

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F307151**

**ROOSEVELT GORDON, EMPLOYEE**

**CLAIMANT**

**STAFFMARK, LLC., EMPLOYER**

**RESPONDENT**

**ATLANTIC MUTUAL INSURANCE CO., CARRIER**

**RESPONDENT**

**OPINION FILED JUNE 21, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 18, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-referenced claim to determine the claimant's entitlement to workers' compensation benefits.

On April 27, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the hearing, and the parties' respective position relative to the issue. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit. #1.

The testimony of Roosevelt Gordon, the claimant, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

Roosevelt Gordon, the claimant, with a date of birth of July 29, 1972, is a high school graduate. Claimant was an employee of respondent-employer, a temporary employment agency, when he was assigned by same to Terta Tech. While discharging employment duties on June 3, 2003, claimant suffered an accident which serves as the basis for the present claim.

Claimant maintains that while cutting the legs off of a piece of equipment, the equipment fell on him causing injuries to his left shoulder, and lower back. Claimant's testimony reflects that he was taken to the emergency room of Baptist Hospital in Blytheville, Arkansas and received medical treatment. Claimant was not admitted to any medical facility relative to the injury suffered in the June 3, 2003, accident. Claimant testified that he continued to work and discharged his regular employment duties until he was laid off.

Following his lay-off by respondent, claimant moved to Dallas, Texas. Claimant secured employment in the Dallas area for a seasonal employer. In December 2003, claimant returned to Arkansas, where filed for and received unemployment benefits. While the claimant is presently unemployed, his testimony reflects that he is physically capable of working, however he has been unable to find a job.

Claimant's testimony reflects that he is not presently taking medication relative to the June 3, 2003, accident. Regarding residuals of his injury, claimant testified that he continued to experience pain in his left shoulder area when he lift his arm above shoulder level. Claimant acknowledged that the symptoms have not prevent him from working. Further, claimant testified that he has not sought medical treatment for the injury since January 2004.

The evidence in the record does reflect an "Injury Reporting Form" of respondent-employer relative to the claimant. The document noted that while cutting leg off a machine, the

same fell on the claimant causing a strain to the claimant's back and injury to his shoulder. The document further reflects that the claimant was seen at the emergency room on June 9, 2003, and released to full duty. (RX. 1).

On July 18, 2003, claimant was seen by Dr. Richard Hester, respondents' designated medical provider, for complaints relative to the June 3, 2003, accident. After noting a history of the claimant's injury, the office note of the examination reflects, in pertinent part:

BJE: There is minimal pain with range of motion of the left shoulder. There is no significant pain to palpation. There is no bruising noted. (RX. 1, p. 11).

Dr. Hester assessed the claimant's complaint as "left shoulder pain by history", for which he was prescribed Vioxx and Ultram. Claimant was directed to return to Dr. Hester on Monday.

The evidence reflects that claimant was again seen by Dr. Hester on July 21, 2003, for complaints relative to the left shoulder. During the July 21, 2003, visit, Dr. Hester noted that claimant's left shoulder was no better and that the medicine did not help. Dr. Hester assessed the claimant complaint as "chronic left shoulder pain". The report further noted plans to send the claimant to Dr. Joseph Yao, a Blytheville orthopedic physician, for a second opinion. (RX. 1, p. 13).

The record does not reflect medical evidence of the claimant's evaluation/examination by Dr. Yao. The final medical in the record is January 12, 2004, office note of Dr. Hester relative to the claimant's visit of the same date. The office note reflects that the claimant presented and "just needs a note from his temp service saying he's okay to go to work". While the January 12, 2004, office note reflects that an examination was had, the same does not reflect the presence of objective findings.(RX. 1, p. 14).

Claimant asserts entitlement to medical benefits as a result of the June 3, 2003, accident. There is no evidence present by the claimant to reflect that he was off work relative to the June 3, 2003, accident such that he would be entitled to indemnity benefit under the Arkansas Workers' Compensation statutes.

Respondents do not dispute the occurrence of the June 3, 2003, accident involving the claimant while discharging employment duties. Respondents maintain that claimant did not suffer a compensable injury in the accident.

After a thorough consideration of all the evidence in the record, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 3, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On June 3, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$213.00/\$160.00, for temporary total/permanent partial disability benefits.
4. On June 3, 2003, the claimant did not sustained an injury which was established by medical evidence supported by objective findings, pursuant to Ark. Code Ann. § 11-9-102 (4)(B).

### **CONCLUSION**

The employment relationship existed between the claimant and respondents on June 3, 2003, when claimant was involved in an accident while discharging employment duties. Claimant maintains that as a result of the June 3, 2003, accident he suffered injuries to his left

shoulder and lower back. Claimant asserts entitlement to medical and indemnity benefits as a result of the June 3, 2003, accident. Respondents do not deny the occurrence of the June 3, 2003, accident, however maintain that the claimant did not sustain a compensable injury which would entitle him to workers' compensation benefits.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The evidence reflects that while discharging duties in his employment with respondent-employer claimant was assigned to Terta Tech. Respondent-employer is a temporary employment agency. On June 3, 2003, cutting the leg of a machine when it fell over. While claimant testified that he was transported to the emergency room of Baptist Hospital in Blytheville for treatment relative to the injury on the date of accident, an Injury Reporting Form completed on July 15, 2003, reflects that medical treatment was not had until June 9, 2003, by the emergency room physician.

Claimant acknowledge that following his initial medical treatment at the emergency room for complaints growing out of the June 3, 2003, accident he was released to return to his regular work duties. Claimant continued discharging employment duties for respondents following the June 3, 2003, accident, until he was laid off.

Following his lay-off, claimant was seen by respondents' designated medical provider, Dr. Richard Hester, a Blytheville general physician. Claimant was seen by Dr. Hester on July 18, 2004. A review of medical reports contained in the record fails to disclose the presence of an injury supported by objective findings. While there is evidence that the claimant was seen at the

emergency room of Baptist Hospital–Blytheville following the June 3, 2003, accident, either on the date of the accident or June 9, 2003, a medical report relative to the visit is not contained in the record.

Claimant was seen by Dr. Richard Hester, respondents’ designated medical provider on at least three (3) occasions relative to the June 3, 2003, accident. During the initial visit of July 18, 2003, Dr. Hester noted minimal pain with range of motion of the left shoulder, no significant pain to palpation, and no bruising. (RX. 1, p. 11). When seen on two subsequent occasions by Dr. Hester on July 21, 2003, and January 12, 2004, examinations did not disclose the presence of objective findings.(RX 1, pp. 13-14).

Ark. Code Ann. § 11-9-102 (4)(E)(i) provides that the burden of proof of a compensable injury is on the employee, and that for a compensable injury caused by a specific incident and identifiable by time and place of occurrence, the burden of proof is a preponderance of the evidence. A “compensable injury “ is an accidental injury causing internal or external physical harm to the body which arises out of and in the course of employment. Ark. Code Ann. § 11-9-102 (4) (A) (i). Additionally, an injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102 (4) (B).

In the instant claim, the claimant has failed to sustain his burden of poof by a preponderance of the evidence that he suffered a compensable injury arising out of and in the course of his employment on June 3, 2003. This claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

**Andrew L. Blood,  
Administrative Law Judge**