

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312729

MIKE A. CROWELL, EMPLOYEE	CLAIMANT
JACK YATES DRYWALL, EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 22, 2005

Hearing held before the HONORABLE DALE DOUTHIT, Administrative Law Judge, on September 29, 2005, at Texarkana, Miller County, Arkansas.

Claimant represented by HON. NELSON V. SHAW, Attorney at Law, Texarkana, Texas.

Respondent represented by HON. MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on September 29, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

A prehearing conference was conducted on July 20, 2005 and a prehearing order was filed on July 21, 2005. At the hearing, the parties announced that the stipulations, issues and their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced into evidence as Commission Exhibit "1", and made a part of the record without objection.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employer/employee/carrier relationship existed on November 6, 2003; that the claimant was earning sufficient wages to entitle him to a TTD rate of \$347.00

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per week, and a PPD rate of \$260.00 per week, and that the respondents have controverted this claim in its entirety.

By agreement of the parties, the issues to be litigated were whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Laws, and if overcome whether the claimant is entitled to temporary total disability benefits, medical expenses and attorney fees.

The claimant contended he suffered an injury to his neck on November 6, 2003, and is entitled to associated medical and indemnity benefits as well as attorney's fees.

Respondents contended that the claimant was not injured on the job as he alleged. Respondents contend the claimant's witnesses do not corroborate the incident and that the claimant had a pre-existing neck condition. In the alternative, respondents contended that if the claim is found to be compensable, the claimant cannot prove entitlement to any TTD benefits; and that if the claim is found to be compensable the claimant is not entitled to any benefits during the time he was incarcerated or in the State Hospital. Respondents affirmatively raise the intoxication defense and allege the claimant's conditions were pre-existing.

Claimant, Mike Crowell, was the only lay witness called to testify by the claimant. The respondents called James Lee and Deena Crowell to testify as lay witnesses. The record is composed of the transcript of the September 29, 2005 hearing containing Claimant's Exhibit "1", which consists of approximately fourteen (14) pages of medical records; Claimant's Exhibit "2", which consists of approximately three (3) pages of medical records; and Respondents' Exhibit "1", which consists of approximately eleven (11) pages of medical records.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations of the parties are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the credible evidence that he sustained compensable injuries arising out of and during the course of his employment with Jack Yates Drywall as the result of a specific incident identifiable in time and place of occurrence on either November 6, 2003 or November 13, 2003.

DISCUSSION

The evidence presented in this matter contains too many inconsistencies and contradictions to justify a finding of compensability. I did not find the claimant to be a credible witness with regard to the alleged compensable injury.

The claimant, age 42, worked for the respondent-employer as a drywall hanger in November 2003. The first inconsistency from the claimant concerns the date of this alleged injury. At the hearing, the claimant testified that the injury to his neck happened on November 13, 2003.

Q. You have filed a claim with the Arkansas Workers' Compensation Commission concerning an injury that you

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say that you had on November 13, 2003. Is that correct?

A. Yes, sir. (T. pg. 10, lines 11-15)

However, as recited in the contentions herein, the claimant initially alleged the injury occurred on November 6, 2003 at the prehearing conference. The claimant's prehearing contentions were again confirmed by the claimant at the full hearing.

In any event, the claimant testified as follows regarding the alleged incident causing cervical injuries on November 13, 2003:

A. We were in a room, it was like classroom areas, those kinds of rooms, about this size. I was taking 4 by 10 sheets of sheetrock and standing them up - they were laying flat in a stack and you have to take them off one at a time. They are like 4 feet wide by 10 feet long. So you stick them up against the wall and you fasten them to the wall. I was - James Lee had run out of screws and so he had went to get more screws and so I was standing the sheets up vertically, up against the wall in preparation for fastening them to the wall. I was stacking them up, lining them out up against this long wall. I stood one of the sheets up and was carrying it to the wall and it snapped above my head and the top part fell. It's connected just like - it's a chalk like substance, real hard in the middle,

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but it's got paper on the outside and so when it fell it kind of stayed together and the top part just fell over like this. Right above my head was where it snapped and that top piece just fell over and it sandwiched my head between the pieces. I had my head up against it and it just kind of snapped my neck. (T. pgs 11 & 12, lines 19-25 & 1-14)

To further confuse the date of the alleged injury, page 1 of Claimant's Exhibit "1" is a medical document that obviously shows the date of injury has been altered a couple of times. The medical record seem to show that someone wrote November 13th over the original date of November 6th and then went and changed the date of injury a third time back to November 6th. Even more strange is why anyone would change the date of injury to November 13, 2003 when the treatment date clearly shows November 10, 2003.

The claimant also testified inconsistently about any neck problems prior to November of 2003.

Q. Prior to November of 2003, are you testifying that you had never had any neck problems?

A. I never had a neck problem. (T. pgs. 24 & 25, lns 24-25 & 1)

The respondents' medical exhibits and the claimant's subsequent testimony clearly show that his statement, "I never had a neck problem" was highly contradictory. The

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claimant even later admitted so:

Q. Okay. Now my question again is, you did have neck problems and you went to the emergency periodically for those prior to November of 2003. Is that not correct?

A. That may be correct. (T. pgs. 25 & 26, lines 25 & 1-4)

The most weighing contradiction was the claimant's testimony regarding Mr. James Lee. The claimant testified that on the date of the accident he was working with Mr. Lee. The claimant testified that when James Lee returned after the drywall allegedly fell on him, that he immediately told James Lee what had happened. The claimant testified that he attempted to keep working but couldn't and that due to his injury James Lee took him home.

Mr. James Lee appeared at the full hearing and credibly testified that on November 13, 2003, Mr. Crowell never mentioned to him that he had been injured. Mr. Lee testified that on the day of the alleged injury, he never had to take the claimant home early due to an alleged injury.

Q. Did you take him home on Thursday?

A. Yes, Thursday afternoon I took him home, but it was at 3:30 though, I mean, I never took him home early on Thursday. It was after we got off when I took him to his house.

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Q. Okay. I guess I was confused. I thought that you testified that you didn't pick him up or take him home on Thursday.

A. Yes, I did pick him up and take him home.

Q. But he never said anything to you about this incident on Thursday?

A. No, never did. (T. pg. 55, lines 12-22)

Mr. Lee testified that the day after the alleged injury was the first time the claimant mentioned anything about an injury. Mr. Lee testified that he inspected the work area where the alleged injury occurred and never saw any broken sheet rock as alleged by the claimant.

Mr. Lee testified credibly that he asked the claimant if he had reported the alleged incident to Jack Yates, and that the claimant replied "no." (T. pg. 50, lines 205) The claimant testified that on the day of the injury, he reported it to Roy Wilson. (T. pg. 15, lines 2-14) Again, nothing about the incident or the reporting of the incident, could be corroborated. The only evidence that shows the claimant's injury arose out of his employment with the respondent-employer is his own highly suspect testimony.

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) must be established.

1) Proof by a preponderance of the evidence of an injury arising out

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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 and 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 compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. C. Mickel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W. 2d 876 (1997)

It is well settled that the 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 v. Faulkner Radio Services, 220 Ark. 368, 247 S.W. 2d (1952)

This claim turns primarily on the claimant's credibility. A claimant's testimony is never considered uncontroverted. As shown above, the claimant's testimony is replete with inconsistencies and contradictions. Based on the reasons recited herein, I find the claimant has failed to prove by a preponderance of the evidence that his cervical injuries arose out of and in the course of his employment with the respondent-employer. Further,

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the claimant has failed to prove by a preponderance of the evidence that his alleged injuries were caused by a specific incident, identifiable by time and place of occurrence. The claimant has the burden of proof, and he has failed to meet his burden concerning compensability.

ORDER

After careful consideration of all the evidence in this matter, and viewing such impartially, and without giving the benefit of the doubt to either party, I find the claimant has failed to prove a compensable injury under the Arkansas Workers' Compensation Laws. Therefore, respectfully, the above captioned claim is hereby denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge