

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F400935/F400936

RICHARD WATSON, Employee	CLAIMANT
CARGILL, INC., Employer	RESPONDENT
CRAWFORD & COMPANY, Carrier	RESPONDENT

OPINION FILED AUGUST 19, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by STEPHEN M. SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by TIMOTHY L. BROOKS, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 28, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 7, 2004, and an amended pre-hearing order was filed on April 8, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his lumbar spine on January 7, 2003.
4. The claimant was earning sufficient wages to entitle him to compensation at the maximum rates.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to lumbar spine on January 12, 2004, either due to a

new injury or aggravation of the January 7, 2003 injury.

2. Temporary total disability benefits from January 19, 2004 through a date yet to be determined.

3. Related medical.

4. Attorney fee.

At the time of the hearing respondent also raised as an issue its entitlement to credit for any unemployment compensation benefits claimant received during the requested period of temporary total disability benefits. In response, claimant contends that even if respondent is entitled to a credit that he is still entitled to an attorney fee on those benefits.

The claimant's contentions are set forth in the amended pre-hearing order filed April 8, 2004.

The respondents' contentions are set forth in a letter from respondents' attorney dated July 21, 2004, which was submitted into evidence as Commission Exhibit Number 2.

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 A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 7, 2004, and contained in an amended pre-hearing order filed April 8, 2004, are hereby accepted as fact.

2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that his subsequent back problems are causally related to his compensable injury of January 7, 2003.

3. Claimant has also failed to prove by a preponderance of the evidence that he suffered a new injury or aggravation of his pre-existing condition while employed by respondent on January 12, 2004.

### FACTUAL BACKGROUND

The claimant is a 47-year-old man who has primarily worked with refrigeration equipment for George's, Tyson Foods, and the respondent. Claimant has worked for the respondent on two separate occasions with his most recent employment beginning in February 1996. Claimant performed refrigeration work for the respondent and his job duties included watching equipment, checking temperatures, and starting up the refrigeration equipment for production.

On January 7, 2003 the claimant was in the process of starting up the refrigeration equipment for production when a discharge waterline hose exploded, causing high pressure water to spray out. This high pressure water struck claimant in his right side knocking him down. Claimant testified that he eventually got to his feet and hit the stop button on the pump, but as he was leaving the room tripped over some "stuff" on the floor that he had been unable to see. Claimant testified that he came out of the room with the high pressure pump limping and had pain in his right shoulder and right hip. After going home and changing out of his wet clothes he returned to work where he went to the nurse's station. According to claimant's testimony he informed Tiffany Franklin, the nurse on duty at that time, that his neck, shoulders, and right hip were hurting. Claimant testified that Franklin massaged both his shoulders and back and set up an appointment for claimant to see Dr. Haws, the company physician. Claimant was placed on light duty until he was seen by Dr. Haws at the respondent's plant on January 15, 2003, and released to return to full duty. Thereafter, claimant testified that he continued to perform his job duties for respondent but that he had difficulty doing so.

In December 2003 claimant sought medical treatment from Dr. Lundeen, a chiropractic physician. After several visits with Dr. Lundeen the claimant eventually sought medical treatment from Dr. Olsen, his family physician, on January 7, 2004. Dr. Olsen ordered an MRI scan which was performed on January 8, 2004, revealing a herniated disc at the L5-S1 level. As a result of this findings Dr. Olsen referred claimant to Dr. Raben for additional medical treatment. Claimant contends that before he could be seen by Dr. Raben he suffered another injury to his low back on January 12, 2004. On that date claimant was replacing an oil pump on a compressor and was using a big pipe wrench when he “twisted wrong” and felt “something in my left side”.

Following this incident the claimant was seen by Dr. Raben on January 19, 2004. Dr. Raben has primarily treated claimant conservatively with physical therapy and injections.

Claimant has filed this claim contending that his back complaints in late 2003 are either a recurrence of his original compensable injury of January 7, 2003 or the result of a new injury or aggravation of a pre-existing condition which occurred on January 12, 2004.

### ADJUDICATION

The first issue to be considered is whether the claimant’s subsequent back problems in late 2003 and early 2004 are causally related to his original compensable back injury of January 7, 2003. The claimant has the burden of proving by a preponderance of the evidence that a causal connection exists between his work related injury on January 7, 2003 and any subsequent disability. *Bates v. Frost Logging Company*, 38 Ark. App. 36, 827 S.W. 2d 644 (1992).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to establish a causal connection by a preponderance of the evidence between the January 7, 2003 incident and his subsequent

back problems.

As previously noted, the parties stipulated that claimant suffered a compensable injury to his back on January 7, 2003. Following that injury the claimant was seen by the respondent's plant nurse and by Dr. Haws. Although the respondent has stipulated that claimant suffered a compensable injury to his low back on January 7, 2003, the nurse's notes do not reflect a history of back or hip pain. Instead, the nurse's notes reflect only a history of complaints involving claimant's arm. Likewise, a review of Dr. Haws' notation from January 15, 2003 also fails to mention any low back complaints. Instead, Dr. Haws mentions a right shoulder strain and releases the claimant to return to full duty.

Claimant contends that after this visit with Dr. Haws he continued to have complaints of back pain off and on which culminated in a severe increase in his low back and leg pain in late 2003.

Even though claimant testified that he had back pain from the time of the original injury, I note that on January 15, 2003, the day claimant was evaluated by Dr. Haws, he was also evaluated by Dr. Kendrick at his family clinic. Dr. Kendrick's medical report from that date indicates that claimant was complaining of a cough and runny nose. There is no indication in Dr. Kendrick's report that claimant mentioned any complaints of low back pain. Claimant again returned to the same family clinic on July 22, 2003 for a check of his hypertension. Dr. Gaston's note from that date fails to mention any complaints of back pain.

Claimant testified that throughout 2003 he returned to the respondent's nurse's station on several occasions for complaints of back pain. However, Tiffany Franklin, the plant nurse for the respondent, testified that respondent's policy is to notate each employee's visit to the nurse's station. Franklin testified that she searched all of the records for entries involving the claimant and after January 7, 2003, the only nurse's note is dated February 10, 2003 where she noted that claimant had not returned to the nurse's

station for additional medical treatment. As a result, she released claimant from care until claimant returned for additional medical treatment. However, the nurse's notes do not indicate that claimant returned for any additional medical treatment for a low back condition throughout 2003.

After claimant's visit with Dr. Haws on January 15, 2003, claimant did not seek any additional medical treatment for his back until he saw Dr. Lundeen, the chiropractic physician, on December 26, 2003. At the time of his initial visit with Dr. Lundeen, the claimant completed a patient health questionnaire. In response to the question, "When did your symptoms appear?" the claimant answered, "2 mos". Although claimant testified that he reported the January 2003 injury to Dr. Lundeen, Dr. Lundeen's medical reports do not mention a history of a prior work-related accident. Dr. Lundeen's notes indicate that claimant gave a history of left hip pain down his leg for two months.

Following evaluations by Dr. Lundeen claimant sought medical treatment from his family physician, Dr. Olsen. The claimant's first evaluation occurred on January 7, 2004. Dr. Olsen's medical reports do indicate a history of the claimant having an accident six months ago at work. However, Dr. Olsen's medical report also indicates that claimant's current pain has been present for two months.

Dr. Olsen ordered an MRI scan which revealed a disc herniation at the L5-S1 level and he subsequently referred claimant to Dr. Raben for additional evaluation. Dr. Raben's medical report is the first medical report which attributes claimant's complaints to a work-related injury one year ago in January 2003. However, Dr. Raben's medical report does not contain a history of claimant's alleged injury of January 12, 2004, which had occurred only one week earlier. [This injury will be discussed later in this opinion.] Finally, I note that claimant was also seen by Dr. Miles Johnson for an EMG scan. Dr. Johnson's medical report contains a history of low back pain for two months which has radiated into the claimant's left lower extremity.

In consideration of this issue I also note that three witnesses were called on behalf of the claimant. The first of these was Gene Baker who is currently a maintenance supervisor with the respondent. Baker testified that he was a co-employee of the claimant at the time claimant worked there. Baker testified that he did not work with claimant very often but did see him on occasion in 2003. Baker testified that he did not notice the claimant having any limitations or problems working.

Also testifying was Henry Guise who is currently an electronic technician for George's. Guise testified that he began working for the respondent on September 24, 2003 and that he does recall the claimant complaining about his back. It should be noted that this time period coincides with the history contained in Dr. Lundeen's medical reports indicating that claimant's back pain had begun two months earlier in October 2003. Therefore, while Guise's testimony would support a finding that claimant was complaining about his back in late 2003, Guise did not even begin working for the respondent until September 24, 2003 and his testimony does not serve as evidence that claimant continued to have problems with his back after January 2003 until at least September or October of 2003. Furthermore, Guise did not testify that claimant attributed his back complaints to an injury in January 2003.

Also testifying was Daniel Ferguson who is also currently employed at George's. Ferguson testified that he was a refrigeration technician along with the claimant on January 7, 2003. Ferguson testified that he and the claimant worked the same shift. Ferguson testified that after claimant returned to work after his initial injury he stated that he was still hurting. However, Ferguson testified that he does not recall where the claimant said his pain was. Therefore, it is unknown whether these complaints were related to claimant's back or to his shoulder and neck.

I also find it significant that on August 20, 2003 the claimant completed a health questionnaire in conjunction with a respirator certification. Claimant not only answered

“No” when asked if he had ever had a back injury but when asked “Do you currently have any of the following musculoskeletal problems: b. Back pain?” the claimant circled “No.” Again, this was during a time in which claimant contends he had back pain.

In addition, I note that claimant testified that after the incident on January 7, 2003, it was his right hip that was hurting.

Q. What was hurting you at that time?

A. My - -

Q. What part of your body?

A. My shoulder and my right hip.

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Q. Tell me what happened. What did she do for you, if anything?

A. Well, she checked me over there and I took the drug test; passed it at that time. And I told her that my neck was - - mainly, it was my neck that was really bothering me and my shoulders and then my hip, my right hip and stuff.

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Q. Richard, at that particular time when you went in, do you recall what, specifically, was hurting you at that time, what parts of your body?

A. My right hip and my shoulder was hurting the worst.

Claimant also testified at the time of his deposition that his primary pain was in his low back and right hip.

When claimant sought medical treatment from Dr. Lundeen in December 2003 claimant was not complaining of pain in his right hip, but instead was complaining of pain in his left hip. Claimant also complained of left hip pain to Dr. Olsen and the MRI scan revealed a disc herniation which was compromising the left S1 nerve root.

Claimant testified at the hearing that his left leg pain did not begin until October

2003.

Q. When did the symptoms start from your low back going down into your left leg? When did that happen?

A. That October.

Thus, while claimant's initial complaints in January 2003 involved his right hip claimant's primary complaints in December 2003 involved his left hip and leg which claimant testified began in October 2003. This was some nine months after the incident in January 2003.

In summary, claimant has the burden of proving by a preponderance of the evidence that his subsequent back problems are causally related to his original compensable injury of January 7, 2003. I find that claimant has failed to meet his burden of proof. After claimant's release to full duty by Dr. Haws on January 15, 2003 he sought medical treatment from his own physicians on January 15, 2003 and again on July 22, 2003 for other conditions. Those medical reports do not contain a history of claimant complaining of back pain. Claimant did not seek additional medical treatment for his back condition until December 26, 2003, some eleven months after he had last seen Dr. Haws. In a patient health questionnaire completed by claimant, he indicated that he had had pain for two months. Dr. Lundeen's medical report also contains a history of claimant's complaints having begun two months earlier. Significantly, Dr. Lundeen's medical report does not reflect a history of a work related injury in January 2003. When claimant sought medical treatment from Dr. Olsen, he gave a history of a work-related injury six months earlier, not one year earlier. In addition, Dr. Olsen also recorded a history of claimant's current symptoms having begun two months earlier. The nurse's notes do not reflect the claimant having sought additional medical treatment for his back during 2003. Claimant completed a questionnaire in August 2003 indicating that he had not had a back injury and indicating that he did not currently have back problems. Finally, claimant testified at the hearing and

at his deposition that his back pain was primarily in his low back and his right hip area. However, when claimant sought medical treatment in December 2003 claimant was complaining of pain in his left lower extremity. Claimant testified that the left lower extremity pain had begun in October 2003, several months after the incident in January 2003. Accordingly, for the foregoing reasons, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that his subsequent back problems are causally related to the compensable low back injury of January 7, 2003.

The next issue for consideration involves claimant's contention that he suffered a new injury or an aggravation of his pre-existing condition on January 12, 2004. As previously noted, claimant testified that on that date he was using a pipe wrench to replace an oil pump when he twisted wrong and felt something in his left side. Claimant's claim for a compensable injury is a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 injury;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a

preponderance of the evidence that he suffered a new injury or an aggravation of his pre-existing condition on January 12, 2004. Initially, I find that claimant has failed to offer medical evidence supported by objective findings establishing a compensable injury. Only four days prior to this incident the claimant underwent an MRI scan which revealed a herniated disc at the L5-S1 level. No objective testing was performed subsequent to January 12, 2004 indicating that claimant suffered a new injury or an aggravation of the pre-existing herniated disc.

In addition, it is significant that claimant's first evaluation with Dr. Raben occurred on January 19, 2004, only seven days after January 12, 2004. At that time, claimant attributed his back complaints to the incident of January 2003. Dr. Raben's medical reports do not contain a history of an injury having occurred only seven days earlier.

Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a new injury or an aggravation of a pre-existing back condition on January 12, 2004.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that his subsequent back problems in late 2003 and early 2004 are causally related to his original compensable injury of January 7, 2003. In addition, claimant has failed to prove by a preponderance of the evidence that he suffered a new injury or an aggravation of his pre-existing condition on January 12, 2004. Therefore, claimant's claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE

