

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312400

BENTON R. CANTRELL, EMPLOYEE	CLAIMANT
QUALITY GARAGE, EMPLOYER	RESPONDENT
FirstCOMP INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 13, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on December 10, 2004, in Osceola, Mississippi County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Andy L. Caldwell, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 10, 2004, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on October 27, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including August 9, 2002; that the claimant's average weekly wage

was \$300.00, entitling him to a compensation rate of \$200.00 per week for temporary total disability in the event the claim was found compensable; and that the respondents had controverted the claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that he sustained a compensable injury arising out of and during the course of his employment with Quality Garage as the result of a specific incident identifiable in time and place of occurrence on August 9, 2002; that respondents should be held responsible for outstanding medical expenses of approximately \$8,000.00, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability benefits for the period beginning September 17, 2003, and continuing through the present, maintaining that his healing period had not ended; while reserving entitlement to permanent disability, if applicable.

The respondents contended that the claimant did not sustain an injury arising out of and during the course of his employment, within the meaning of the Arkansas Workers' Compensation Laws. In the event an incident occurred, respondents maintained that the claimant's subsequent medical treatment was not causally related to any such incident or injury.

The claimant testified in his own behalf. Charles Cantrell, the owner of Quality Garage, who is also the claimant's uncle, testified on behalf of the

respondents. The record is composed solely of the transcript of the December 10, 2004, hearing containing a joint medical exhibit consisting of thirty-two (32) pages.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws on August 9, 2002.
4. The claimant has failed to prove, by a preponderance of the credible evidence, that there is a causal connection between the claimant's need for treatment and alleged disability and a work-related incident.

DISCUSSION

_____ This is an extremely troubling claim. The difficulty, in part, is because the claimant was unrepresented. Although the claimant consulted attorneys, none would take his case. The claimant stated that he was told by the attorneys that they would

not take his case unless he underwent a MRI which he maintained he could not afford. This assertion by the claimant may indeed be true because, as will be set out further below, the record does not contain medical evidence supported by objective findings which is necessary in order to establish compensability under our Act. The claimant is a nice and polite gentleman. He appeared to be a credible witness. His testimony concerning a work-related incident on August 9, 2002, is actually undisputed. However, the claimant has failed to prove that he sustained an injury as the result of the incident. He also failed to prove a causal connection between his alleged injury and current complaints. Conversely, Charles Cantrell, who is the claimant's uncle, as well as owner of the respondent business, lacked credibility. The record reflects that he failed to provide the claimant with prompt medical treatment after an injury was reported. Perhaps this was due, in part, because the claimant was also a relative which is not a valid reason for his shortcomings. However, the claimant has the burden of proving his entitlement to workers' compensation benefits which he has failed to do. The claimant's course of conduct, work history, together with the insufficiency of the medical evidence, causes this claim to fail.

The claimant was advised on multiple occasions of his right to legal representation at any proceeding before this Commission. He was further advised that an attorney could not charge him a fee for representing him in a workers' compensation claim without approval of the Commission. In addition, the claimant was advised that he was only entitled to one hearing and that he could not later

argue or allege that the reason he failed to meet his burden of proof was due to a lack of representation or that he did not know the law. The claimant elected to proceed, *pro se*. (Tr.4-7)

The relevant facts are undisputed. The claimant is forty-eight (48) years old. He has a high school education. The claimant's work history has consisted of working as a lineman for a utility company, as a process server, and as a mechanic or mechanic's assistant. The claimant testified that his injury was caused by lifting and carrying a transmission on August 9, 2002. He stated that he reported the injury to a co-worker, James Johnson, who had assisted him in carrying the transmission and that he subsequently reported the injury to his uncle, Charles Cantrell. Charles Cantrell acknowledged that the claimant reported a work-related injury on August 9, 2002. The record reflects that the claimant did not immediately seek medical treatment and that the employer failed and/or refused to provide prompt medical treatment. The record further reflects that the claimant continued working for the employer herein through on or about June 27, 2003, performing his regular duties at which time he voluntarily terminated his employment. After the claimant quit working for the respondent, he went to work at another garage, specifically, for Larry Roser. The claimant worked for Mr. Roser until September 17, 2003, at which time he was laid off due to a lack of work. The claimant has not returned to gainful employment since September 17, 2003.

The claimant first sought medical treatment for his low back on November 11,

2003, when he was examined and treated by Dr. Collum at the Collum Clinic in Marion, Arkansas. The record reflects that the claimant subsequently sought medical treatment for an unrelated heart condition and has since applied for Social Security Disability which was still pending at the time of the within hearing.

COMPENSABILITY

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

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

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc. vs. Van Wagner*, 337 Ark. 443, 990 S.W.2d

522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other explanation for the injury. *Hall vs. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett vs. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962). See also, *Wentz vs. Servicemaster*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

Again, the fact that a work-related incident occurred on August 9, 2002, is undisputed. However, this claim fails because the claimant cannot establish that he sustained a back injury as the result of the incident. The claimant did not seek medical treatment until more than fifteen (15) months following the incident. The claimant first sought medical treatment on November 11, 2003, when he was examined and treated by Dr. Collum. The history given to Dr. Collum reflects severe back pain following an incident at home in October, 2003, when the claimant bent over and fell in his yard and could not get up. Admittedly, the claimant also reported that he worked in a garage and that his work included lifting transmissions for a number of years and that he eventually quit that type of work due to back pain. The

history does not relate a specific incident. Further, a review of the various reports failed to reflect any medical evidence supported by objective findings necessary to establish compensability. (Jt. Ex. A, pp.1-25)

The claimant's course of conduct and work history are simply inconsistent with a back injury. The claimant acknowledged that he performed his regular work duties following the August 9, 2002, incident until voluntarily terminating his employment in late June, 2003. Thereafter, the claimant went to work for another employer where he worked until September 17, 2003, at which time he was laid off for reasons unrelated to his alleged back injury. The claimant's contention that he was temporarily totally disabled following his lay-off on September 17, 2003, and continuing through the present is a mere conclusion which is not supported by any credible evidence. Further, the medical history, aforementioned, reflects an independent intervening accident on or about October, 2003, which prompted the claimant to obtain medical treatment.

It would require sheer speculation and conjecture to attribute the claimant's need for treatment and alleged disability after November 11, 2003, to the incident on August 9, 2002. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

It is well-settled that claimant has the burden of proving the job-relatedness

of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has simply failed to prove that he is entitled to any compensation benefits. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge