

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F404122

RUDOLPH CONTRERAS, Employee	CLAIMANT
MASONRY STRUCTURES, INC., Employer	RESPONDENT
AIG CLAIM SERVICES, INC., Carrier	RESPONDENT

OPINION FILED NOVEMBER 17, 2005

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 27, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 2, 2005, 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.

There were no stipulations entered into between the parties.

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

1. Employee-employer relationship.
2. Compensability.
3. Temporary total disability benefits.
4. Medical.
5. Attorney fee.

At the time of the hearing the parties also agreed to litigate as an issue the claimant's correct compensation rate.

The claimant's contentions as set forth in his pre-hearing questionnaire are as follows: "Claimant was injured on April 20, 2004. He injured his hand and wrist when he

fell from a height of six feet while carrying cinder blocks.”

The respondents’ contentions as set forth in their pre-hearing questionnaire are as follows: “Respondents contend that the claimant obtained employment from respondent employer using the fictitious name of Rudolph Contreras, a name that he apparently purchased. Respondents also contend that claimant’s alleged injury may be associated with a pre-existing problem. Respondents contend that while this claim was initially accepted as compensable, when it was learned that the claimant was operating under a fraudulent name, benefits were discontinued on November 8, 2004. Respondents further contend that despite the claim being denied on that basis, additional medical treatment is not reasonable and necessary and claimant is not entitled to additional temporary total disability benefits.”

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 witness and to observe his 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 claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury.

FACTUAL BACKGROUND

The claimant is a 55-year-old man who admitted he is in this country illegally. Although claimant has filed his claim under the name of Rudolph Contreras, he testified at the hearing that his actual name is Octavio Quintero Guetterez. The claimant testified that he had worked for the respondent for approximately three months as a laborer.

Claimant testified that on April 20, 2004 he was carrying blocks on a scaffold when

one of the scaffold boards came loose causing him to fall several feet to the floor. According to claimant's testimony he landed on his right arm and injured it. Claimant testified that he did not receive any medical attention that day, but that he sought medical treatment from Dr. Berestnev on April 21, 2004. Dr. Berestnev's report of that date indicates that claimant underwent x-rays which revealed a fracture in his right wrist. Claimant was provided a splint, sling, and medication. Claimant was also released to return to work with the limitation of no use of his right hand. The medical records indicate that claimant continued to receive medical treatment from Dr. Berestnev for a period of time and when claimant's condition did not improve, Dr. Berestnev referred claimant to Dr. Benafield, a hand specialist. Dr. Benafield treated claimant conservatively and recommended that claimant undergo a nerve condition study which was denied by the respondent. Dr. Benafield also released claimant to continue working with no use of his right hand.

The respondent originally accepted claimant's injury as compensable and paid some compensation benefits. However, respondent subsequently denied compensability and claimant has filed this claim contending that he suffered a compensable injury while employed by the respondent and requesting temporary total disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

The claimant contends that he suffered a compensable injury to his right arm and wrist as a result of a fall which occurred while he was employed by the respondent on April 20, 2004. 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 even if one were to assume that claimant was an employee of the respondent on April 20, 2004 that he has failed to prove by a preponderance of the credible evidence that he suffered a compensable injury.

In order to prevail, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury while working for the respondent. While the respondent did initially accept claimant's injury as compensable and paid some compensation benefits, the fact that respondent initially paid those benefits is not evidence that claimant actually suffered a compensable injury.

In short, the issue of whether claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury while working for the respondent is dependent upon the claimant's credibility as a witness. Other than claimant's testimony, there is no other independent evidence upon which to base a finding that claimant suffered an injury while working for the respondent. Although the medical reports contain a history of injury consistent with claimant's testimony, that history is dependent upon statements made to the medical providers.

After reviewing the evidence, I do not find claimant's testimony to be credible. As

previously noted, claimant admitted that he is in the United States illegally. Further, and more importantly, claimant has been untruthful in obtaining employment and in filing this claim with the Commission. Claimant testified at the hearing that his name is not Rudolph Contreras but Octavio Quintero Guetterez. According to claimant's testimony he "rented" the name Rudolph Contreras for \$50.00 a week from another individual. In addition to the name Rudolph Contreras, claimant was provided with a social security number and a photo identification card. Claimant further testified that it was his understanding that Rudolph Contreras was actually a deceased individual. Claimant also admitted that he had previously "rented" one other name.

Claimant used this false name, social security number, and photo identification card to obtain employment with the respondent. Not only was claimant untruthful with the respondent, but claimant has also been untruthful with this Commission as well. Claimant filed with the Commission Form AR-C indicating that his name was Rudolph Contreras and providing a false social security number.

Given claimant's admitted willingness to obtain false identification for the purpose of obtaining employment and his willingness to falsify documents filed with this Commission, I find that claimant's testimony is not credible. In making this finding regarding claimant's credibility I would emphasize that my finding is not based primarily on the fact that claimant is in this country illegally. Instead, my finding is based upon claimant's willingness to obtain false identification documents and his falsifying of documents filed with this Commission.

When one discounts claimant's testimony, I find insufficient evidence proving that claimant suffered an injury while employed by the respondent. As previously noted, the fact that respondent initially accepted the injury as compensable is not evidence that a compensable injury actually occurred and the history contained in the medical records is based upon claimant's statements to those medical providers.

In summary, I find that claimant's testimony is not credible; therefore, I find that he has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury as an employee of the respondent.

ORDER

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

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE