

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F205307

DAVID HUMPHRIES, EMPLOYEE CLAIMANT

NATIONAL ENERGY PRODUCTION
CORPORATION, EMPLOYER RESPONDENT

TRAVELERS INDEMNITY COMPANY,
INSURANCE CARRIER RESPONDENT

OPINION FILED SEPTEMBER 5, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Little Rock, Pulaski County, Arkansas.

The claimant was represented by BRIAN H, RATCLIFF, Attorney at Law, El Dorado, Arkansas.

The respondents were represented by PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on June 7, 2004. A prehearing conference was conducted on September 23, 2003, and a prehearing order was filed on September 25, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection. It should be noted that a hearing was scheduled in this claim for March 9, 2004 in El Dorado, AR. Claimant was unable to attend that hearing due to lack of transportation. At claimant's request, after arranging for transportation, a hearing was scheduled for June 7, 2004 in Little Rock, AR.

During the prehearing conference, the parties agreed to the following

stipulations:

1. The employer/employee/carrier relationship existed on March 18, 2002.
2. The claimant was earning sufficient wages to entitle him to the maximum compensation rate.
3. Respondents have controverted this claim in its entirety.

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

1. Whether the claimant sustained an injury that is compensable under Arkansas Workers' Compensation Laws as amended by Act 796 of 1993.
2. Whether the claimant is entitled to temporary total disability compensation.
3. Whether the claimant is entitled to medical benefits.

From a review of the record as a whole, to include the testimony of the claimant, 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. 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 is an electrician and he is employed by the respondent employer to assist in the construction of a power plant in El Dorado, Arkansas. His duties involved pulling electrical wire that was approximately one inch in diameter and weighed approximately three pounds per foot. He contends that he sustained a compensable low back injury on March 18, 2002. According to his testimony he twisted while pulling wire and he felt something in his low back which he described as feeling like a pop. He also testified that he experienced pain in his low back that radiated into his left leg. According to his testimony the pain was like "somebody taking a hot piece of wire...and sticking it down the back of your leg." He testified that he immediately told his co-workers that were present at the time, including Donnie Joe Perry, that he had hurt his back. However, he continued working and completed work in that area. He testified that when he moved to the next area he was unable to continue working and he, again, advised Mr. Perry that he was unable to work due to the pain he was experiencing in his back. He left at that time and reported the incident to his supervisor, Mr. Joe Reyes. Mr. Perry's deposition

testimony was submitted into the record and Mr. Perry testified that the claimant did, in fact, advise him that he had hurt his back while pulling wire. However, according to Mr. Perry's testimony, the claimant left the manhole in which they were working at that time to report the incident to Mr. Reyes. Mr. Perry also testified that he also saw the claimant talking to Mr. Reyes and that he saw the claimant walking toward the nurse's office after he concluded the conversation with Mr. Reyes.

The claimant sought treatment from Dr. Rick L. Brown, a chiropractor, on March 20, 2002. Dr. Brown's report indicates that the claimant was complaining of low back pain and numbness in his left leg and foot. Dr. Brown's report also indicates that the claimant had experienced intermittent problems with his low back for the past twenty (20) years and that he had experienced left foot numbness for over one year. In this regard, the claimant served in the Navy in the late '70s and he sustained an injury to his low back during the course of his duties when he slipped while pulling on a cable on a ship. Dr. Brown's report does not indicate that the claimant provided any history of the injury that he describes as occurring on October 18, 2002. In a narrative statement from Dr. Brown to the claimant's former counsel, Dr. Brown indicates that his notes do not reveal any reference to a job related injury.

The claimant continued working for the respondent employer until there was a mass layoff of employees around the end of March or first of April, 2002. However, during that period of time he was given light duty work which did not involve pulling wire but instead involved just the use of a walkie-talkie to facilitate communication between the crews. After the claimant was laid off he returned to his home in Tulsa, Oklahoma and he did not return to work. He sought treatment at the Veterans Administration, and I note that the records from the Veterans Administration indicate that he has related the onset of his problems to his work with the respondent employer. Under the care of the Veterans Administration a MRI was performed on May 22, 2002. This MRI revealed a large central and left-sided disc protrusion at L4-5. As a result of this finding surgery was recommended and the medical records, as well as the claimant's testimony, indicate that the surgery was ultimately performed in February or March of 2003.

The claimant testified that his condition has improved somewhat since the surgery; however, he also testified that he continues to experience severe problems which prevent him from working. In this regard the claimant testified that he is unable to lift over ten pounds and that he continues to experience severe cramps in his left lower extremity. He further testified that his "whole mid-section is numb" and that he has "no control of [his] bowels or [his]

bladder." In this regard, he also testified that he wears a diaper due to these problems. According to the claimant's testimony prior to the March 18, 2002 injury he experienced occasional back discomfort. However, he testified that the problems he experienced before March 18, 2002 were not comparable in severity to the problems he experienced subsequent to March 18, 2002. In addition, he testified that he did not experience any radicular problems prior to March 18, 2002.

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. Although the testimony of the claimant, as well as the deposition testimony of Mr. Perry, do indicate that the claimant was experiencing pain at work on March 18, 2002, the medical records also indicate that the claimant has a long history of back problems for which he has

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sought treatment on a regular basis from the Veterans Administration.

Moreover, the records of the Veterans Administration indicate that the chronic nature and the severity of the problems that the claimant has previously experienced exceed that to which the claimant acknowledged in his testimony during the hearing conducted before this administrative law judge.

Furthermore, the records of Dr. Brown indicate that the claimant did not relate the problems that he was experiencing when Dr. Brown saw him on March 20, 2002 to his employment. Instead Dr. Brown's records indicate that the claimant attributed his problems to his long history of back problems.

Furthermore, I note that Dr. Brown indicates the claimant reported a year-long history of problems in his left lower extremity, which is inconsistent with the testimony provided by the claimant at the hearing conducted in this matter.

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

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

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HON. C. MICHAEL WHITE
Administrative Law Judge