

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202267

TRACY CANADY, EMPLOYEE	CLAIMANT
VIRCO MFG. CORPORATION, EMPLOYER	RESPONDENT
UNITED STATES FIRE INS. CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 1, 2005

Hearing before Administrative Law Judge March Churchwell on November 17, 2004, in Conway, Faulkner County, Arkansas.

Claimant represented by Honorable Eddie H. Walker, Jr., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by Honorable Gail Ponder Gaines, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 17, 2004 in Conway, Arkansas. The Prehearing Order was entered in this case on August 23, 2004. The 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 either in the Prehearing Order or during the course of the hearing and are hereby accepted.

1. The employee-employer-carrier relationship existed on the applicable date.

2. Based on the claimant's average weekly wage, the applicable compensation rates are \$342 per week for total

disability and \$257 per week for permanent partial disability.

3. This claim has been controverted in its entirety.

4. The claimant has received short-term disability benefits which under Ark. Code Ann. § 11-9-411 would entitle the respondents to a dollar-for-dollar offset and would obligate the respondents to set aside money to reimburse the third-party payor if the claim is found compensable.

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

Claimant:

1. Compensability.

2. Claimant's entitlement to temporary total disability and medical expenses.

2. Attorney's fee.

Respondent:

1. Compensability.

2. Notice.

The record consists of the November 17, 2004 hearing transcript and the exhibits contained therein.

DISCUSSION

In Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001), the Arkansas Court of Appeals summarized

the requirements for establishing a compensable gradual onset low back injury as follows:

When a claimant requests benefits for an injury characterized by gradual onset, Arkansas Code Annotated section 11-9-102(4) (A) (ii) (Supp. 1999) controls, defining "compensable injury" as follows:

(4) (A) (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

. . . .

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A claimant seeking benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. *Freeman, supra*. Furthermore, objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

In the alternative, to prove the occurrence of a compensable injury as a result of a specific incident identifiable by time or 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).

In the present case, Mr. Canady presently contends that in December of 2001, he sustained a compensable injury to his back while lifting boxes. Mr. Canady believes that his injury is due to a specific incident. In this regard, Mr. Canady testified that one day he was taking products off the line, twisted, had a pain, and reported it immediately to a nurse. However, if the Commission determines that Mr. Canady did not prove a specific incident, then Mr. Canady contends that his general job activities of repetitive lifting and bending while boxing and stacking approximately 100 to 200 pieces of furniture per shift on a production line constitutes the major cause for his need for treatment (back surgery) at issue in this case. However, based on the evidence discussed below, I find that Mr. Canady has failed to establish by a preponderance of the evidence the

occurrence of a low back injury arising out of his employment with Virco Manufacturing in either November or December of 2001, as he presently contends.

In this regard, notwithstanding Mr. Canady's hearing testimony that he reported a work-related back injury to a nurse immediately, I note that the nurse's logs from Virco contain no report of an injury by Mr. Canady during the period in question. Likewise, Dr. Kuhn's December 5, 2001 office note contains no history of a work-related injury, and specifically states instead that Mr. Canady "is not aware of any specific incident where it began hurting all of a sudden." There are no physician medical opinions in the record attributing Mr. Canady's back symptoms at issue to either a specific incident or to his general lifting and twisting activities at Virco Manufacturing. I likewise note that although Dr. Saer initially interpreted an MRI as indicating a free disk fragment at L4-5, during surgery he did not locate any free fragment but did observe extensive scar tissue.

I further note that Mr. Canady's current contentions notwithstanding, on a disability claim form completed January 7, 2002, Mr. Canady indicated that his disability at issue was not work related and that he first noticed his "illness" approximately two years prior with a back injury.

Under these circumstances, I find that Mr. Canady has failed to prove by a preponderance of the evidence that he sustained an injury at work at Virco Manufacturing in November or December of 2001.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed on the applicable date.

2. Based on the claimant's average weekly wage, the applicable compensation rates are \$342 per week for total disability and \$257 per week for permanent partial disability.

3. This claim has been controverted in its entirety.

4. The claimant has received short-term disability benefits which under Ark. Code Ann. § 11-9-411 would entitle the respondents to a dollar-for-dollar offset and would obligate the respondents to set aside money to reimburse the third-party payor if the claim is found compensable.

5. Mr. Canady has failed to prove by a preponderance of the evidence that his back problems at issue arose out of an injury sustained by either a specific incident or gradual onset caused by work activities at Virco Manufacturing in November or December of 2001.

6. Therefore, Mr. Canady has failed to prove by a preponderance of the evidence that he sustained a compensable low back injury.

ORDER

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

IT IS SO ORDERED.

HONORABLE MARK CHURCHWELL
Administrative Law Judge