

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300057

AARON COLLINS,
EMPLOYEE

CLAIMANT

TRUMAN BAKER DODGE, INC.,
EMPLOYER

RESPONDENT

CENTRAL ARK. AUTO DEALERS SIF,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 24, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

The respondent was represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 14, 2005 in Little Rock, Arkansas. A prehearing order was entered in this case on April 22, 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 either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The employee-employer relationship existing on October 25, 2002.
2. That the claimant earned an average weekly wage of \$352.00 which would yield a temporary total disability rate of \$235, if the claim is found to be compensable.

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

Claimant:

1. Compensability with attendant medical and TTD from 10/25/2002 to 3/1/2003.
2. Controversion and attorneys' fees.

Respondent:

1. Compensability.

The record consists of the June 14, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

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).

Mr. Collins was employed by Truman Baker Dodge, Inc. in October of 2002 as a Mazda automobile technician. Mr. Collins testified that on October 25, 2002, as he was lifting a heavy trash can approximately six feet high near the end of his work day, he felt a pop in his back with a crunching noise, felt tremendous pain, and collapsed. According to Mr. Collins, a co-worker came and helped him get the trash can back out of the dumpster. Mr. Collins testified that he went in to the main part of the Dodge shop, saw his immediate supervisor, Jodie Parish, sitting there and told her that he had just hurt his back. According to Mr. Collins, Ms. Parish wanted him to fill out a workers' compensation form, but he did not feel capable of doing so and went home.

Mr. Collins returned to work the next Monday and continued to work at Truman Baker until December 9, 2002. Mr. Collins testified that after that date, he would call in each Monday to advise his employer that he was off work. Mr. Collins testified that he again talked to Ms. Parish more than once before he stopped working in December, and she again wanted him to fill out a form. Mr. Collins testified that he would not fill out a form because he didn't want to have back surgery and he was afraid that is what would happen. Mr. Collins testified that he talked to Joann Imholf, the service director at Truman Baker during November and December of 2002, on the Monday after October 25, 2002, and at that time, told her how he hurt his back, that his back was hurting very badly, and that he might have to go home. [T. 18].

The medical records indicate that Mr. Collins began to treat with Dr. Timothy Kamerman, a chiropractor, on November 12, 2002, and ultimately underwent an L4-5 disc surgery with decompression performed by Dr. Patrick Chan on January 7, 2003. Contrary to Mr. Collins' recollection, however, Ms. Imholf, who is no longer employed at Truman Baker, testified that when the two discussed his back in November of 2002, he only referred to an old injury 20 years earlier. In fact,

Ms. Imholf testified that she first learned of an alleged work injury in January of 2003. Contrary to Mr. Collins' testimony that he was terminated in February of 2003, Ms. Imholf testified that Mr. Collins never called in after he stopped working, and she terminated him after approximately one week of no show-no call in December of 2002. In fact, Ms. Imholf testified that she attempted to contact Mr. Collins but was unable to do so. [T. 66].

Andrea Stevens, an administrative assistant at Truman Baker Dodge, testified that in November of 2002 Mr. Collins told her and a co-worker that he had had back problems for years and that he was going to a chiropractor. Ms. Stevens testified that no one in her 12 years experience at Truman Baker had ever been fired for filing a workers' compensation injury.

Finally, I note that the contemporaneous medical reports from November of 2002 contain no indication of any alleged work-related injury. Instead, one document apparently in a doctor's handwriting, and one document apparently in Mr. Collins' handwriting, both dated November 12, 2002 indicate that Mr. Collins' back condition was due to a personal injury, and not a work injury. [Claimant's

exhibit no. 1 page 5 and respondent's exhibit no. 1 page 13].

Because I accord greater weight to the testimony of Ms. Stevens and Ms. Imhoff and to the documents filled out on November 12, 2002 than the weight I accord to Mr. Collins' testimony, I find that the claimant has failed to establish by a preponderance of the evidence that he sustained a work-related back injury on October 25, 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer relationship existed on October 25, 2002.

2. That the claimant earned an average weekly wage of \$352.00 which would yield a temporary total disability rate of \$235, if the claim is found to be compensable.

3. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a work-related back injury on October 25, 2002.

ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge