

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302863/F402794

ROGER LEONARD

CLAIMANT

BEVERLY ENTERPRISES

RESPONDENT

AMERICAN HOME ASSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 8, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by J. GREGORY MAGNESS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claims on September 28, 2004, in Fort Smith, Arkansas. The deposition of the claimant was taken on July 26, 2004, and has been admitted as Respondent's Exhibit No. 2. A pre-hearing order was entered in this case on July 13, 2004. However, certain amendments were made prior to the commencement of the hearing. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, in March of 2003 and 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$227.00 for total disability and \$170.00 for permanent partial disability for both March 6, 2003, and March 12, 2004.
3. On March 6, 2003, the claimant sustained compensable injuries to his left knee, finger, and back.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether on March 12, 2004, the claimant sustained new compensable injuries, and

aggravations of the prior compensable injuries, or simply, prior compensable injuries to his left knee and back.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability from March 22, 2004 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends that, on March 12, 2004, he sustained either new compensable injuries, aggravations of the prior compensable injuries by his activities on March 12, 2004, or recurrences of his prior compensable injuries. He contends, that as a result, he is entitled to the payment of medical expenses incurred for the difficulties which he experienced with his neck, shoulder, back, and left knee on and after March 12, 2004. He further contends that he is also entitled to temporary total disability benefits for these difficulties from March 22, 2004 through a date yet to be determined.

In regard to these issues, the respondents deny that any difficulties, which the claimant experienced with his neck, shoulder, back, or left knee, on and after March 12, 2004, are in any way compensable and controvert the claimant's entitlement to any benefits attributable to this episode of difficulties.

DISCUSSION

_____The central issue in this case is whether the claimant's difficulties with his neck, shoulder, back, and left knee on and after March 12, 2004, are "compensable." The burden rests upon the claimant to prove compensability of these difficulties.

The evidence shows that the claimant's prior admittedly compensable injuries to his neck, left shoulder, lower back, and left knee were in the form of musculoligamentous strains or sprains (his difficulties with the fourth digit on his right hand were diagnosed as being the result of a fracture). The medical evidence and to a certain extent the claimant's testimony reveals that these musculoligamentous strains or sprains resolved after a brief course of appropriate conservative treatment (the fracture of the fourth digit of the claimant's right hand also appears to have resolved).

However, the claimant testified that he continued to have persistent difficulties with his left knee, even though he experienced substantial alleviation improvement with the conservative treatment.

On June 3, 2003, the claimant was released by Dr. Terry Clark from further treatment for all of his compensable injuries of March 6, 2003. At that time, Dr. Clark noted that, in the claimant's own words, he was "doing good." There was no indication in this report that the claimant was, or had for some time, experienced any difficulties involving his neck, left shoulder, left wrist, or back. Dr. Clark did record that the claimant continued to experience chronic complaints involving his left knee, but was currently "doing just fine." Dr. Clark released the claimant to return to full duty, and the claimant clearly did so.

On August 21, 2003, the claimant returned to Dr. Clark with complaints only to his left knee. There is no mention of any complaints involving any other portions of his body, particularly his neck, shoulder, or back. Dr. Clark again recorded that the claimant's left knee complaints simply "recurred" without any new injury or incident. The claimant's left knee complaints were essentially the same as those he had previously voiced. Dr. Clark again gave the claimant another trigger point injection, which was noted to provide good relief. He directed the claimant to continue on his oral medications, to return to full duty, but did not keep the follow up appointment as directed (which is some evidence that the injection successfully relieved this recurrence of his knee difficulties).

The claimant's testimony shows that he continued to perform his regular assigned employment tasks for the respondent. Although he testified of continuing difficulties involving his left knee, these were not sufficient to prevent him from performing his regular work.

The claimant then testified that, on March 12, 2004, he was moving a number of relatively heavy boxes of documents and started feeling "little twinges" first in his left knee and then his lower back. Then, at some point, he began to have significant difficulties that almost caused him to collapse.

In his deposition, the claimant stated that he experienced a sudden onset of excruciating pain in his neck, shoulder, back, and left knee. However, in this deposition he did not attribute

the onset of these complaints to lifting or moving any particular box, but rather attributed it to “just an accumulation” of lifting and moving a number of the boxes. At the hearing, he described the difficulties he experienced on March 12, 2004, a “whole lot worse” than the difficulties he experienced at the time of the compensable injuries on March 6, 2003. However, he testified in his deposition that he finished out the remainder of March 12, 2004, “typing” and did not attempt to report the injury until the following morning.

At this point, it must be noted that in his deposition, the claimant was unsure as to what day this incident occurred and was even unsure as to whether it occurred during the first part or the last part of the work week. The date subsequently given in his testimony at the hearing (i.e. March 12, 2004) was a Friday.

I would also note that, at the hearing, the claimant testified that after the onset of these difficulties, he made only one attempt to return to work and “actually showed up one day” but was physically unable to do his job. However, his subsequent testimony reveals that he worked for the respondent through March 21st or March 22nd. This would have been ten days after the alleged incident on March 12, 2004.

The medical evidence causes even more confusion in regard to the date of the onset of the claimant’s most recent episode of difficulties. The medical evidence shows that the claimant first sought treatment for these difficulties at St. Edwards Mercy Medical Center emergency room at approximately 11:30 a.m. on March 22, 2004. At that time, a history was taken that the claimant’s difficulties with his back, neck, shoulder, and knee began with heavy lifting during the week prior to his visit. This would have been the week of March 14 through March 20, 2004.

Shortly after this visit at the emergency room, the claimant returned to see Dr. Clark. Although the claimant testified that Dr. Clark would not see him, the records of Dr. Clark show that he did see the claimant on March 24, 2004. At the time of this visit, Dr. Clark notes only complaints involving the claimant’s left knee. He also noted that these difficulties apparently reappeared for no reason and expressly states that the claimant denied “any recurrent injury.” In his report, Dr. Clark

also indicates his concern that the claimant's continued knee pain was due to his excessive weight and that he discussed this matter with the claimant.

The claimant's testimony is the only direct evidence presented to prove that his difficulties with his neck, shoulder, back, and left knee in March of 2004, are compensable. Although the testimony of a party is never considered uncontradicted, this does not mean that it could be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. In the present case, the claimant's testimony would clearly be legally competent to prove when his most recent episode of difficulties began and the circumstances and events surrounding the onset of these difficulties.

However, the evidence in the present case shows significant conflicts and discrepancies in the various statements made by the claimant concerning the onset of his most recent episode of difficulties. These difficulties began either gradually or suddenly. These difficulties began as the result of lifting a number of boxes or as the result of lifting one particular box. He either has no recollection concerning the date upon which they began (deposition) or he was certain they began on March 12, 2004 (testimony at the hearing). Also, these difficulties began the day before he reported them to the respondent and he worked only one day thereafter. However, his last day at work was either March 21 or March 22, 2004. Still another possibility is that these difficulties began on some day between March 15, and March 20, 2004 (emergency room records). Finally, at least in regard to the claimant's left knee difficulties, these simply recurred without any precipitating cause (Dr. Clark's records).

These various inconsistencies and conflicts, concerning the dates and events surrounding the claimant's most recent episode of difficulties, must also be considered in light of the fact that the medical evidence shows substantial degenerative and developmental changes involving his thoracic spine, lumbar spine, and left knee. These changes would be of a longstanding nature and would have pre-existed the claimant's alleged episode of difficulties in March of 2004 and even his admittedly compensable injuries in March of 2003. These pre-existing conditions when coupled

with the claimant's excessive weight could, in and of themselves, have reasonably caused the claimant's current difficulties, without any contribution by his employment activities.

After consideration of all the evidence presented, it is my opinion that the claimant has simply failed to prove by the greater weight of the credible evidence that his employment activities with this respondent on March 12, 2004 or any other date played a causal role in his episode of difficulties during and after March of 2004. Thus, these difficulties would not be "compensable," either as a "new compensable injury," as aggravation of his prior admittedly compensable injuries, or as a mere "recurrence" of his prior admitted compensable injuries. I have no alternative but to deny and dismiss his claims for benefits, that would be attributable to his episode of difficulties during and after March of 2004.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including March 12, 2004 and March 6, 2003, the relationship of employee-employer-carrier existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$227.00 for total disability and \$170.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that his difficulties with his neck, shoulder, back, and left knee that allegedly began on March 12, 2004, represent either "new" compensable injuries, aggravations of his prior admittedly compensable injuries of March 6, 2003, or recurrences of his prior admittedly compensable injuries of March 6, 2003. Specifically, the claimant has failed to show a causal relationship between his current episode of difficulties with these portions of his body and his prior admittedly compensable injuries or his subsequent employment activities for this respondent (particularly those on March 12, 2004).

5. The respondents have controverted the claimant's entitlement to any and all compensation attributable to his difficulties with his neck, shoulder, back and left knee during and after March of 2004.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss any claim for additional benefits for the claimant's previous admittedly compensable injuries of March 6, 2003. I also have no alternative but to deny and dismiss any claim for benefits attributable to any alleged compensable injury in March of 2004.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge