

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304073

JEREMY G. PRATT, EMPLOYEE

CLAIMANT

DITTA DOOR & HARDWARE, INC.,

RESPONDENT

COMPANION PROPERTY & CASUALTY INS., CARRIER

RESPONDENT

OPINION FILED JANUARY 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 31, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE M. SCOTT WILLHITE, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE ANDY CALDWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On July 15, 2003, a prehearing conference was conducted in this claim, from which a prehearing order was subsequently filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission's Exhibit #1. The parties also stipulated that the claimant earned wages sufficient to entitle him to weekly compensation benefits at the rate of \$264.00 in the event the claim is found to be compensable.

The testimony of Jeremy G. Pratt, the claimant, Amy Willey, Anna Ditta, and Jeremy McMillan, coupled with the deposition testimony of Dr. Arnold E. Gilliam, along with medical

reports and other documents comprise the record in this claim.

DISCUSSION

Jeremy G. Pratt, the claimant, with a date of birth of January 10, 1979, has a tenth grade education. Claimant commenced his employment with respondent on November 27, 2001, and last discharged employment duties for same on April 11, 2003.

After quitting school in the tenth grade claimant worked with his brother-in-law laying bricks until 1997. Thereafter, claimant secured employment painting on the road for Wal-Mart for a period of approximately four years. The year prior to birth of his son in 2001, claimant changed occupations and went to work at Co-Ord Glass. Claimant testified relative to his job duties with Co-Ord Glass:

Glazed windows, built doors, aluminum doors, put in store fronts, I traveled on the road for them, occasionally, and that's about it. (T. 10)

After leaving the employment of Co-Ord Glass, claimant secured employment with respondent-employer.

Claimant's testimony reflects at the time he secured employment with respondent he was told that he was coming in to help as welder. Once he began working for respondent, claimant testified, with respect to his job duties:

I welded. I worked on wood doors for them. I worked in the glass chop for them, Just almost everything that they had except for automotive. (T.11)

Claimant's testimony reflects that prior to April 11, 2003, the condition of his health was fine. Claimant did not have any physical limitations or restrictions prior to April 11, 2003, that prevented him for discharging his employment duties. There is no evidence in the record to reflect that the claimant was physically unable to perform his job duties due to low back complaints prior

to April 11, 2003. The evidence does reflect that claimant was involved in a motor vehicle accident on April 22, 2001, in Atlanta, Georgia. While claimant suffered injuries in the accident and received medical treatment the evidence in the record reflects that the injuries were confined to the claimant's cervical area and headaches. There is no evidence in the record to reflect that the claimant suffered from low backs complaints or sought medical treatment relative to his low back prior to April 11, 2003.

On April 11, 2003, claimant performed job duties for respondent at the site of a Jonesboro factory, Nestle plant. Claimant explained:

I was working at Nestle, a factory, fixing a punch list. We had a punch list that we had to go over and fix little minor things. And that particular day they had turned on the air conditioners so they created such a suction that it bent a door. So, we had to take that door down and bring in back to the shop and replace it with another door. (T.11-12)

Another employee of respondent, Jeremy McMillan, testified that he also discharged employment duties for respondent at the Nestle plant. The claimant and McMillan did not arrive at the Nestle plant in the same vehicle or together. The testimony of the claimant reflects that he removed a door from the Nestle plant and returned it to the shop of respondent-employer. The door, constructed of steel, weighed between 80 and 100 pounds and had a glass window in it. The testimony of the claimant reflect that no one assisted him in replacing the door at the Nestle plant. Regarding the mechanics of the injury which serves as the basis for the present claim, claimant's testimony reflects:

I was unloading the truck when we got back. I was cleaning the truck off before lunchtime and I bent over to pick the door up. I was just slightly bent over and when I picked up, that's when I felt the pain. (T. 12)

Claimant explained that he felt a sharp pain and shooting “a weird sensation” down his left leg. The sharp pain was experienced in the claimant’s mid-back in the area just below his belt line.

The testimony of the claimant reflects that his co-workers, Jeremy McMillan, was present in the shop at the time of the occurrence. Claimant explained that he was taking the door off the side of the glass truck at the time he experienced his initial symptoms of pain in his back and radiating down his left leg. Claimant then lowered the door to the floor. Claimant testified:

That’s when I waved to Jeremy McMillan or let him know what’s going on and then we both sit the door down together. (T. 40)

Claimant informed Mr. McMillan that he had hurt his back while lifting the door:

He helped me sit the door down, laid it down on another stack of doors and then we went up front. He told me that we needed to go up front. (T. 13)

Claimant explained that up front was the location of the offices of the secretaries and other personnel of respondent:

Well, that’s just the front of the office where all the secretaries are, where Anna and Debbie and Dick stay. The people that we need to tell when we get injured. (T. 13)

The testimony of the claimant reflects that he walked up and talked to Anna Ditta, the vice-president of respondent-employer. After relaying to Ms. Ditta that he had hurt his back and needed to go to the doctor, claimant’s testimony reflects:

Okay. And she asked, I’m not sure what her name is, but she asked Amy, I believe to call the doctor. She called the doctor and Jeremy was going to lunch anyway so he dropped me off on the way back. (T.14)

The testimony in the record reflects that the telephone call had been made by Amy Willey, a

secretary in the office of respondent-employer, pursuant to the direction of Ms. Anna Ditta to NEA Clinic. Claimant was dropped off at the clinic by Mr. Jeremy McMillan where he was seen by Dr. Arnold Gilliam for his low back complaint attributable to the April 11, 2003, accident.

Claimant's testimony reflects that he relayed a history of his injury of April 11, 2003, to Dr. Gilliam at the time of the initial visit. Claimant acknowledged that he was aware of the provision in the documents he signed December 3, 2001, wherein he would be subject to a drug test relative to any work-related injury. A drug test was not administered the NEA Clinic on April 11, 2003, at the time of the claimant's initial visit for treatment relative to the April 11, 2003, injury. Claimant testified that he asked about the drug test, however was told by personnel in the office of NEA Clinic that it was not necessary. Claimant did receive medical treatment under the care of Dr. Gilliam during the April 11, 2003, visit, for complaints relative to his low back. Claimant was again seen at the NEA Clinic by Dr. Gilliam on April 15, 2003. The medical in the record reflects that on April 22, 2003, claimant was seen by Dr. Michael Tedder, was at the NEA Clinic. Claimant's testimony reflects that at the conclusion of his examination and treatment by Dr. Tedder, as he was leaving the clinic he was informed by the nurse that the employer wanted him to take a drug test. (T.33)

Claimant did not take the drug test at the time. The testimony of the claimant reflects that he informed the nurse that he wanted to contact his employer. Thereafter, claimant telephoned Ms. Debbie Ditta, president of respondent-employer, and requested a meeting with her. Claimant then proceeded to respondent-employer where he had a conference with Ms. Debbie Ditta. Claimant informed Ms. Ditta that he has some Xanax in his system having taken it the previous night in order to get to sleep. Claimant did not have a prescription for Xanax but had obtain the medication from his mother. Claimant acknowledged that after informing Ms. Ditta of the his predicament he was

told by her to return to the clinic and to take the drug test. Claimant's testimony reflects:

She did and I explained to her that I wanted to call workmen's comp and explain things to them to be honest with everybody and let them know what was going on and as far as I knew that was what was going on. I want straight home and made a call to workmen's comp.(T.34)

Claimant called the workers' compensation carrier for respondent-employer to relay his predicament with respect to the drug test. The testimony in the record reflects that claimant did not have the drug test because respondent canceled his next scheduled appointment with Dr. Tedder.

The claimant continued to receive treatment under the care of Dr. Gilliam for complaints attributable to his April 11, 2003, low back injury. Claimant was ultimately referred to Dr. Robert Abraham, a neurosurgeon. Claimant explained that he was unable to continue to receive medical treatment because he did not have money to pay for same. Further, claimant noted that while he had been able to obtain medical treatment by filing it on his group health insurance, once his insurance was canceled he no longer had access to medical treatment.

The testimony of claimant reflects that at one point he was released to light duty work by Dr. Gilliam, however when he presented the release to respondent-employer he was informed that they did not have light duty work within the restrictions. The testimony of the claimant reflects that he has not worked for respondent since April 11, 2003, because of residuals of his injury and either being off work by his treating physician or released to limited duty work. Claimant noted that for a period of two weeks he worked a total of thirty hours and earned approximately \$170.00, performing roofing work with two friends. Claimant was unable to continue performing the work because of residuals of the injury relative to the April 11, 2003, accident.

Jeremy McMillian, an eight year employee of respondent-employer, testified that he performed the same job duties and those performed by the claimant during his employment with respondent. Mr. McMillian was not working with the claimant to April 11, 2003, however testified:

No, I'd - - he was out at Nestle that morning. They had sent him out there. And I was doing some other stuff and then I ended up going out to Nestle but we were working in two different areas.

* * *

I run into him back - - on the side, like the control room over there and we were replacing a door that they had tore up with a forklift or something, you know. One of them that they had messed up. They messed up a lot of doors out there. (T. 47)

Mr. McMillian testified that the claimant told him that he had hurt his back:

He didn't really say how. He said it was bothering him and everything. We was going back to the shop. I t was getting close to lunchtime. (T. 48)

The testimony of Mr. McMillian reflects that he did not remember whether or not he helped the claimant lower a door. Mr. McMillian testified that while the claimant told him that his back was hurting and bothering him at the Nestle plant claimant did not tell why his back was bothering him. Mr. McMillian acknowledged that at the time they returned to the shop claimant appeared to be in pain and that he told the claimant that he needed to tell the people in the front office. While Mr. McMillian's testimony reflects that he went up to the front office when the claimant went up and that he heard the claimant report that his back hurting, he was unable to respond to whether or not he heard anyone ask the claimant if he knew when or how his back was hurting. Mr. McMillian had seen the claimant unloading the door which claimant attribute as the source of his injury and

responded:

Like I said, it's been a long time. I don't - - I can't remember really. He could have done it. (T. 49)

On cross-examination Mr. McMillian acknowledged that he could not dispute the claimant's testimony with respect to what happen to cause his injury. Further, Mr. McMillian testified that he did remember clearly that the claimant said that he had hurt his back and that he hurt his back while at work. (T. 50)

The testimony of Ms. Amy K. Willey, employed over a year as a secretary for respondent-employer, testified that when the claimant came into the office he talked to her on April 11, 2003:

He said he had hurt his back and he needed a doctor's appointment. (T. 51)

Ms. Willey further testified that she heard Ms. Anna Ditta asked the claimant how he got hurt:

I remember her asking, you know, how he did it and he said he wasn't really sure how he did it. (T.52)

Ms. Willey acknowledged that the claimant "look of kind stiff" when asked whether claimant appeared to be in pain. Ms. Willey's testimony reflects that she was directed to call the NEA Clinic by Ms. Anna Ditta relative to the claimant's request for medical treatment:

She just said to call and see if I could get him, you know, in to the doctor. Call the doctor's office since he had hurt his back so I called down there to see if we could get him in. (T. 55)

Ms. Willey testified that at the time she was instructed to call the NEA Clinic by Ms. Ditta for the appointment on behalf of the claimant she was not directed to request a specific doctor nor was she given instructions to make sure that a drug test was taken by the claimant at the time of the visit. (T.55)

Ms. Anna Marie Ditta, vice-president of respondent-employer, testified that she was in her office on April 11, 2003, when the claimant came in at lunchtime. Ms. Ditta's testimony reflects:

He came in and me and Amy were standing up front at her desk taking and - -

* * *

Yes. Came in and said he hurt his back. I asked him if he wanted to go to the doctor and he said yes and I told Amy to call down there and get him an appointment with Dr. Tedder and then I asked him when she got off the phone how he had hurt his back and he said, he didn't know. I said, did you hurt it Thursday, Friday, this week? I don't know, he kept saying. (T.57)

Ms. Ditta's testimony reflects that respondent-employer had an arrangement with the NEA Clinic that when any of respondents' employees present to the clinic for a workers' comp injury a drug test is to be performed. Ms. Ditta acknowledged that on April 11, 2003, when the claimant presented at the NEA Clinic the drug test was not done. Ms. Ditta maintains that Dr. Michael Tedder, an associate of Dr. Arnold Gilliam at the NEA Clinic, is respondent's designated or company doctor. Ms. Ditta maintains that when an employee of respondent suffers an injury and is seen at the NEA Clinic, if Dr. Tedder is not available then the employee sees the physician who is on call, and is instructed to see Dr. Tedder when he is next available. The testimony of Ms. Ditta reflects that when the claimant did not take the drug test as directed during his visit at the NEA Clinic with Dr. Tedder claimant was no longer authorized to seek treatment by respondent-employer from the NEA Clinic.

The medical evidence in the record reflects that claimant was seen at the NEA Clinic on April 11, 2003, by Dr. Arnold Gilliam, and following the physical examination was diagnosed with lumbosacral strain and directed to remain on bed rest for three days. The medical further reflects that

claimant was provided prescriptions for medication relative to his low back by Dr. Gilliam, to include anti-inflammatories, muscle relaxants, a pain medication (Soma, Naproxen, and Darvocet). Claimant was next seen by Dr. Gilliam on April 15, 2003, during time arrangements were made for him to undergo a CT of his lumbar spine. Claimant was also directed to remain off work until April 23, 2003. (CX. 1, p5-7). On April 22, 2003, claimant was seen by Dr. Michael Tedder at the NEA Clinic and received medical treatment as well as a prescription for back exercises at Regional Medical Center. (CX. 1, p8-12). Claimant was seen in follow-up by Dr. Gilliam and a referral was had to Dr. Robert Abraham, a Jonesboro neurosurgeon. A treatment regiment was prescribed by Dr. Abraham to include heat, massage, ultrasound, and a lumbar traction. Further, claimant was directed to remain off work until he is re-evaluated by Dr. Abraham during scheduled July 10, 2003, visit. (CX. 1, p15-19)

On October 22, 2003, the deposition of Dr. Arnold Gilliam was obtained by the parties and is included in this record as Joint Exhibit #1. Dr. Gilliam's testimony reflects the history of the claimant's April 11, 2003, injury relative to the claimant's low back, as obtained from the claimant during the April 11, 2003, visit. Dr. Gilliam also testified regarding the results of his finding during a physical examination of the claimant at the time of the April 11, 2003, visit. Additionally, the testimony of Dr. Gilliam reflects his assessment of the claimant's April 11, 2003, injury and treatment furnished to the claimant at the NEA Clinic as well as the referral to Dr. Robert Abraham.

From all of the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On April 11, 2003, the relationship of employee-employer-carrier existed among the parties.

3. On April 11, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$264.00/\$198.00 for temporary total disability/permanent partial disability.

4. On April 11, 2003, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant was temporarily totally disabled for the periods beginning April 12, 2003, and continuing through the end of his healing period, a date yet to be determined, with the exception of a two (2) week period during which claimant worked a total of thirty (30) hours and for which he is entitled to temporary partial disability benefits.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of April 11, 2003.

7. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The present claim is one of compensability growing out of an April 11, 2003, low back injury suffered by the claimant within the course and scope of his employment with respondent. This claim is governed by the provision of Act 796 of 1993, in that claimant asserts having sustained a injury in the employment of respondent subsequent to the effective date of the afore provision.

Claimant commenced his employment with respondent on November 27, 2001, and last discharged employment duties on April 11, 2003. There is no evidence in the record to reflect that claimant experienced any physical limitations or restriction relative to his low back prior to his employment with respondents. There is no evidence in the record to reflect that the claimant sought

or required medical treatment relative to his low back prior to April 11, 2003. The evidence discloses that the claimant successfully performed his assigned employment duties for respondent through April 11, 2003.

On April 11, 2003, after having discharged employment duties in the employment of respondent at the Nestle plant claimant returned to the shop of respondent. As the claimant was unloading an 80 to 100 pound steel door off the side of his glass truck he experience pain in his mid-lower back below his belt line along with corresponding pain down his left leg. After successfully lowering the door to the floor claimant summoned a co-worker, Jeremy McMillian, who was also in the shop of respondent. Mr. McMillian assisted the claimant and placing the door in a proper location. Claimant informed Mr. McMillian of the injury to his low back suffered while lifting the door. Mr. McMillian directed the claimant to notify office personnel of the injury.

The evidence discloses that claimant in fact proceeded to the office of respondent and reported that he sustained an injury to his low back lifting the door and needed to see a doctor. Mr. McMillian accompanied to the front office and was present during a portion of the reporting.

The credible evidence in the record reflects that claimant relayed his injury and need for medical treatment to appropriate supervisory personnel of respondent. Specifically, claimant reported the injury to Ms. Anna Ditta, the vice-president of respondent-employer. Ms. Ditta in turn directed the secretary, Ms. Amy Willey, to contact the NEA Clinic and schedule an appointment for the claimant to be seen by the doctor for his back complaint. The evidence in the record reflects that the respondent did not specify that the claimant was to be seen by Dr. Michael Tedder, at the time of the appointment was scheduled. Further, respondents did not direct medical personnel of NEA Clinic to obtain a drug test on the claimant at the time the appointment was scheduled on April 11, 2003.

The claimant was transported to the NEA Clinic by a co-worker, Mr. Jeremy McMillian.

The claimant was seen by Dr. Arnold Gilliam on April 11, 2003, when he reported to the NEA Clinic in accordance with the appointment scheduled by respondent-employer. The credible testimony of Dr. Gilliam reflects that the claimant relayed the history that he was bending over at work and picking up a door when he hurt his back. Claimant relayed to Dr. Gilliam at the time he hurt his back that he had pain going down his left leg in addition to the low back pain, as a result of the lifting incident. (JX. 1, p6).

Dr. Gilliam testified regarding his findings upon examining the claimant on April 11, 2003:

I examined him and found him to have spasm in his lumbar spine, ordered an x-ray here of his lumber spine and did two views, and felt like it was within normal limits.

* * *

I thought he had low back syndrome, and he had spasm. He was having symptoms of a radiculopathy, which would be sciatica. (JX. 1,p7)

In terms of medical treatment rendered to the claimant during the April 11, 2003, visit, Dr. Gilliam testified:

He was supposed to be off work for three days, and we put him on a muscle relaxant, a pain pill, and an anti-inflammatory. (JX. 1, p7)

The claimant was again seen by Dr. Gilliam on April 15, 2003, in follow-up for the April 11, 2003, injury. Claimant was continuing to have low back pain at the time of the April 15, 2003 Visit, and a CT scan of his lumbar spine was ordered by Dr. Gilliam. The CT of the lumbar spine was performed on April 17, 2003. Dr. Gilliam testified regarding of the CT scan:

It revealed that he had in the opinion - - well, he said, "A central and left paracentral sub-annular disk protrusion," which is little worse than a bulging disk, but not a frank herniation. (JX. 1, p8)

Dr. Gilliam testified that the CT scan relative to the claimant disclosed a protrusion at L5-S1 as well as a bulge at L4-L5, one level above the protrusion. Dr. Gilliam elaborated with respect to the distinction between a protrusion and a bulge:

A bulge is that you've got the disk - - the intervertebral disk sitting between the vertebral bodies, and it's putting more weight on it and making it bulge out. Sometimes that can cause symptoms and sometimes it doesn't. A lot of people have that that don't know it, okay? We see that in this room, two of us are liable to have that and don't have any back pain. A protrusion, though, on the other hand, to see means that it's bulging a little more. It may be trying to come through the fibrous sheath. (JX. 1, p11)

Dr. Gilliam is adamant in his testimony that at the time claimant presented for treatment on a April 11, 2003, relative to his back complaint, the claimant relayed that he had injured his back picking up a door at work. Dr. Gilliam acknowledged that the door lifting incident is not reflected in his medical report relative to the April 11, 2003, visit of the claimant, however he testified that he remembers claimant telling him how the injury occurred. The testimony of Dr. Gilliam further reflects that the injury diagnosed relative to claimant's low back is consistent with the history as relayed by the claimant regarding the mechanics of the accident. Dr. Gilliam, during his October 22, 2003, deposition reaffirmed the opinion as expressed in his September 12, 2003, correspondence that the accident of April 11, 2003, was the major cause of claimant's back injury, including the protrusion of herniated disk at L5-S1 level. (CX. 1, p21)(JX. 1)

Dr. Gilliam's testimony reflects that the claimant was seen by Dr. Michael Tedder on April

22, 2003, for his April 11, 2003, low back injury, complained to an acute lumbar strain. Treatment rendered to the claimant by Dr. Tedder on April 22, 2003, included an injection of steroids, direction to put heat on the area, and to start on an exercise program for his back at Regional Medical Center Physical Therapy.

Dr. Gilliam's testimony reflects that claimant was released to light duty work at claimant's request. Dr. Gilliam noted that the claimant wanted to return to work and, as a consequence of request was released to light duty work. The testimony of Dr. Gilliam reflects that it was his intention to keep the claimant on bed rest however he did author the limited duty release. Dr. Gilliam further testified that during a subsequent visit the claimant was referred by him to Dr. Robert Abraham, a Jonesboro neurosurgeon, for further treatment relative to the April 11, 2003, low back injury. Dr. Gilliam's testimony reflects that he prescribed medication relative to the claimant's low back complaint, to include anti-inflammatories, muscle relaxants, and pain medication to last for a thirty day period. Additionally, Dr. Gilliam testified that once he referred the claimant to the neurosurgeon he usually transferred medical treatment of the patient to the physician. Dr. Gilliam did note that the claimant had been seen by Dr. Abraham on at least one occasion, in that he had a report generated as a result of the visit. (JX. 1)

The evidence discloses that claimant was seen by Dr. Robert Abraham, on May 29, 2003, pursuant to the referral of Dr. Gilliam. The May 29, 2003, initial evaluation of the claimant by Dr. Abraham noted a chief complaint of low back pain that radiates down the left leg which had been present since April 11, 2003, when he injured it at work while lifting the door. Following his examination of the claimant and review of pertinent diagnostic studies the May 29, 2003, report of Dr. Abraham noted that the lumbar CT scan revealed the left L5/S1 HNP (contained disk

herniation). Dr. Abraham assessed the claimant's complaint as left lumbar radiculopathy. Treatment plan provided relative to the claimant's April 11, 2003, low back injury by Dr. Abraham included physical therapy with traction, direction to remain off work and to return to the clinic in four to six weeks. (CX 1, p16-19)

Claimant maintains that he sustained a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence pursuant to Ark. Code Ann §11-9-102 (4)(A)(i)(Repl. 2002). In order to establish a compensable injury pursuant to the afore statutory provision claimant must establish proof by a preponderance of the evidence of an injury arising out of and the course of employment; proof by preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability; medical evidence supported by objective medical findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable time and place of occurrence. In the instant claim, the claimant has sustained requisite burden of proof.

The credible evidence in the record reflects that on April 11, 2003, while lifting a door and removing same from his truck, within the course and scope of his employment, claimant suffered an injury to his back. The credible evidence in the record reflects that the claimant, upon sustaining the injury or the initial symptom, notified his co-worker, Jeremy McMillian, who later assisted him in placing the door in the proper location. Further, Mr. McMillian admonished the claimant to report the injury to supervisory office personnel of respondent. Claimant in fact reported the injury to Anna Ditta, the vice-president of respondent-employer. As previously noted, there is no evidence in the record to reflect that the claimant had physical restrictions and limitations relative to his low back

prior to April 11, 2003. Further, claimant had fully discharged his employment duties throughout his employment with respondent. There is no medical in the record reflects that claimant never suffer complaints relative to his low back or injury relative to same prior to April 12, 2003.

The credible evidence in the record reflects that on April 11, 2003, claimant relayed to Mr. Jeremy McMillian, a co-worker, Ms. Amy Willey, a secretary, and Ms. Anna Ditta, vice-president of respondent-employer, that he had suffered an injury on that date to his low back while lifting the door at work. Respondents scheduled an appointment for the claimant to be seen at NEA Clinic upon his reporting of the injury and the need for medical treatment. Further, respondent arranged for the co-worker, Jeremy McMillian, to drop the claimant off at the NEA Clinic.

When seen at the NEA Clinic on April 11, 2003, by Dr. Arnold Gilliam, claimant relayed a history of lifting a door while discharging employment duties at work as the basis for his low back complaint and need for medical treatment. At the time claimant was examined by Dr. Gilliam on April 11, 2003, Dr. Gilliam noted the present of muscle spasms in the claimant's lumbar spine area. Diagnostic studies obtained pursuant to the directions of Dr. Gilliam disclosed the presence of a L5-S1 protrusion on the CT scan. Dr. Robert Abraham, characterized the afore diagnostic findings as a L5-S1 HNP (contained disk herniation). The evidence preponderates that claimant's diagnosed L5-S1 protrusion was caused by a specific incident, lifting the door, identifiable by time and place of occurrence. Mickle v. Engineering Specially Plastic, 56 Ark. App. 126, 938 S.W. 2d 876 (1997). Claimant has sustained his burden of proof by a preponderance of the evidence that he sustained an injury as a result of a specific incident identifiable by time and place of occurrence arising out of and in the course of his employment of respondent. Respondent have controverted this claim in its entirety.

While respondent scheduled the April 11, 2003, appointment at NEA Clinic for the claimant after claimant reported his injury and need for medical treatment on said date, the evidence in the record reflects that respondent has not paid any workers' compensation benefits or for any of the claimant's medical treatment relative to the April 11, 2003, compensable injury. The testimony of Ms. Anna Ditta, vice-president of respondent-employer, reflects that it is the policy of respondent-employer to pay the initial medical bill for an injured employee and that subsequent medical payment relative to treatment are turned over to the workers' compensation carrier for payment. In the instant claim, the evidence disclose that respondent-employer did not pay the initial April 11, 2003, bill incurred in claimant's treatment at the NEA Clinic. The bill was filed on claimant's health care provider with the claimant having to pay any deductions. Claimant was able to secure medical treatment for the April 11, 2003, compensable injury during the period that he had health insurance coverage through his employment with respondent; however, once it was canceled claimant loss assess to medical treatment.

Respondents assert that following the claimant's visit to the NEA Clinic when he was seen by Dr. Michael Tedder and declined to take the drug test respondent refused thereafter to authorize medical treatment. The evidence in the record reflects that claimant's injury was sustained on April 11, 2003. Claimant had already obtained medical treatment relative to the April 11, 2003, injury on at least two occasions prior to the point in time he was seen by Dr. Tedder on April 22, 2003. The claimant had not undergone a drug test on April 11, 2003, during his initial visit for treatment relative to the April 11, 2003, compensable injury or when seen in follow-up on April 15, 2003, for treatment relative to the compensable injury. Further, the evidence discloses that claimant was furnished a prescription for medication following the initial visit of April 11, 2003, which included

anti-inflammatory, muscle relaxants and pain medication, in the treatment of his compensable injury by Dr. Gilliam. Further, the evidence discloses that when the claimant was seen at NEA Clinic by Dr. Michael Tedder on April 22, 2003, he had been evaluated, and received medical treatment at the time the request was had for a drug test.

The credible evidence in the record reflects that claimant was in the process of leaving the NEA Clinic on April 22, 2003, when he was notified that respondent-employer desire a drug test. The evidence in the record reflects that at the time claimant had already received an injection of steroid by Dr. Tedder in the treatment of his compensable injury. Obtaining a drug screening test at the point in time that claimant was alerted that respondent-employer specifically desire same, as he was leaving the clinic after having received medical treatment, would have been of no value as the same related to the mechanics of the April 11, 2003, compensable injury.

The evidence discloses that the visit subsequent to April 22, 2003, with Dr. Tedder was canceled by respondents such that the claimant could not present for a drug screening test pursuant to the desires of respondent. Claimant did continue to receive medical treatment relative to his compensable injury subsequent to April 22, 2003. The evidence reflects that claimant has not been in the position to receive medical treatment relative to the April 11, 2003, compensable injury due to the fact that respondents controverted the claim in its entirety. Access to medical treatment through his group health insurance ceased when the insurance was canceled. Claimant continued to experience symptoms relative to the April 11, 2003, compensable injury, to include pain in his low back and radiation numbness in the left leg. The credible evidence reflects that the claimant remain within his healing period relative to the April 11, 2003, compensable injury to his low back in the employment of respondent.

Claimant last received medical treatment relative to the compensable under the care of Dr. Robert Abraham, however has not been able to secure medical treatment since. The healing period is that period for healing of an injury which continues until the employee is as far restored as the permanent character of the injury will permit. If, the underlying condition causing the disability has not become stable and if there is something further in the way of treatment to improve the condition then the healing period has not ended. The evidence preponderates, in the instant claim, that the claimant has not reached the end of his healing period relative to the April 11, 2003, compensable injury. Further, the evidence reflects that the claimant, with the exception of a two week period during which he worked thirty hours and earned approximately \$170.00, has been totally incapacitated from earning wages either in the employment of respondent or any other employer since April 11, 2003.

Temporary total disability is the period within the healing period in which an employee suffers a total incapacitate to earned wages. During the afore period the claimant is entitled to temporary total disability benefits, if, while in the healing period claimant is able to earned wages however a diminished rate as a result of the compensable injury then he would be entitled to the payment of temporary partial disability benefits.

The evidence preponderates that the claimant is within his healing period as a result of the April 11, 2003, compensable injury and has been totally incapacitated for engaging in gainful employment as a result of the compensable injury. Claimant remains within his healing period and entitled to the payment of temporary total disability benefits during said period. The evidence further preponderates that during the two week period in which claimant worked thirty hours and earned approximately \$170.00, while within his healing period he is entitled to the payment of temporary

partial disability benefits. Respondents have controverted this claim in its entirety.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at a weekly compensation benefit rate of \$264.00, as a result of the claimant's April 11, 2003, compensable injury, for the period beginning April 12, 2003, and continuing through the end of his healing period, a date yet to be determined. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to the claimant temporary partial disability benefits for a two week period when in claimant worked thirty hours and earned \$170.00, while within his healing period as a result of the April 11, 2003, compensable injury. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of April 11, 2003.

Respondents are further ordered and directed to reimburse the claimant's health care provider for sums expended relative to claimant's compensable injury for medical treatment received by the claimant relative to his April 11, 2003, compensable injury.

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable M. Scott Willhite, pursuant to Ark. Code Ann. §11-9-715, since the claimant's injury occurred after July 1, 2002, claimant's attorney fee is governed by the provisions of Ark. Code Ann. §11-9-715 as amended by Act 128 of 2001.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge