

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400996

ROGER MASSENGALE, EMPLOYEE	CLAIMANT
PACE INDUSTRIES, INC., EMPLOYER	RESPONDENT
SAFETY NATIONAL CASUALTY CORP., INSURANCE CARRIER	RESPONDENT

**OPINION FILED DECEMBER 8, 2004**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Harrison, Boone County, Arkansas.

The claimant was represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

The respondents were represented by HONORABLE JAMES D. SPROTT, Attorney at Law, Harrison, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 21, 2004 in Harrison, Arkansas. A prehearing order was entered in this case on July 2, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Joint Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. Jurisdiction of the Commission.
2. The parties stipulate to the employee/employer relationship at all times pertinent to this claim.
3. The claimant's average weekly wage was \$687.00 entitling the claimant to the maximum compensation rates for 2003 if this claim is found compensable.
4. The claim has been controverted in its entirety.

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

1. Compensability of low back injury allegedly sustained at work on November 15, 2003 with payment of medical expenses and TTD from January 7, 2004 to a date yet to be determined.
2. Controversion and attorneys' fees.

The record consists of the September 21, 2004 hearing transcript, the exhibits contained therein, and the deposition of Roger Massengale under separate cover and marked Respondent's Exhibit 2. In addition, by agreement of the parties, I have supplemented the record by "blue-backing" Mr. Sprott's September 29, 2004 cover letter and a 68 page photocopy of a "black book" kept by Danny Alford during the period in question.

**DISCUSSION**

The claimant contends that he sustained a compensable low back injury caused by a specific incident on November 15, 2003 while manipulating a magnetic drill. To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, Mr. Massengale testified that he injured his back on Saturday, November 15, 2003 while lifting what has been determined to be an 80 pound magnetic drill. Mr. Massengale testified that he then reported a work related back injury to Danny Alford, his supervisor, on

Monday, November 17, 2003, and first presented to a doctor on Wednesday, November 19, 2003.

However, Danny Alford testified that when he spoke to Mr. Massengale, Mr. Massengale advised Mr. Alford that Mr. Massengale threw out his back when he bent over at his house to pick something up. Mr. Alford's testimony is corroborated by contemporaneous notations in Mr. Alford's "black book" on page 4 of that document. Mr. Alford's testimony is also consistent with the testimony of Mr. Marshall, who testified that Mr. Massengale called in and related that he had hurt his back at home picking up a can and could not work. Mr. Alford's testimony is also corroborated by Dr. Jackson's November 19, 2003 medical report which indicates that Mr. Massengale's pain in his left hip and lower back started three or four days prior when he bent over to pick something up at his cabin in Compton. I also note that Mr. Massengale's description of a specific incident at work using a magnetic drill which initiated his back symptoms by specific incident is inconsistent with his report on December 31, 2003 on a disability claim to the effect that he was not sure how his back symptoms began.

In the present case, I accord greater weight to the relevant testimony of Mr. Alford, the relevant testimony of Mr. Marshall, Mr. Alford's contemporaneous written notations, Dr. Jackson's contemporaneous written notations, and Mr. Massengale's notations on the disability claim form than the weight that I accord to Mr. Massengale's hearing testimony as to when and where his injury occurred. I find that a preponderance of the credible evidence in the record establishes that his back problems began away from work when he bent over to pick up a can. Therefore, I find that Mr. Massengale has failed to establish by a preponderance of the credible evidence that he sustained a back injury which arose out of and in the course of his employment by specific incident on November 15, 2003 as he has alleged.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Jurisdiction of the Commission.
2. The parties stipulate to the employee/employer relationship at all times pertinent to this claim.
3. The claimant's average weekly wage was \$687.00 entitling the claimant to the maximum compensation rates for 2003 if this claim is found compensable.
4. The claim has been controverted in its entirety.
5. The claimant has failed to establish by a

preponderance of the evidence that he sustained a compensable back injury. Specifically, the claimant has failed to establish by a preponderance of the credible evidence that his back condition at issue arose out of and in the course of his employment by any specific incident on November 15, 2003 as he asserts.

**ORDER**

For the reasons discussed herein, this claim must be denied and dismissed.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge