

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401890

JIMMY C. RICKMAN,
EMPLOYEE

CLAIMANT

WAL MART ASSOC, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED OCTOBER 13, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Searcy, White County, Arkansas.

The claimant was PRO SE.

The respondent was represented by HONORABLE ANDREW IVEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 20, 2004 in Searcy, Arkansas. A prehearing order was entered in this case on July 23, 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 Exhibit No. 1 to the hearing record.

The following stipulation was submitted by the parties and is hereby accepted:

1. Employee-employer relationship existed between the claimant and respondent on or about 1-8-04, and at all other times relevant.

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

1. Compensability.
2. Entitlement to medical benefits.

In addition to these issues, the claimant objected to the medical documents submitted by the respondent as Respondent's Exhibit No. 1 at the start of the hearing, and the respondent objected to the claimant's testimony regarding what the claimant's doctor may have told him during the course of an examination. These objections also require an evidentiary ruling. Mr. Rickman also proffered on September 28, 2004 Dr. Ransom's February 13, 2004 office note which was also proffered by the respondent at the hearing as page 6 of Respondent's Exhibit No. 1.

The record consists of the August 20, 2004 hearing transcript and the exhibits contained therein. I have blue-backed Mr. Rickman's September 28, 2004 proffer for identification purposes.

DISCUSSION

On January 8, 2004, Mr. Rickman's foot slipped as he was getting out of a tractor at the Searcy yard. His elbow hit the ground and he jammed his shoulder. Thereafter Mr.

Rickman presented to the emergency room at the White County Medical Center on February 7, 2004, and he presented to Dr. Ransom on February 13, 2004. On February 7, 2004, Dr. Prince diagnosed Mr. Rickman with back pain, abdominal pain and epididymitis. On February 13, 2004, Dr. Ransom diagnosed Mr. Rickman with musculoskeletal sprain and lumbar sprain secondary to a fall one month before.

Mr. Rickman has not had any more problems with his back after seeing Dr. Ransom, and he seeks reimbursement for the medical expenses that he incurred on February 7, 2004 and on February 13, 2004. The respondents contend that the record fails to establish the occurrence of a compensable injury supported by objective medical findings.

To prove the occurrence of a compensable back injury as a result of a specific incident which is identifiable by time or 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). A finding is "objective" if the finding "cannot come under the voluntary control of the patient". Ark. Code Ann. § 11-9-102(16).

1. Admissibility of Respondent's Exhibit 1

With regard to Mr. Rickman's objections to the respondent's introduction into the record of his medical reports preceding January 8, 2004, I note that the respondent asserts that Mr. Rickman's pre-existing prostate problems may have some bearing on his need for medical treatment beginning on February 7, 2004. I find Mr. Rickman's 2003 medical treatment was sufficiently close in time to his 2004 medical treatment at issue, so as to have some possible relevance to Mr. Rickman's need for treatment in 2004, as the respondent asserts. Therefore, I am overruling Mr. Rickman's objection to the respondent's proffer, and I am accepting into the record Respondent's Exhibit No. 1 in its entirety.

2. Admissibility of Mr. Rickman's Proffered Testimony Regarding his Doctor's Statements

Black's Law Dictionary (6th Ed.) defines "hearsay" in relevant part as "a statement, other than one made by the

declarant while testifying at the trial or hearing, offered in evidence to prove the truth of matter asserted." Id.

[Citations omitted] "Hearsay includes any statement made outside the present proceeding which is offered as evidence of the truth of matters asserted therein."

I find that Mr. Rickman's proffered testimony as to what his physician described to him as a physical injury during the course of their conversation was clearly, by definition, hearsay. I am sustaining Mr. Ivey's objection to Mr. Rickman's proffered testimony regarding what his doctor allegedly told him regarding the nature of his injury.

3. Admissibility of Rickman's Medical Report Proffered on September 28, 2004

The Commission received on September 28, 2004 from Mr. Rickman a copy of Dr. Ransom's office notes between January 31, 2004 and February 20, 2004. Handwritten on the report is the comment "Here is the hearsay [sic] stuff that I couldn't get before". However, I note that the report proffered by Mr. Rickman is already in the hearing record as page 6 of Respondent's Exhibit 1. Therefore, any issue of the timeliness of Mr. Rickman's proffer appears to be moot.

4. Objective Findings

In reviewing the record, the only objective medical finding that I have been able to locate is Dr. Prince's February 7, 2004 emergency room report which indicates "a little bit of swelling in his spermatic cord". I also note that Dr. Prince diagnosed Mr. Rickman at that time in part with "Epididymitis." Dorland's Illustrated Medical Dictionary (30th Edition) defines epididymitis as inflammation of the epididymis. Dorland's defines "epididymis" as "the elongated cordlike structure along the posterior border of the testis, whose elongated coiled duct provides for storage, transit, and maturation of spermatozoa and is continuous with the ductus deferens." However, Mr. Rickman is not seeking benefits for any alleged injury to the prostate or the scrotum area.

With regard to Mr. Rickman's alleged hip and back injury at issue, I note that Dr. Ransom diagnosed Mr. Rickman with musculoskeletal sprain, specifically lumbar sprain, on February 13, 2004. Dr. Ransom's report indicates that no abnormalities were detected on x-rays or CT scan, and Dr. Ransom's only clinical finding was tenderness in the left side and left lower back. However, the Arkansas Courts have previously determined that tenderness is not an

objective finding within the meaning of Ark. Code Ann. § 11-9-102(16). Kimbrell v. Ark. Dept. of Health, 66 Ark. App. 245, 989 S.W.2d 570(1999).

I am therefore constrained to find that Mr. Rickman has failed to establish the existence of a hip or back injury with medical evidence supported by objective findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Employee-employer relationship existed between the claimant and respondents on or about 1-8-04, and at all other times relevant.

2. The claimant has failed to meet his burden of proving the existence of a hip or back injury with medical evidence supported by objective findings.

3. Since the claimant has failed to prove the existence of a compensable injury, the respondents are not required to reimburse the claimant for the medical treatment that he has received.

ORDER

For the reasons discussed herein, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge