

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F310548

**O'BRIAN STAGGS,
EMPLOYEE**

CLAIMANT

**HILL'S LAKE ESCAPE, INC.,
EMPLOYER**

RESPONDENT

**COMMERCE & INDUSTRY INS. CO. &
AIG CLAIMS SERVICES,
INSURANCE CARRIER**

RESPONDENT

**SALINE COUNTY OFFICE
OF CHILD SUPPORT ENFORCEMENT**

INTERVENOR

OPINION FILED MARCH 5, 2004

Hearing conducted March 4, 2004, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. Donald C. Pullen, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's request for additional temporary total disability and medical benefits for an admittedly job-related low back injury.

The claimant contended that he should be awarded additional benefits for temporary total disability from September 18, 2003, until a date to be determined, as well as medical benefits for treatment after October 1, 2003, and for future medical care, including surgery recommended by Dr. Michael Young. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant was not entitled to additional benefits for temporary total disability or medical expense. Specifically, they contended that the alleged

additional period of temporary total disability and need for medical care are related either to the claimant's pre-existing condition which had required surgery in 1988 and 1996, or to a new injury which occurred after he had successfully returned to work for the respondents, then left that employment July 21, 2003, and sought employment elsewhere. They abandoned a previously asserted defense that the claim was barred by the doctrine of Shipper's Transport of Georgia v. Stepp, 265 Ark. 365 (1979).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable low back injury arising out of and in the course of his employment July 3, 2003; and his average weekly wage was \$360.00.
3. The preponderance of the evidence fails to show that the claimant is entitled to additional benefits for temporary total disability and medical care as a result of his compensable injury of July 3, 2003.

DISCUSSION

On July 3, 2003, the claimant injured his low back during his employment at the marina operated by Hill's Lake Escape, Inc., on Lake Ouachita where he had started his employment in March, 2003. He testified that it was his job to take care of all the maintenance on the boats and described the physical activities associated with his employment duties. The injury on July 3 took

place as he was pulling a jet ski to the dock when water in that vessel rushed to the back, causing it to pull on him, which resulted in pain in his back.

He reported the incident to the employer and was afforded medical care by Dr. J. Kelly Mahone who on July 3 diagnosed his condition as a lumbosacral strain and recommended medication and that he stay off work until July 7. The claimant testified that he had not improved by the time he returned to work on July 7 and, while there, felt a sharp pain in his back as he turned the wheel on a boat. He returned to Dr. Mahone and was off work until July 15. He stated that when he then returned to work he had some pain but nothing like it was before and he was still having problems. He testified that after a few days his condition was such that he started asking other employees to help him with various activities, such as getting down into engine compartments. He stated that he quit on July 21, 2003, because his boss was not happy about the claimant being their first worker's compensation claim. He stated that when he left he still had minor back problems which were getting worse on a daily basis. However, on July 24, 2003, he went to work for Brady Mountain Marina which was immediately adjacent to the marina of the respondent employer.

He stated that he had no other incident of injury during this employment and that he continued with physical therapy which did not fix his problem. The claimant returned to the doctor and was referred to Orthopaedic Associates where he was seen by Dr. J. Kevin Rudder and then by Dr. Michael J. Young. An MRI on September 19, 2003, showed a recurrent disc bulge at L4-5, eccentric to the left causing severe effacement of the thecal sac and left neuroforaminal narrowing. By October 9, 2003, Dr. Young had recommended a repeat discectomy at the L4-5 level, including an instrumented fusion, if possible. He also wrote that there was a pretty significant risk involved

with a third time surgery. The claimant testified that he was now in significant pain and that some days he could hardly get out of bed.

On cross-examination, the claimant admitted that after he had gone to work for Brady Mountain Marina Shane Morrison had thrown him into the water from the dock, during an incident of horseplay. He denied that this was the cause of his current back problems and he further stated that he was not pain free before he returned to the doctor on August 8, 2003. However, the medical record shows a gap in physical therapy from July 14, 2003, until August 12, 2003, when the therapist noted that the claimant aggravated his back about a week after returning to work. This would be consistent with an injury occurring during the incident of horseplay at Brady Mountain Marina. Moreover, the dock manager at respondent employer testified that around the first of September, 2003, he asked the claimant how he was doing and he said he had been hurt when he was thrown in the water by Shane Morrison. This witness also testified that when the claimant returned to work July 14, 2003, he said that everything was great and that he worked without apparent difficulty or complaints of pain.

Similarly, the employer's office manager also testified that after the claimant had quit, he told her that he had been hurt again during an incident of horseplay when he and another were wrestling around the dock trying to throw each other into the water and that his back started bothering him after that.

The respondents contend that the claimant's previous back problems are the cause of his current symptoms and need for surgery. In Shipper's Transport of Georgia v. Stepp, 265 Ark. 365 (1979), previously cited by the respondents, the Arkansas Supreme Court rejected the argument that it was common knowledge that three previous back surgeries had left the claimant's back in a

weakened condition which was prone to serious injury, thus furnishing a causal connection between prior problems and his current condition. Similarly, although there may be some relationship between the claimant's previous surgeries and his current problems, it is not a matter of common knowledge and the medical record does not establish that causal link.

On the other hand, the preponderance of the evidence indicates that the claimant's injury July 3, 2003, was minor and had largely resolved after he returned to work and ended his physical therapy. His statements to the witnesses for the respondents concerning the horseplay incident and the worsening of his condition in the medical record are more consistent with him having suffered a new injury during the incident of horseplay and that this injury required his additional medical care and has caused him to be temporarily totally disabled.

For the foregoing reasons, this claim for benefits should be, and it is, respectfully denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge