTY RISK SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 14, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 15, 2004, in Little Rock, Arkansas.

Claimant represented by Mr. Marquis E. Jones, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on April 15, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer-carrier relationship at all relevant times. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$394.00 for temporary total disability and \$296.00 for permanent partial disability benefits.

Claimant contends that he sustained a work-related injury on June 15, 2000. He contends that he is entitled to temporary total disability from the date of injury until medical evidence states differently. He further contends that he is permanently totally disabled.

Respondents contend that claimant had back and neck problems prior to June 15, 2000; that he did not report the alleged injury until August 21, 2000; that respondents are not responsible for any benefits prior to notice; and that if claimant did sustain any permanent disability, any work-related injury was only a temporary aggravation of a pre-existing condition and was not the major cause.

STATEMENT OF THE CASE

Claimant worked as a welder for respondent employer, a car seat manufacturer, and testified that he had worked for respondent employer since June of 1999, approximately one year prior to his alleged injury. Claimant testified that on the alleged date of injury, June 15, 2000, he was working the 5:00 p.m., June 15, until 2:00 a.m., June 16, shift. He contends that he, along with another man, were asked to help an Oleta Jones lift parts onto her table so she could finish her production. Claimant testified that the parts were too heavy for her to lift by herself and that, in fact, he and the man helping him had to use a handyman jack to move the parts from another area to her table, as they were too heavy for one man to lift alone. Claimant testified that as he and his fellow employee were lifting the parts off of the handyman jack onto Ms. Jones's table, the man helping him started to slip, so claimant just tried to hold onto the parts as best he could so that they would not fall. He claims that, at that time, he felt a "pop" in his neck. He testified that he said to Ms. Jones, "I popped by neck," and that his supervisor was maybe fifteen to twenty feet away, so he walked over to him and said, "I just popped my neck, lifting that thing there."

Claimant testified that the supervisor he told had only been the supervisor for about three days, at that time. He claims that, after telling him, the supervisor went on to tell claimant about problems that *he* was having, and then claimant resumed working. After finishing his production, claimant testified that he told his Union steward that he had popped his neck and that it was still hurting. She advised him to go to the doctor. He testified that he saw a doctor as soon as the Lee County Cooperative Clinic was open the day he got off his shift, which would have been June 16, 2000. He had continued working until his shift ended.

Lee County Cooperative Clinic notes from June 16, 2000, show that claimant was seen, complaining of shortness of breath, pain in the back and neck, and nervousness. There

is no mention in the clinic notes of a work-related injury or a “pop” in claimant’s neck when lifting.

Claimant asserts he was referred to Dr. Brett Ironside after his injury; however, in a letter dated June 12, 2000, written by Dr. Ironside to Dr. Susan Balke, the apparent referral doctor, Dr. Ironside writes that he saw claimant for the first time on *that day*, June 12, 2000, which would have been prior to his alleged date of injury, June 15, 2000. No mention was made by Dr. Ironside of claimant alleging any work-related injury or any “pop” in his neck on June 12, 2000, or at *any* subsequent visit with Dr. Ironside. Claimant, in fact, told Dr. Ironside on June 12, 2000, that he had been experiencing his symptoms for approximately six to seven months prior.

Claimant was again seen by Dr. Ironside on June 19, 2000, for a follow-up visit, at which time Dr. Ironside diagnosed claimant as having degenerative disc disease with disc herniation and what appeared to be spinal cord compression. Again, Dr. Ironside’s notes made no mention of any work-related injury or popping of claimant’s neck. Dr. Ironside did advise claimant to remain off work and avoid heavy lifting or physical exertion until claimant was seen by a neurosurgeon. Dr. Ironside referred him to Dr. David Reding and gave claimant an off-work slip for his employer.

The off-work slip notes that Dr. Ironside advised claimant to remain off work “indefinitely,” noting “cervical spine instability and spinal cord compression,” and that the “evaluation is ongoing.” Again, the off-work slip mentions nothing about a work-related injury; and, more importantly, although claimant testified that he gave the off-work slip to his employer that day, claimant did not at that time mention anything about being injured on the job or desiring to file a workers’ compensation claim. He simply filed a group health insurance claim.

It was only after he had seen Dr. Reding, the neurosurgeon, and surgery had been performed on July 27, 2000, that he decided to file a workers’ compensation claim.

Claimant testified as follows:

[a]fter I found out exactly what was the matter, then I went to file a claim. After I had seen other doctors, I went and tried to file a claim. I could not file a claim. I went there three times, and that is when I called the Work Commission here because they would not allow me to file one. The Workman's Commission said, "They can't stop you from filing, even if you're denied." This is what they told me, and this is why - *I can't see how I could file a workman's comp claim if the doctor hadn't said I'm not able to work.* [Emphasis added.]

Claimant admits that he did not attempt to file a workers' compensation claim until August 21, 2000, one month *after* his surgery on July 27, 2000. Claimant asserts that he does not see how he could, if the doctor had not said he was unable to work; however, Dr. Ironside had already given him an off-work slip on June 19, 2000, advising him to remain off work "indefinitely," and he had already turned that in to his employer on June 19, 2000. Further, according to Dr. Reding's notes, claimant apparently told Dr. Reding on July 6, 2000, at his first visit with Dr. Reding, that he felt a sudden pop in his neck and immediate pain down his arms when he was lifting some parts at work "about three months ago," which would have been approximately *April* of 2000.

In a letter to attorney for respondents from Dr. Reding, dated April 2, 2002, Dr. Reding states that claimant's healing period could be considered ended as of July 30, 2001. He gives claimant a 12 percent permanent partial impairment rather, as a result of his spinal myelopathy, and states that claimant could return to work at any time with no particular restrictions, although he may have difficulty using his hands. Dr. Reding does opine that the work is the cause for his symptoms, stating, "[s]ince his symptoms began with the lifting incident," which, as noted above, claimant had told him occurred three months prior to the date he now alleges he was injured. Dr. Reding further opines, however, that his condition had been "developing for some time" prior to the alleged lifting incident at work.

Claimant's condition had, indeed, been developing for quite some time, as his medical records reflect. Although claimant denied having neck problems prior to this alleged

work injury, records from Lee County Cooperative Clinic show that claimant had an x-ray of his cervical spine as far back as 1998, after complaining for some period of time about neck and shoulder problems.

Claimant eventually saw Dr. Harold Chakales, an orthopedist, to obtain another opinion. Dr. Chakales reviewed Dr. Reding's findings and evaluated claimant, opining, on January 23, 2003, that claimant had a pre-existing cervical degenerative disc disease and spinal stenosis, suffered an industrial injury *in 1999*, and subsequently developed cervical myelopathy and lost function. Dr. Chakales further opined that, although claimant had surgery, which was of some limited value to him, it was not completely curative and that, because of that, claimant is still disabled and unable to work. He believes claimant falls into DRE Cervical Category 4, with a 25 - 28 percent impairment to the body as a whole. He would recommend that claimant be evaluated by another group of neurosurgeons and neurologists for independent evaluation to obtain their opinion.

Claimant testified that he has pain every day and every night now in his legs, arms, and back, with numbness in his arms and legs. He claims that he is not able to take long walks and that he has to alternate from sitting to laying to standing. His daily routine now consists of mostly "laying down, walking, and fishing." He testified that there is "no possible way" he can now do the duties of his employment that he once did for respondent employer.

FINDINGS OF FACT

1. Claimant failed to give his employer proper notice of his alleged injury, as required by Ark. Code Ann. § 11-9-701 (Repl. 1996).
2. Claimant's reason for not giving notice does not fall within any of the three statutory exceptions, enumerated at Ark. Code Ann. § 11-9-701(b)(1).

3. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury or that any work-related injury he may have sustained was the major cause of his condition.

DISCUSSION

Ark. Code Ann. § 11-9-701 states, in pertinent part, as follows:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

Obviously, the alleged injury did not render claimant physically or mentally unable to report the injury to the employer on a form prescribed or approved by the Workers' Compensation commission. Further, although claimant asserts that he told his supervisor immediately after the incident that he had felt a "pop" in his neck, no testimony was offered to corroborate that he informed any supervisor of respondent employer; the only witness who testified that she even heard him say that he felt a "pop" in his neck was Oleta Jones, who, if the alleged date of injury is accurate, was not even an employee of respondent employer at the time.

Ark. Code Ann. § 11-9-701(b)(1) lists three exceptions to claims being barred by failure to give notice. It states as follows:

(b)(1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

It is this examiner's opinion that none of these exceptions apply in this case. I do not believe that respondent employer had knowledge that claimant was alleging a work-related

injury until August 21, 2000, when he first notified his employer that he wished to file a workers' compensation claim. Although claimant told no doctors prior to July 6, 2000, that he was claiming an on-the-job injury, he told Dr. Reding on that date that he had injured his neck while lifting at work some three months prior. The date of injury he finally reported to his employer was June 15, 2000, which is inconsistent with what he told Dr. Reding. If claimant believed, in fact, that he had been injured on the job three months prior to July 6, 2000, why did he wait until August 21, 2000, to report the injury to his employer and file a workers' compensation claim? Claimant contends that he did not know he should report it until he knew what the problem was and was unable to work; however, Dr. Ironside had taken him off work "indefinitely" as early as June 19, 2000. There is clearly no satisfactory reason the notice could not have been given to his employer prior to August 21, 2000.

Moreover, the totality of claimant's inconsistencies with dates and the omission of any mention whatsoever of a work-related injury, or *any* specific incident or injury, with any doctor prior to Dr. Reding, along with his history of medical problems with his neck, shoulder, back, and his failure to timely notify his employer, gravely calls his credibility into question. Dr. Reding, as well as Dr. Chakales based their opinions on the claimant's word that he was injured at work; however, as noted above, claimant told Dr. Reding on July 6, 2000, that he was injured "three months ago," although he maintains that his date of injury was, in fact, June 15, 2000. Claimant told Dr. Chakales that he was injured on the job in June of 1999, at which time he may not have even been employed with respondent employer. The alleged work-related injury notwithstanding, both doctors found that claimant had a pre-existing cervical degenerative disc disease and spinal stenosis.

The claimant obviously has a long-standing history of degenerative problems, and it is certainly the law that the employer takes the employee as he finds him, *see Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003); however, the claimant still must prove that a work-related injury occurred in order to aggravate or worsen

his pre-existing condition. This claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury or that any work-related injury he may have sustained was the major cause of his condition.

For all of the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge