

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F209084**

**EDDIE WEBB, EMPLOYEE**

**CLAIMANT**

**LUTHERAN HIGH SCHOOL, INC., EMPLOYER**

**RESPONDENT**

**CHURCH MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 14, 2004**

Submitted on the record before Administrative Law Judge Dail Stiles.

Claimant represented by Mr. James W. Stanley, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

This case is submitted on the deposition of the claimant taken on January 3, 2003, the deposition of the claimant's witness, Charles Clift, taken on January 3, 2003, respective briefs and medical exhibits.

It was stipulated that the employer/employee relationship existed in December of 2001, and that the claimant was earning sufficient wages to entitle him to weekly indemnity rates of \$244.00 for temporary total disability and \$183.00 for permanent partial disability benefits.

The claimant contends that he sustained a series of injuries to his back in December of 2001. The claimant contends as a result of those injuries, he is entitled to temporary total disability benefits from March 8, 2002 through January 17, 2003, as well as attendant medical benefits and attorney's fees.

The respondents controvert the claim in its entirety contending that the claimant had pre-existing back difficulties. The respondents further contend that there are no objective findings in the medical evidence to support a claim of compensability.

## **STATEMENT OF THE CASE**

In the deposition of the claimant taken on January 3, 2003, he testified that he began working for the respondent school in July of 2001. The claimant stated that he did custodial work as well as substitute teaching.

The claimant said he initially injured his back while helping a co-worker lift a pallet off a truck in Dallas some time in the year 2000. The claimant stated that he only had pain from that incident for a couple of days. The claimant denies any back problems from the time he lifted the pallet off the truck in Dallas in 2000 until December 2001. The claimant said that some time before Christmas, 2001, he was moving three or four file cabinets in an office and had pain in his low and mid back. The claimant stated that he reported that incident to Dr. Tom Wolbrecht, his supervisor.

The claimant said that some time after Christmas, but before the first of the year of 2002, he was shampooing some carpets and slipped and fell to the floor.

That incident was corroborated by the claimant's cousin and roommate, Charles Clift. Mr. Clift, at the time, worked as a teacher for the school and was helping the claimant shampoo the carpets on the day of the incident.

This case is submitted on depositions, briefs and medical exhibits because the claimant, some time in 2003, moved to Los Angeles, California.

A review of the medical evidence reveals that contrary to his testimony, the claimant was complaining of back pain in 1999 to his physician in Texas, Dr. Jeffrey Liddell. The medical evidence reflects that the claimant was on a regimen of pain medications from some time in 1999 through his claimed injuries in December of 2001.

The claimant was being seen by Dr. Steve Simpson, at St. Vincent Family Clinic, and in a progress note dated November 8, 2001, Dr. Simpson noted:

Mr. Webb has history of scoliosis and arthritis in his lower back. Yesterday he slipped in the shower. He caught himself without falling but he felt tightness in his mid and lower back since then. No numbness, weakness or paresthesias.

Dr. Simpson assessed the claimant as having a lumbar strain at that visit. Dr. Simpson stated in that same report that the claimant, "has chronic back pain due to his scoliosis and arthritis."

On November 23, 2001, the claimant telephoned Dr. Simpson's office to see if he could arrange physical therapy sessions, which were arranged.

On December 30, 2001, an office note from Dr. Gil Foster at St. Vincent Family Clinic stated, "44 year old WM with long hx of back pain who has recently strained his back again after helping some friends do some moving." Dr. Foster assessed the claimant as having a lumbosacral strain.

A lumbar MRI was performed on January 16, 2002, and demonstrated degenerative findings.

The claimant was seen by Dr. Philip Johnson, an orthopedist. Dr. Johnson diagnosed the claimant as having lumbar and thoracic degenerative disc disease with some thoracic stenosis.

In March of 2002, the claimant was seen by Dr. Scott Schlesinger, a neurosurgeon. Dr. Schlesinger reviewed myelogram and post-myelogram CT scans and stated that the claimant showed "mild stenosis at T11-12, but there is no significant cord compression."

The claimant said in his deposition that he felt he was getting the run-around from Dr. Johnson and Dr. Schlesinger and went to see Dr. Michael Fischer

of the Little Rock Internal Medicine Clinic. In a report dated April 2, 2002, Dr. Fischer stated, in part:

The patient was moving furniture a couple of days ago and pulled his back. He does have a history of scoliosis, as well as degenerative joint disease of the spine. He says that he felt sudden pain and has not gotten any better.

The claimant was referred by Dr. Scott Schlesinger to Dr. James Abraham for a rheumatology consultation. Dr. Abraham saw the claimant on May 1, 2002, and stated in a report generated that day to Dr. Schlesinger and Dr. Philip Johnson under the Impression section, the following:

Chronic idiopathic back pain. While he does have some abnormalities on his imaging studies, these I don't think would explain his pain and I don't think he has any surgical lesions. He also does not have anything that would suggest any sort of inflammatory process in his spine. He does not have any "red flags" that would suggest any dangerous causes for his back pain. Unfortunately this type of back pain is extremely difficult to manage. . . .

#### **FINDING OF FACT**

The claimant does not meet his burden of proving by a preponderance of the evidence of record that the physical complaints he makes in his deposition of January, 2003, are related to any on-the-job injuries he sustained while working for the respondent employer in December of 2001.

#### **DISCUSSION**

Contrary to the claimant's assertions in his deposition, the claimant had been experiencing back pain which is medically documented back as far as 1999. Again, contrary to his testimony in his deposition, those difficulties did not subside or become asymptomatic, but rather continued right along. For this examiner to attribute all the claimant's back pain and complaints to some incidents that may have occurred at work in 2001, would require conjecture and speculation

on my part. It is well-settled that conjecture and speculation, no matter how plausible, do not take the place of proof. Dena Construction v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

In addition, there is a requirement in the Workers' Compensation Act that in order to prevail on a claim for compensation one must demonstrate "objective findings" in the medical evidence. See Ark. Code Ann. §11-9-102(4)(D) and Ark. Code Ann. §11-9-102(16)(A)(i).

The claimant in the instant case simply does not meet the burden of proof required of him to establish a claim of compensability.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

---

DAIL STILES  
Administrative Law Judge