

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307366

EDWARD SUMERS,
EMPLOYEE

CLAIMANT

CONAGRA FROZEN FOODS, INC.,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED NOVEMBER 15, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Russellville, Pope County, Arkansas.

The claimant was represented by HONORABLE PHILIP WILSON, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on September 8, 2004 in Russellville, Arkansas. A prehearing order was entered in this case on July 9, 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 stipulations were submitted by the parties in the prehearing order and are hereby accepted:

1. Jurisdiction of the Commission.

2. The employee-employer relationship existed on June 5, 2003.

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

1. Compensability of spine injury by specific incident or gradual onset.
2. Medical expenses.
3. Attorney's fees.

The record consists of the September 8, 2004 hearing transcript with the exhibits contained therein, and the deposition of Dr. Scott Schlesinger taken on September 21, 2004.

DISCUSSION

In order to receive benefits for a gradual onset or a cumulative trauma back injury, a claimant must prove by a preponderance of the evidence (1) that he sustained an injury arising out of and in the course of her employment; (2) that the injury caused external or internal physical harm to the body; (3) that the injury is supported by objective medical finding; (4) that the injury was the major cause of disability or need for treatment. Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

In the alternative, to prove the occurrence of a compensable injury as a result of a specific incident or incidents which are 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).

In the present case, the claimant asserts and testified that he experienced a severe low back injury on June 5, 2003 while lifting a 40 pound box of potatoes. His former co-worker, Mike Williams, likewise testified that the claimant picked up a particular box, and Mr. Williams heard the claimant exclaim a very painful grunt.

While I am persuaded that Mr. Summers felt severe pain while lifting a box of potatoes at work on June 5, 2003, I am not persuaded by a preponderance of the credible evidence

that his back injury occurred at that time, as he presently insists. In this regard, I find more persuasive than the claimant's hearing testimony the patient history form which Mr. Summers completed on June 6, 2003, when he first presented to Dr. Brown for what Mr. Summers presumed was a kidney stone. Notably, in that patient history form, Mr. Summers indicated that he first noticed the problem seven days earlier, and not the one day earlier which would have been consistent with his current contention that he sustained a work-related back injury on June 5, 2003.

To the extent that Mr. Summers attempted to explain away his response "7 days" on the patient history form as a mistake caused by extreme medication, I do not find that explanation credible in light of the other apparently accurate information that Mr. Summers hand wrote on the form in addition to the response "7 days". Dr. Schlesinger has acknowledged that his expert medical opinion (that Mr. Summers' injury occurred on June 5, 2003) is based on the history provided to Dr. Schlesinger by Mr. Summers. Mr. Summers advised Dr. Schlesinger that Mr. Summers' symptoms began on June 5, 2003. Because I find that Dr. Schlesinger's medical opinion is based on an inaccurate

history, I accord Dr. Schlesinger's opinion on causation no weight.

To the extent that the claimant asserts in the alternative that he has sustained a compensable gradual onset back injury, I note that the only medical opinion regarding causation in the record attempts to attribute the claimant's low back injury to a specific lifting incident on June 5, 2003, and as discussed above, I do not accord that medical opinion on causation any weight. Not only has the claimant failed to persuade me by a preponderance of the evidence that his low back injury occurred on June 5, 2003, the claimant has likewise failed to persuade me by a preponderance of either the medical evidence or the non-medical evidence that the back symptoms which he began to experience seven days before June 6, 2003 were caused by his lifting or other duties at work for the respondents. Consequently, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained a back injury arising out of and in the course of his employment on June 5, 2003, and the claimant has failed to persuade me that the symptoms that he began to experience six days before June 5, 2003 occurred as a result of an

injury which arose out of and in the course of his employment duties prior to that date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jurisdiction of the Commission.
2. The employee-employer relationship existed on June 5, 2003.
3. The claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable low back injury. Specifically, the claimant failed to prove by a preponderance of the credible evidence that the low back problem at issue in this case arose out of and in the course of his employment for the respondent.

ORDER

For the reasons discussed herein, this claim for benefits must be, and hereby is denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge