

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308934

DANIEL SUTTERFIELD

CLAIMANT

UNITED AUTO GROUP, INC.

RESPONDENT EMPLOYER

ACE AMERICAN INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED APRIL 8, 2004

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on March 16, 1004. A prehearing conference was held on November 18, 2003 and a prehearing order was filed on November 19, 2003. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on January 24, 2003.
2. The compensation rate is \$82.

The claimant contends that he sustained a compensable specific incident injury on January 24, 2003 and is entitled to medical benefits and attorney's fees.

The respondents contend the claimant did not sustain a compensable injury. Since the claim is a medical only claim, there are no attorney's fees owed.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on January 24, 2003.
2. The compensation rate is \$82.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the course of and arising out of his employment on January 24, 2003.

DISCUSSION

The claimant, 25 years old, worked for the Bryant Police Department on January 24, 2003, where he was a patrolman. Along with that job, the claimant also worked off-duty security for Landers Auto Group. The off-duty security job was a 12-hour shift where the claimant would walk or patrol the lot and stay in the guard shack. The claimant worked two to four shifts per month as the off-duty security guard and was paid by Landers Auto Group. Sergeant Plouch took care of the scheduling, the off-duty work and any problems were reported to the sergeant you worked for at the police department and on January 24, 2003, that was Sergeant Kizer.

According to the claimant, on January 24, 2003, he was working as an off-duty security guard and was sitting at a desk reading a paper when a 31-inch television hanging from an overhead rack fell, hitting him in the back of the neck and back. According to the claimant, he was dazed for a moment but then picked up the television and set it on the desk. The claimant testified that he had on a thick jacket that cushioned his neck some. He testified his neck was sore and he got an immediate headache but he continued working his shift but he did contact both Sergeant Plouch and Sergeant Kizer from the Bryant Police Department. The claimant also reported the incident to Landers security guard, Lloyd Ivy.

According to the claimant, he sought medical treatment with Dr. Nick Cavaneau, his family doctor, about four days after the incident on January 28, 2003. The claimant testified that his wife accompanied him in the doctor's office and he told the doctor about the television falling on him even though Dr. Cavaneau's notes do not reflect such. According to the claimant, Dr. Cavaneau referred him to Dr. Christopher Mocek, a spine specialist. The claimant has a spine surgery scheduled for March 31, 2004.

Under cross examination, the claimant verified that he had previously had neck pain associated with migraine headaches, hypertension and stress. The claimant was questioned about the absence of any notation in Dr. Cavaneau's records of the television fall incident and the claimant testified that he had previous problems with Dr. Cavaneau.

The claimant verified that he told Dr. Mocek on April 15, 2003, about the television falling on his neck. According to the claimant, he told Dr. Cavaneau the same scenario that he told Dr. Mocek.

Mark Kizer, former sergeant at the Bryant Police Department, testified that the claimant called him and reported the television falling and hitting him on the neck on January 24, 2003.

Andrea Sutterfield, wife of the claimant, testified that she accompanied her husband to Dr. Cavaneau's office on January 28, 2003, and heard her husband tell the doctor about the television falling on his neck.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable neck injury as a result of a specific incident on January 24, 2003. While the claimant testified that he sustained neck problems as the result of a television falling from an overhead bracket and hitting his neck, the initial medical records do not reference this incident. In fact, when Dr. Cavaneau, the initial

treating physician, was questioned about the claimant's neck problems, Dr. Caveneau denied the claimant describing to him about a television falling on his neck, denied any signs consistent with a television falling and denied the claimant gave any type history as the cause of his neck problems. The office notes on January 28, 2003, reflect the visit was a follow-up for hypertension and headaches. The first mention of the television incident in the medical records was the April 15, 2003, office visit with Dr. Christopher Mocek where the claimant had complaints of neck pain with radiation in both arms with numbness and tingling in both hands. Dr. Mocek's report reveals that the results of a MRI showed degenerative disc disease with bulging disc at C5-6 and C6-7 with mild central canal stenosis.

The claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The medical evidence reveals bulging discs at C5-6 and C6-7; however, all the medical evidence reports this as degenerative disc disease. The preponderance of the evidence simply does not provide that the claimant's current condition was causally related to his employment.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the course of and arising out of his employment on January 24, 2003. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE