

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500031

STONE ANDERSON	CLAIMANT
GROWTH GROUP, INC.	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 15, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JOHN TALBOT, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 18, 2005, in Springdale, Arkansas. A pre-hearing order was previously entered in this case on March 29, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On October 21, 2004, the relationship of employee-employer-carrier-third party administrator existed between the parties.
2. On October 21, 2004, the claimant sustained a compensable injury to his left foot.
3. There is no dispute over the payment of medical expenses incurred for treatment of his left foot.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant also sustained compensable injuries to his left hip and back in the accident of October 21, 2004.
2. The claimant's entitlement to the payment of medical expenses for his left hip and back difficulties.

In regard to these issues, the claimant contends:

"Claimant was injured on October 21, 2004. His left foot was injured when one of the other employees was showing him how to use a sheep foot machine the claimant's foot became caught in the machine."

In regard to these issues, the respondents contend that the claimant is not entitled to additional benefits.

DISCUSSION

_____The respondents concede that the claimant sustained a compensable injury to his left foot in a specific employment related accident or incident on October 21, 2004. In fact, it appears from the record that the respondents have provided the claimant with all appropriate benefits, to date, for this compensable foot injury. The central issue, at the present time is whether the claimant also sustained "compensable injuries" to his left hip and back in this same employment related accident or incident on October 21, 2004. The respondents deny the occurrence of any such "compensable injuries."

The burden rests upon the claimant to prove all of the statutory elements necessary to establish the occurrence of

“compensable injuries” to his left hip and back in this specific employment related incident. These various statutory requirements are found in Ark. Code Ann. §11-9-102(4)(A)(i) and §11-9-102(4)(D).

In order to represent a “compensable injury,” under Ark. Code Ann. §11-9-102(4)(D), the claimant must prove by medical evidence the actual existence of the physical injuries to his back and/or left hip, which he alleges to be compensable. He must further prove that the actual existence of these physical injuries is supported by “objective findings,” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The initial medical records from the emergency room of the Northwest Health Center, dated October 21, 2004, make no reference to any injury or complaints involving the claimant’s lower back and/or left hip. The notations describing the physical examination performed on the claimant, on that date, note no observations of any abnormalities involving these portions of his body.

The claimant was subsequently seen by Dr. Peter Tang, an orthopaedic surgeon, for the admittedly compensable injury to his left foot. The initial visit with Dr. Tang took place on October 26, 2004. Again, there is no mention in the initial report of Dr. Tang or in any of his subsequent reports of any complaints of difficulties involving the claimant’s low back or left hip. There is also no record of the observation by Dr. Tang of any abnormalities with these portions of the claimant’s body during any of his physical examinations of the claimant.

The first record of any back difficulties is found in a Community Clinic note that is also dated October 26, 2004. This note states:

“Emergency room visit on Thursday, vomiting, stomach pain, gave IV Pepcid at hospital. Lower back pain, need something for sleep, last medication prescribed for insomnia not working now. Has been taking wife’s Prevacid which helps, ER told him he had an ulcer. Benadryl gives him hangover effect.”

Clearly, the claimant had been seen at the emergency room on the previous Thursday, which would have been October 21, 2004. At that time, he was seen for the admittedly compensable injury to his foot. However, the medical evidence shows that the claimant had previously been seen at the emergency room of the same facility on Wednesday, October 20, 2004. It was at that time that he was complaining of difficulties with his abdomen and received an extensive evaluation and work up for gastric difficulties. It would appear from the Community Clinic note that it was in fact referring to the visit at the emergency room on Wednesday, October 20, 2004, rather than “Thursday,” October 21, 2004. Curiously, there is no mention of the injury to the claimant’s left foot. Nor, is there any mention that the claimant’s lower back pain was related to any specific incident or accident, employment related or otherwise. More importantly, there is no record in this Community Clinic chart note of the observation of any “objective findings” to support the recorded subjective complaint of lower back pain.

The next mention of any difficulties or complaints involving the claimant’s back and/or left hip is found in a document styled

“patient phone encounter” that is dated January 10, 2005. This document states:

“Patient hurt his back at work-patient’s lawyer told him that he needed ortho referral-does he need appointment with us??? Thanks, Misty.

No-can call directly himself 1-11-05.

1-11-05 patient notified.”

The next mention of any difficulties involving the claimant’s back or left hip is found in a prescription form from the Family Foot Clinic of northwest Arkansas. This notation is dated January 24, 2005, and simply states:

“Ozark Orthopaedic Clinic for hip pain.”

The final mention in the medical record of any difficulties involving the claimant’s lower back or left hip is found in a patient record of the Community Clinic that is dated March 28, 2005. This notation states:

“Disc trouble-has been experiencing radicular pain-bilaterally. Patient with history of DDD (degenerative disc disease) lumbar-he has seen ortho-prescribed exercise and Motrin. Motrin upsetting stomach despite Prevacid. Back pain continues. No history ASHD (arteriosclerotic heart disease).”

None of the aforesaid notations record the actual observation of any objective findings that would support the existence of any physical injury to the claimant’s low back or left hip. In fact, two of these fail to even record that the claimant’s subjective complaints were due to any accidental injury, employment related or otherwise.

After consideration of all the medical evidence presented, it is my opinion that the claimant has failed to present sufficient medical evidence to establish the actual existence of a physical injury to his back or left hip that is supported by “objective findings,” as defined by Ark. Code Ann. §11-9-102(16)(A)(i). Therefore, the claimant has failed to prove the occurrence of “compensable injuries” to these portions of his body in the manner required by the Act. His claim for benefits attributable to these alleged injuries must be denied and dismissed in its entirety. This would include the claimant’s entitlement to medical services directed toward the alleged injuries to his low back and left hip.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On October 21, 2004, the relationship of employee-employer carrier-third party administrator existed between the parties.
3. On October 21, 2004, the claimant sustained a compensable injury to his left foot.
4. There is no dispute, at the present time, over the payment of medical expenses incurred for treatment of the claimant’s compensable left foot injury.
5. The claimant has failed to prove by the greater weight of the credible evidence that he also sustained compensable injuries to his left hip and/or low back in the specific employment related accident or incident of October 21,

2004. Specifically, he has failed to establish by medical evidence, which is supported by objective findings, the actual existence of physical injuries to these portions of his body.

6. The respondents have denied the occurrence of any compensable injuries to the claimant's left hip or low back in the employment related accident of October 21, 2004, and have controverted his entitlement to any benefits attributable to such alleged injuries.

ORDER

The respondents remain liable for any and all appropriate benefits provided by the Act for the claimant's compensable left foot injury.

However, for the reasons heretofore stated in this Opinion, all claims for benefits attributable to any alleged injuries to the claimant's back or left hip should be and hereby are denied and dismissed in their entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge