

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F103456

CALVIN WHITE, EMPLOYEE CLAIMANT

ARKANSAS ELECTRIC CO-OP, INC.,
SELF-INSURED EMPLOYER RESPONDENT

ARKANSAS RURAL ELECTRIC SIT
% CROCKETT ADJUSTMENT,
THIRD PARTY ADMINISTRATOR RESPONDENT

OPINION FILED FEBRUARY 23, 2004

This matter comes before the Commission on Remand from the Full Arkansas Workers' Compensation Commission. A full hearing was conducted in this matter on November 7, 2001, and an opinion and order was filed by this Administrative Law Judge on February 5, 2002. In that opinion and order I concluded that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. That decision was appealed to the Full Arkansas Workers' Compensation Commission which filed an opinion and order affirming and adopting the decision of this Administrative Law Judge on August 20, 2002. The Full Commission's decision was then appealed to the Arkansas Court of Appeals which filed a decision on June 25, 2003 reversing and remanding the decision of the Commission. In an order filed

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August 7, 2003 the Full Commission remanded the case to this Administrative Law Judge for additional findings consistent with the June 25, 2003 opinion of the Arkansas Court of Appeals.

At the hearing before this Administrative Law Judge the claimant contended that he was employed by the respondent/employer as a tree cutter and that his duties involved cleaning damage caused by ice storms in Oklahoma. He also contended that he sustained a compensable injury to his low back on February 27, 2001, when, according to his testimony, he experienced a sharp onset of pain in his low back in the course of his employment. Although he testified that the pain he experienced was very sharp and intense for a few seconds he also testified that the pain then went away and that he was just stiff and sore after that. He continued to work the remainder of his shift and admittedly did not mention the incident to either of his two co-workers. After work they returned to the apartment that they shared, ate supper and watched T.V. before going to sleep for the night. However, when he awoke the following morning he was very sore, and although he initially felt that he could work that day the pain ultimately became so intense that he could not work. Consequently, his mother was contacted and she picked him up and returned him to Arkansas where he received medical treatment. A March 1, 2001 report from the Jefferson Medical Clinic did not contain any specific history regarding the onset of the claimant's problem. A medical report from Dr. Richard McCarthy dated April 18,

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2001, does indicate that the claimant related a history of experiencing a sudden onset of pain in his low back while operating an extremely large chain saw.

The claimant's co-workers who shared the apartment with him in Oklahoma also testified at the hearing conducted in this matter. Russell Falconburg testified that the claimant did not complain of any back problems on February 27, 2001, the date that the claimant contends that he sustained the work-related injury. In this regard Mr. Falconburg testified that the claimant did not demonstrate any signs of problems either at work that day or later at the apartment. However, Mr. Falconburg did testify that the claimant told him he was experiencing back pain the following morning when he got up and that the claimant appeared to be in pain at that time. However, Mr. Falconburg also testified that the claimant indicated to him that he did not know what was causing his back problems. Likewise, Jeff Waters, the foreman of the crew, testified that the claimant did not report a back injury to him on February 27, 2001, and he testified that he was not aware that the claimant contended that his back problems were related to his employment until approximately March 21, 2001, when he received notice of this claim. Mr. Water testified that he asked the claimant what had caused his back pain when the claimant advised him on February 28, 2001, that he was experiencing back pain and that he was unable to continue working and Mr. Waters also testified that the claimant advised him that he did not know what he had done to cause his back to hurt.

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In reaching my conclusion that the claimant failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, I noted that the claimant testified with specificity regarding the onset of pain while lifting a log at a specific residence. However, I also noted that the testimony of Mr. Falconburg, as well as Mr. Waters, indicated that the claimant told them the following day that he did not know what the cause of his back pain was. I concluded that the only evidence indicating that the claimant did in fact sustain a work-related injury as he contends was founded on his testimony and I found that the testimony of his co-workers indicated that he did not know what had caused his problems on the day immediately following the alleged injury. In light of the contradictory nature of his co-employees' testimony I found that a preponderance of the evidence failed to support a conclusion that the claimant's back and leg problems were causally related to his employment.

In reversing the decision of the Commission and remanding the claim back to the Commission the Arkansas Court of Appeals found that this Administrative Law Judge, as well as the Commission, erroneously concluded that the testimony of the claimant was the only evidence presented supporting his contention that he was injured while lifting a log in the course of his employment on February 27, 2001. In this regard the court concluded that the fact that the claimant was able to continue using a chain saw to cut trees and remove debris and later spend the evening relaxing and sleeping at the apartment shared with his co-workers, but

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then awoke the following morning experiencing such severe pain that he was unable to continue working constituted evidence, albeit circumstantial, corroborating the claimant's claim. In addition the courts found that Mr. Water's observation of the claimant between the date of the alleged injury and his return to work the following day negated, at least circumstantially, the possibility that the claimant's condition was related to a non-work-related injury. In this regard the courts made the following findings:

Contrary to the findings of the Commission, the testimony of the appellant was not the only evidence presented supporting his contention that he was injured while lifting a log in the course of his employment on February 27, 2001. The uncontradicted evidence established that for eleven hours on Monday and until 4:30 p.m. on Tuesday, appellant was able to use a chainsaw to cut trees and remove debris. After leaving the job site, appellant, his supervisor, and co-worker spent the evening relaxing and sleeping at the apartment. According to appellant's testimony, the pain he experienced the following morning prevented him from being able to operate a bucket truck. His condition was such that his supervisor inquired about the necessity of him seeing a doctor and drove him to the apartment so that he could be transported to Jasper for medical treatment. This evidence, albeit [sic] circumstantial, corroborates appellant's claim of an on-the-job injury and cannot be ignored by the Commission in its de novo review of the ALJ's determination of appellant's claim. Likewise, the supervisor's observation of appellant between the date of the incident described by appellant and his return to work the following day is evidence that negates, at least circumstantially, the possibility of appellant incurring his diagnosed medical condition in an off-the-job injury.

The court additionally noted that the medical evidence corroborated the claimant's

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testimony as to the nature of his specific injury.

In remanding this claim to the Commission the court directed the Commission to conduct a full examination of the relevant evidence presented in this cause of action, including the evidence which the court cited, as described above. After giving due consideration to the decision of the court I conclude that the court concludes that the facts it relates constitutes evidence that the claimant did in fact sustain a compensable injury. After weighing all of the evidence of the record, including those facts deemed by the court that constitute evidence supporting the claimant's claim, I am constrained to find that the greater weight of the evidence supports a conclusion that the claimant did, in fact, sustain an injury arising out of and in the course of his employment. Accordingly, I find that the claimant proved by a preponderance of the evidence the elements necessary to establish a compensable injury under Arkansas Workers' Compensation Law.

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
Administrative Law Judge

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