

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403031

JERRY BARTON,  
EMPLOYEE

CLAIMANT

CORBETT GARRETT TRUCKING, INC.,  
UNINSURED EMPLOYER

RESPONDENT

**OPINION FILED NOVEMBER 21, 2005**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Searcy, White County, Arkansas.

The claimant was represented by HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by HONORABLE MICHAEL KNOLLMEYER, Attorney at Law, Jacksonville, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on August 23, 2005 in Searcy, Arkansas. A prehearing order was entered in this case on January 14, 2005. This prehearing 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 prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the prehearing order or during the course of the hearing and are hereby accepted:

1. The claimant is entitled to the maximum compensation rates in effect in April of 2002 if this claim is found compensable.
2. The parties stipulate that an individual is not paid for the first five months of disability onset by the Social Security Administration.

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

1. Compensability.
2. Controversion.
3. Attorney's fees.

The record consists of the August 23, 2005 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

The claimant contends that he sustained a compensable injury on or about April 28, 2002 while employed by the respondent as a truck driver. Specifically, the claimant testified that he injured his back when he got out at a truck stop at Big Springs, Texas, worked on his truck's air conditioner, then slipped and fell. The respondent contends that the claimant cannot establish a back injury with objective medical findings. In addition, the respondent

contends that the bruising condition which Mr. Garrett observed on Mr. Barton's back when Mr. Barton returned to Arkansas was more indicative of injuries sustained in a fight, rather than injuries sustained by a slip and fall.

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 and in the 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, 938 S.W.2d 876 (1997).

As a threshold matter, I note that I do not find particularly credible the testimony of either Mr. Barton or Mr. Garrett. In this regard, the testimony of Mr. Byarman, a trucking employer of Mr. Barton after the incident in question, raises grave concern that Mr. Barton engaged in Social Security Disability fraud after April of 2002 but

prior to the hearing held on August 23, 2005. Likewise, Mr. Garrett's own testimony indicates to me that Mr. Garrett paid his trucking employees illegally using a form 1099, rather than using a W-2 and withholding income taxes, providing workers' compensation insurance, etc.

After considering the testimony offered in the record and the documentary evidence, I find that a preponderance of the credible evidence establishes that Mr. Barton did in fact slip and fall, striking his back on a truck tire, as he asserts, rather than sustaining his back injury in some type of fight as Mr. Garrett asserts. In reaching this conclusion, I note that Mr. Barton's medical bills were initially apparently paid through some type of insurance which Mr. Garrett bought as an alternative to workers' compensation insurance, and as far as I can tell, Mr. Garrett initially never raised any suspicion that Mr. Barton's injury was not work related. In this regard, I am particularly persuaded by the May 3, 2002 report from Joseph Clinic, which contains a history of Mr. Barton hitting his low back on a tire on an eighteen wheeler, which indicates that the injury is job related, and which indicates that there is no question on behalf of the attending physician that the injury was job related. I therefore conclude that

the claimant's testimony as corroborated by the contemporaneous medical reports establish by a preponderance of the evidence that Mr. Barton sustained a back injury which occurred arising out of and in the course of his employment, and which caused internal harm to the body which required medical services and ultimately resulted in disability. I find that Mr. Barton's back injury sustained as a result of his slip and fall striking a truck tire is an injury caused by a specific incident and identifiable by time and place of occurrence.

I also find that the back injury is established by medical evidence supported by objective findings. Those objective findings include both Dr. Bob Smith's May 13, 2002 observations of bilateral paraspinous muscle spasm, and the L5-S1 disc abnormality noted on MRIs performed on August 27, 2002 and on April 8, 2004. In reaching my conclusion that the abnormality at L5-S1 identified by MRI on August 27, 2002 and on April 8, 2004 is causally related to the back injury sustained in April of 2002, I am aware that Dr. John Bell's May 7, 2002 MRI report did not indicate disc protrusions or impingement upon the thecal sac. However, I also note that Mr. Barton was reporting back pain with radiculopathy in his first visit at the Joseph Clinic on May

3, 2002, i.e., before the first MRI on May 7, 2002 which was interpreted in showing no disc abnormality. I further note that the radiating pain was similarly noted on May 13, 2002, and on this record, also persisted in 2003 and in 2004. Moreover, I note that Dr. Smith performed a series of steroid injections in 2002, and Dr. Chan performed another series of steroid injections beginning later in 2002 and continuing into 2004. When Mr. Barton's symptoms did not resolve after two years of conservative care, Dr. Chan ultimately performed disc surgery on August 25, 2004.

In light of the May 3, 2002 clinical documentation of radiculopathy prior to the May 7, 2002 MRI which was read as not indicating a disc abnormality, in light of the second MRI performed on August 27, 2002 which did indicate an L5-S1 disc herniation, and in light of Mr. Barton's persistent radicular symptoms over a period of two years, I find that a preponderance of the evidence establishes that the May 7, 2002 MRI simply failed to detect the L5-S1 disc abnormality which was already causing radicular symptoms and which was present and identified on the August 27, 2002 MRI performed later that summer. Consequently, I find that the claimant has established all of the elements necessary to prove the occurrence of a compensable low back injury that was caused

by a specific incident and identifiable by time and place of occurrence.

There appears to be no dispute that the respondent has controverted the occurrence of Mr. Barton's work related back injury in it's entirety; therefore, I find that the claimant's attorney will be entitled to a 25% attorney's fee on any indemnity benefits to which the claimant may become entitled as a result of the findings of fact and conclusions of law set forth herein, one-half of said attorney's fee to be paid by respondents and one-half to be paid by the claimant in accordance with Ark. Code Ann. § 11-9-715.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The claimant is entitled to the maximum compensation rates in effect in April of 2002 if this claim is found compensable.

2. The parties stipulate that an individual is not paid for the first five months of disability onset by the Social Security Administration.

3. The claimant has established by a preponderance of the evidence that he sustained a compensable low back injury identifiable by time and place of occurrence.

4. The respondent has controverted this claim in its entirety.

5. The claimant's attorney is entitled to a 25% attorney's fee on any indemnity benefits to which the claimant may become entitled as a result of the findings of fact and conclusions of law set forth herein, one-half of said fee to be paid by the claimant and one-half of said to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715.

**AWARD**

The respondent is liable to pay benefits consistent with the findings of fact and conclusions of law set forth herein.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge