

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306414

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| JOHNNY F. THROWER, EMPLOYEE | CLAIMANT |
| TRIMAC, INC., EMPLOYER | RESPONDENT |
| AIG CLAIM SERVICES, INC., TPA | RESPONDENT |

OPINION FILED JULY 30, 2004

Hearing before Administrative Law Judge J. Mark White on June 24, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Lewis Ritchey, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 24, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas (I note that the transcript of the hearing is mistakenly dated June 29). A pre-hearing conference was conducted on January 5, 2004, and a Prehearing Order was entered that same day. A copy of the January 5, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed at all relevant times, including January 22, 2003; and that the claimant earned an average weekly wage of \$568.93, entitling him to a compensation rate of \$279 per week for total disability benefits and \$209 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on January 22, 2003; whether he is entitled to associated medical and indemnity benefits; the extent of permanent impairment, if any; and controversion and attorney's fees. The issues of rehabilitation and wage loss are expressly reserved.

The claimant contends that he sustained a compensable injury to his back on January 22, 2003; that he immediately informed his supervisor of the injury; and that he has been treated for the injury and has had back surgery.

Respondents contend that the claimant did not suffer a compensable injury on or about January 22, 2003; that there are no objective findings to support a work-related injury; that the claimant's physical problems which necessitated surgery are associated with pre-existing problems and not any traumatic or work-related injury; that there are no objective findings to support an award of permanent impairment benefits; that any permanent impairment is due to pre-existing conditions and not

to any work-related injury; that the claimant failed to give notice of his injury to the respondents prior to the filing of his form AR-C in June, 2003; and that if this injury is found to be compensable, the claimant reached the end of his healing period on January 19, 2004, and any eligibility to temporary total disability benefits would cease as of that date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of his injury is established by medical evidence supported by objective findings.

4. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant alleges he sustained a compensable injury to his back on January 22, 2003. He and two other employees were removing a hose rack from an asphalt trailer; this steel hose rack was 20 to 25 feet long, 14 inches wide, and weighed approximately 200 pounds. The claimant was holding one end of the rack, Jimmy Jenson was holding the other end, and Arthur Parker was holding the middle. Jenson accidentally dropped his end of the rack to the ground. The claimant testified that the fall jarred him, causing back and leg pain. Neither Parker nor Jenson saw the claimant exhibit pain behavior or complain of pain at the time. Parker testified that he and the claimant carried the rack to its proper place without incident. The claimant testified that he reported his back pain to Jenson, who was also his supervisor, but Jenson denied that the claimant did so. I take judicial notice of the fact that January 22, 2003, was a Wednesday; the claimant testified the incident occurred on a Tuesday, Wednesday or Thursday. He later testified it was

on a Thursday, that he came in and reported back problems again on Friday, and that he saw a doctor the following week. However, the medical records show the claimant did not seek treatment until Tuesday, February 4, 2003.

He sought treatment from Dr. Larry Ezell, complaining of low back pain and pain radiating into the left leg, along with left leg numbness. Dr. Ezell diagnosed "lumbar disk disease with radiculopathy," ordered an MRI and referred the claimant for a neurosurgical evaluation. The MRI revealed degenerative changes at L4-5 and L5-S1. Notably, the claimant has a long history of back pain, including a 1989 surgery at L5-S1. He had been treated by Dr. Ezell for back pain as early as 1988. Six months prior to the alleged compensable injury, on June 5, 2002, the claimant had visited Dr. Ezell with complaints of low back pain and pain radiating into the left leg. At the hearing, the claimant testified he did not remember this visit with Dr. Ezell.

Dr. Ronald Williams saw the claimant on February 18, 2003; he performed a left microlaminectomy at L4-5 on March 10, 2003. Dr. Williams had also performed the claimant's 1989 surgery at L5-S1. He assigned the claimant a permanent impairment rating of 10% to the body as a whole for the 2003 surgery.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* Not only must a claim be established by medical evidence supported by objective findings, the claimant must also show a causal connection between these objective findings and his alleged injury. *Id.* This is true even where the alleged injury is an aggravation of a preexisting condition. *Id.* The Full Commission has previously found a claim not to be compensable where the only objective findings pointed to a degenerative condition and not an acute injury. *See, e.g., Matheny v.*

Medcath, Inc./Arkansas Heart Hosp., A.W.C.C. F200248 (April 29, 2003).

An MRI exam of the lumbar spine taken February 6, 2003, revealed “degenerative rather marked focal spinal stenosis at the L4-L5 and L5-S1 intervertebral discs which appears to surround an old traumatic compression fracture of L5 with rather marked neural foramina encroachment described in detail above.” The study also noted mild to moderate degenerative changes at L2-3 and L3-4, and a herniated disc at L4-5. Dr. Williams’ interpretation of the MRI films was “lumbar stenosis at L4-5 and postoperative changes at L5-S1.” A CT scan and myelogram taken the same day also revealed straightening of the spine, and a “decreased size of the thecal sac” from L3-4 down to L5-S1, which the radiologist described as “of uncertain significance.” The radiologist suggested that the narrowing of the thecal sac “does not appear to be caused by discogenic disease or severe degenerative changes.”

These objective findings are obviously sufficient to show that the claimant has back problems. Whether they are causally connected to the claimant’s alleged compensable injury, however, is an entirely different question. The problem is that these objective findings are little different from those existing prior to the claimant’s work incident. An MRI exam taken in 1989 also revealed herniated discs at L4-5 and L5-S1. A lumbar myelogram and x-rays taken in 1989 likewise show narrowing of

the thecal sac from L4-5 down to L5-S1.

Comparing the 1989 studies with those of 2003, the only substantive differences I can identify are either the progression of degenerative changes, or the extension of the thecal sac narrowing to L3-4. The radiologist thought this narrowing to be of “uncertain significance,” and there is no other evidence in the record to connect it with either the claimant’s complaints of pain or his alleged compensable injury. The only other objective finding I can identify in the record is one mention of spasm, but it came months after the claimant’s 2003 surgery.

In short, the record contains objective findings of degenerative changes and prior injuries, but little else. Without additional evidence to prove a causal connection between these objective findings and the claimant’s alleged compensable injury, I cannot find that the claimant has met his burden of proof. I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of his injury is established by medical evidence supported by objective findings. Therefore, I conclude that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Because I so find, the remaining issues identified by the parties are moot and need not be addressed.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge