

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F407035

MARIO CARTAGENA, Employee	CLAIMANT
CRYSTAL LAKE FOODS, Employer	RESPONDENT
COMPCARE ADMINISTRATORS, Carrier	RESPONDENT

OPINION FILED JANUARY 31, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by ANDREW HATFIELD, Attorney, Rogers, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On January 12, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 22, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on June 14, 2004.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$200.00 for total disability benefits and \$154.00 for permanent partial disability benefits.
4. Respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's back on June 14, 2004.

2. Medical.
3. Temporary total disability benefits from June 15, 2004 through a date yet to be determined.
4. Attorney fee.
5. Notice.

The claimant's contentions as set forth in his pre-hearing questionnaire are as follows: "Claimant is a 39-year-old employee of Crystal Lake Foods who sustained a back injury on or about June 14, 2004 while performing on-the-job duties. The claimant was lifting empty boxes of frozen chicken onto a conveyor belt when he injured his lower back. Claimant was seen by emergency physicians at St. Mary's Hospital in Rogers for these injuries on or about June 15, 2004. Claimant was told to stay off work until June 21, 2004. Claimant was still in severe pain as of June 21, 2004, at which time he returned to St. Mary's Hospital. After undergoing an MRI, Mr. Cartagena was admitted for back surgery which was performed by Dr. Raben. Respondents have controverted the entire claim.

The respondent contends the claimant did not sustain an injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act. Respondent also contends that it did not receive notice of the injury until July 16, 2004; therefore, claimant is not entitled to benefits prior to that date.

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 A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference

conducted on November 22, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by respondent on June 14, 2004.

### FACTUAL BACKGROUND

The claimant is a 39-year-old man who completed the seventh grade in El Salvador. Claimant went to work for the respondent on May 27, 2004. Claimant testified that on June 14, 2004 he was bending over to pick up a box of chicken and "felt something make a noise, crack, and then on my leg." Claimant testified that after this incident he had continued pain and that following his lunch break he reported the incident to a lady supervisor whose name he could not remember. Claimant testified that the next day when he reported for work he found Enrique Gonzalez, his immediate supervisor, and told him about the incident, that his back was hurting, and that he needed to go to the doctor. Claimant testified that he sought treatment from St. Mary's in Rogers where he was given an injection, medication, and was taken off work for approximately one week. Claimant testified that he was still in pain on June 21 and again sought medical treatment from St. Mary's. Medical reports from St. Mary's dated June 21 indicate that claimant was diagnosed as suffering from a large herniated disc at the L4-5 level. As a result, claimant underwent a surgical procedure which was performed by Dr. Raben on June 22, 2004.

Claimant has filed this claim contending that he suffered a compensable injury to his low back while working for respondent on June 14, 2004. He seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

The claimant contends that he suffered a compensable injury to his low back while lifting a box of chicken while working for respondent on June 14, 2004. Therefore, claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back while employed by respondent.

First, I note that claimant testified that on the date of his injury he did not report an injury to Enrique Gonzalez, his immediate supervisor, but instead reported the injury to a lady supervisor after his lunch break. Unfortunately, claimant does not know the name of the lady supervisor to whom he allegedly reported his injury. Claimant also contends that the next day he reported the injury to Gonzalez and was permitted to seek medical treatment. However, Gonzalez testified that the claimant never reported a work-related

injury to him and testified that claimant never complained about any part of his body hurting.

Claimant's testimony regarding the reporting of the incident to Lorena White, a personnel manager for respondent, is conflicting. At the hearing claimant testified that he did not discuss the accident with White on the day it occurred. However, during claimant's deposition, claimant indicated that he had informed White about the accident on the day it occurred. White testified at the hearing that claimant left a message for her on June 15 indicating that he was sick. However, White testified that she did not learn of a potential work-related injury until claimant brought papers to her from the hospital several days later. White also testified that she had a conversation with claimant at one point wherein he indicated that he might have injured his back previously while working for FM Corporation.

I also note that claimant testified that he sought medical treatment from St. Mary's Hospital in Rogers on June 15, the day after his injury. However, no medical reports from June 15 were offered into evidence. Therefore, it is impossible to know whether claimant sought medical treatment on that date and if so whether he gave a history of injury at work.

In finding that claimant has failed to meet his burden of proof, I do acknowledge that the medical reports from June 21 indicate that claimant gave a history of having injured himself while lifting a box while working for the respondent. However, this was one week after the occurrence without any credible evidence other than claimant's own testimony indicating that he reported the injury to the respondent.

In summary, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back while working for respondent on June 14, 2004. By claimant's own testimony, he did not report a work-related injury to his immediate supervisor, Enrique Gonzalez, on the date his injury allegedly occurred. According to Gonzalez's testimony, claimant never reported a work-related injury and never indicated that he was having pain in his back. While claimant contends that he reported

the incident to another supervisor, claimant could not identify the name of that supervisor. In addition, claimant's testimony regarding the reporting of an injury to Lorena White is inconsistent. Finally, although claimant contends that he sought medical treatment from St. Mary's on June 15, 2004, no medical records from that date were offered into evidence. Given all of this evidence, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back while working for respondent on June 14, 2004.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while working for respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE