

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F213145

JAMES BARKER, EMPLOYEE	CLAIMANT
MAVERICK TRANSPORTATION, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 6, 2005

Hearing held on June 9, 2005, in Little Rock, Pulaski County, Arkansas, before the HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant represented by HONORABLE JAMES W. STANLEY, of Little Rock, Arkansas.

Respondents represented by HONORABLE ERIC NEWKIRK, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned matter on June 9, 2005, in Little Rock, Arkansas. A prehearing order was entered in this case on January 13, 2005. The prehearing order originally set a full hearing date of April 7, 2005, however, the parties agreed to continue the hearing to June 9, 2005, after the prehearing order was filed. The prehearing order sets out the stipulations offered by the parties and outlined the issues to be litigated, and resolved at the present time. A copy of the prehearing order was made a part of the record as Commission Exhibit #1.

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The following stipulations were submitted by the parties either in the prehearing order, or at the full hearing, and are hereby accepted as fact:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times, including November 13, 2002.
- 3) The claimant earned sufficient wages to entitled him to a temporary total disability rate of \$425.00 per week, and a permanent partial disability rate of \$319.00 per week.
- 4) The claimant sustained compensable injuries to his left wrist and rib cage on November 13, 2002; however, the respondents have controverted all claims of compensable injuries to the claimant's head, back and neck occurring on November 13, 2002.
- 5) The parties stipulated the claimant is in arrears in child support; however, they are unsure of the amount. The parties further stipulate that in the event of an award in this matter, the child support lien will be withheld and sent directly to the proper child support agency in the appropriate amount.

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

- 1) Whether the claimant sustained compensable back, neck head and/or mental injuries on November 13, 2002.
- 2) If compensability is overcome, whether claimant is entitled to temporary total disability from March 3, 2003 through March 8, 2004, associated medical treatment, and attorney fees.

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3) Whether an offset pursuant to §11-9-411 is warranted.

The claimant contends he sustained a compensable neck, back, head and/or mental injury on November 13, 2002, and is entitled to indemnity benefits from March 3, 2003 through March 8, 2004, associated medical and attorney fees.

Respondents contend the claimant did not sustain compensable neck, back, head and/or mental injuries as defined by Arkansas Law, and to the extent the claimant has such problems in those areas that they are pre-existing and traceable to either a motor vehicle accident, degenerative changes, or other causes unrelated to the work incident on November 13, 2002. Further, respondents contend there are no objective medical findings of injuries to each of these regions, and the claimant did not sustain a compensable mental injury as defined by A.C.A. §11-9-113. The respondents contend that an offset may be justified pursuant to A.C.A. §11-9-411.

The record consists of the June 9, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant, age 40, worked for the respondent employer as a commercial truck driver in 2002. On November 13, 2002 the claimant sustained admittedly compensable injuries to his left wrist and rib cage. The claimant testified as follows

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regarding the November 13, 2002 accident:

Q. Okay. And what was your duties? What was going on while they were loading the sheet rock onto your vehicle?

A. I was laying the slats on there and he was loading the last sheet of drywall and coming up with it so I had to get off the trailer and when I went to turn, there was nowhere but to fall.

Q. Approximately how high is this trailer off the ground?

A. About four to five feet.

Q. All right. And you fell off the trailer and landed on ...(T. pg. 23, lines 19-25) what?

A. My left side.

Q. And what kind of surface did you land on?

A. Concrete.

Q. All right. And you say your left side, what parts of your left side? Your shoulder, your arm or - -

A. I was hurting in my ribs and wrist at the time. I don't know what all I did I just knew I was hurting in my ribs and

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wrist.

Q. Were you rendered unconscious?

A. I don't know. (T. pg. 24, lines 1-11)

The claimant testified he could not recall whether he hit his head as a result of the fall on November 13, 2002. (T. pg. 48, lines 20-22). The claimant was treated for his wrist and rib cage injury that was accepted by the respondent, and returned to full duty work in February of 2003.

The claimant testified he voluntarily quit Maverick Transportation, Inc., in March of 2003 because they were not responding to his medical needs:

A. What lead up to that is, I was telling him about the headaches and me not being able to figure out my route and the icy conditions that I needed to pull over and just rest. And he told me that I needed to get the load there. And I said, well, what about my safety and he said, I'm not concerned about your safety. Or he said - - he said, I've got other things to worry about than your safety. So I called the safety director.

Q. Okay. So you're telling me that A. J. basically told you to go on and don't worry about safety issues and as far as your ability to recall routes and things like that, were you telling him about those issues - - (T. pg. 53, lns 14-25)

A. I told him about that, yeah.

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Q. Okay. And was he helping you in any way about that?

A. No, he didn't help me in any way. He told me other things - - he said he had more important things to worry about right now.

Q. Okay. And did you quit on your own, then, eventually?

A. Yes.

Q. And why?

A. For them reasons.

Q. For those reasons?

A. Basically.

Q. They were inattentive to your concerns - -

A. Sure. (T. pg. 54, lns1-13)

After leaving the respondents' employ, the claimant worked for several months at Ron's Cab Company as a taxi driver. The claimant testified he left Ron's Cab Company because he was forgetting streets and routes. (T. pg. 36, lines 12-19). The claimant testified he has not worked since leaving Ron's Cab Company.

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To prove the occurrence of a compensable injury as a result of a specific incident, which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence:

- 1) that an injury occurred arising out of an in the course and scope of employment;
- 2) that the injury caused internal or external harm to the body which required medical services, or resulted in disability or death;
- 3) that the injury is established by medical evidence supported by objective findings as defined in Ark. Code Ann §11-9-102(16); and,
- 4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 958 S. W. 2d 876 (1997). It is the claimant's burden to prove each element of compensability by a preponderance of the evidence. For several reasons, which will be outlined below, I find the claimant has failed to meet his burden.

First, the admitted compensable injuries to the claimant's left wrist and rib cage took place on November 13, 2002. At the time of those injuries, the claimant never mentioned head, back or neck pain to any of the treating physicians. In the ten months following the Nov. 2002 injuries to his wrist and rib cage, the claimant was examined by Drs. Pritchard, King, Heis and Koester; however, he never mentioned any of the

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problems he now claims. (See JX-1 , pgs. 1-8a) The failure to exhibit any of the symptoms the claimant now alleges is further documented in Dr. Heis' March 1, 2005 letter: (JX-1, pg. 25).

"I have no record of this patient having neck pain or a closed head injury"

In fact, the first medical report of neck, back or head injury came on November 16, 2003. (JX-1, pg 10), when the claimant started reporting migraine headaches. Over one year had passed from the November 13, 2002 accident and that was the first mention of any other problems according to the medical records.

The claimant testified he started having headaches within a few weeks after the November 13, 2002 accident; however the claimant could not explain why his complaint's were not documented in any of his medical reports. This discrepancy was just the first factor in my questioning of the claimant's credibility. The claimant also testified that after he was released to full duty and returned to Maverick Transportation, that he started having memory loss and headaches shortly after his return to work in February of 2003. The claimant testified he reported these problems to A. J., his supervisor, but that no accommodations were made. A. J. Cathey testified at the hearing that during the time he was the claimant's supervisor, the claimant never mentioned any neck, back or head problems. In fact, A. J. Cathey testified the reason the

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claimant gave him for leaving his employment was that his son was having problems and he needed to be home with him. (RX-1, pg 2). Mr. Cathey testified the claimant wanted a local job to be in town more for his son.

The claimant's actions after leaving the respondents' employ in March of 2003 backup A. J. Cathey's testimony. The claimant then took a job with a local cab company. The claimant worked for the cab company for several months, and during that time the claimant never sought medical attention for his alleged symptoms. I find the testimony of A. J. Cathey to be far more credible than that of the claimant. The claimant testified he told Ms. Lisa Kegley with Maverick Transportation about his head and neck problems. Ms. Kegley testified she didn't remember the claimant ever telling her about neck or head problems. I found Ms. Kegley's testimony to be more credible than that of the claimant.

The claimant testified at the full hearing he couldn't remember if he hit his head in the fall on November 13, 2002. And, as stated earlier, no medical records indicate a head trauma. However, the claimant's neuropsychological evaluation (CX-2) is replete with statements about a head injury in November of 2002. The evaluations took place between January 22 of 2004 and March 4, of 2004; again, well over one year after the November 13, 2002 fall. In the absence of medical records indicating a head

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trauma, the question becomes who relayed a head trauma incident on November 13, 2002 to the psychiatrist? It would appear the head trauma was a self-report from the claimant. However, the claimant testified before this Administrative Law Judge that he could not recall a head injury or not on November 13, 2002

Based on the evidence, I find the claimant has failed to meet his burden of proof that a head and/or mental injury occurred arising out of and in the scope of his employment on November 13, 2002. Further, this Administrative Law Judge doubts any objective medical findings regarding a head or mental injury in light of JX-1, pg 21 when Dr. Zuccarello states as follows:

“The patient has been investigated with an (sic) MRI scan of the brain which is essentially normal and a MRA of the Circle of Willis which is also normal and trans thoracic complete 2-D study which was overall normal.”

The claimant has also alleged compensable neck injuries as a result of his November 13, 2002 accident. As stated, over ten months elapsed after the accident before any of the medical evidence mentions neck pain. Also, as stated, the claimant’s credibility is in serious doubt to this Administrative Law Judge. A MRI of the claimant’s cervical spine was performed on September 23, 2003, and had the following impressions:

“1) Mild to multilevel degenerative discogenic changes as detailed above, worst at the C3-4 level.

2) No evidence of cord compression. (JX-1, pg 9)

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The claimant testified he fractured three vertebrae in the 1990s when a van's mirror struck him in the jaw. He testified as follows:

Q. The side, all right. And I believe in the 1990s you also sustained an injury. Tell the Judge what happened in that injury.

A. I was standing outside my cab and there was an Access van and their mirrors stick out and the mirror hit my jaw and I fractured three vertebrae.

Q. In your neck?

A. In my neck.

Q. All right. Did you receive medical attention?

A. Yes.

Q. All right. And for what period of time?

A. I'm not exactly sure on the time. I know I had an (sic) MRI done and on those three vertebrae -- (T. pg. 20, lines 8-20)

Even though the claimant testified about a previous MRI, one was not admitted into the record to show different findings. Further, the MRI that was done in September of 2003 indicated the claimant's problems were degenerative in nature. It is also disturbing as to why the claimant never mentioned neck problems to his supervisor,

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A. J. Cathey, to Ms. Kegley, or to any of the doctors until over ten months after the November 2002 accident. The lack of reporting to his doctor or employer, coupled with the pre-existing neck injury and degenerative findings leads this examiner to find the claimant has failed to sustain his burden of proof by a preponderance of the evidence that his neck injuries arose out of and in the scope of his employment on November 13, 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The parties stipulations are reasonable and hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the credible evidence that he sustained compensable neck, back, head and/or mental injuries in the scope of his employment with the respondents on November 13, 2002.

ORDER

For the reasons discussed herein, this claim for benefits must be, and hereby is denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge