

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E518432

CHARLES E. DAVIS, EMPLOYEE

CLAIMANT

RANK VIDEO SERVICES OF AMERICA, EMPLOYER

RESPONDENT

LIBERTY MUTUAL INS. CO., CARRIER

RESPONDENT

OPINION FILED JUNE 20, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 15, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine claimant entitlement to workers' compensation benefits.

On February 22, 2005, a pre-hearing conference was conducted in this claim, which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Charles Davis, the claimant, coupled with medical reports, prior rulings of the Commission, and other documents comprise the record in this claim.

DISCUSSION

_____ Charles Davis, the claimant, with a date of birth of March 5, 1963, commenced his

employment with respondent on October 31, 1995, as a material handler. On December 8, 1995, while stacking cartons of video tapes onto a pallet claimant suffered an injury to his low back. The testimony in the record reflects that the injury was reported to appropriate supervisory personnel of respondent and accepted as compensable. Claimant was paid temporary total disability benefits for a period of time and the cost of his medical treatment was paid by respondent. The testimony of the claimant reflects that from the time he suffered his December 8, 1995, injury he continued to experience some pain in his low back, and that over the course of time the symptoms progressed to pain and numbness in the buttock area as well as shooting pain radiating down his lower extremities. The testimony of the claimant reflects that medical treatment provided to him prior to 2002 did not result in long term relief of his symptoms. Claimant denies that he suffered injuries or complaints relative his back prior to the December 8, 1995, injury suffered in the employment of respondent.

Claimant's testimony reflects that he has continued to seek and obtain medical treatment relative to his low back complaints since suffering the injury in the employment of respondent on December 8, 1995. Claimant was ultimately referred to Dr. Thomas Hart, a Little Rock pain management specialist, who performed additional diagnostic studies. Claimant asserts that as a result of the diagnostic studies performed by Dr. Hart the injury to his disc was identified by objective medical findings. Further, claimant testified that he was referred by Dr. Hart to Dr. Reza Shahim, a Little Rock neurosurgeon. Claimant asserts that while consideration was had for a lumbar fusion in addressing his central disc herniation at L4-5, he ultimately underwent a lumber discectomy under the care of Dr. Shahim.

Claimant acknowledged that a hearing was conducted in his claim before the Arkansas

Workers' Compensation Commission in 1996, as a result of respondents refusal to pay further workers' compensation benefits, both medical and indemnity. Further, claimant acknowledged that as a result of the adverse ruling by the administrative law judge an appeal was taken to the Full Workers' Compensation Commission, which affirmed the ruling of the administrative law judge denying the compensability of the claim. Additionally, claimant acknowledged that he acquired additional medical records following the hearing and ruling by the administrative law judge, and while the matter was pending before the Full Commission. Claimant concedes that his effort to include the afore medical reports in the record for consideration by the Full Commission was denied.

While claimant acknowledged that he had a good results from the procedure performed by Dr. Shahim, he desires to return to him for further evaluation, however he has been unable to do so because of the outstanding balance incurred from the prior medical treatment. The testimony reflects that medicaid paid a portion of the bills growing out of the surgery by Dr. Shahim. The claimant has been approved for social security disability and is receiving said benefits. Claimant maintains that his current need for medical treatment, as well as the surgery performed by Dr. Shahim, is the product of the December 8, 1995, injury suffered in his employment with respondent. Further, claimant maintains that he now has objective medical evidence of the injury relative to the December 8, 1995, accident suffered in the employment of respondent.

Respondents take the position that the claim is barred by operation of doctrine of res judicata and law of the case. Alternatively, respondents assert that if not barred by the doctrine of res judicata the present claim is barred pursuant to the statute of limitation.

After a through consideration of all of the evidence in this record, I make following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 8, 1995, the relationship of employee-employer-carrier existed among the parties.
3. On December 8, 1995, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$164.00/\$154.00 for temporary total/permanent partial disability.
4. The present claim of the claimant is barred pursuant to the doctrine of res judicata.

CONCLUSION

Claimant asserts that he is entitled to additional workers' compensation benefits, in the form of medical benefits, relative to a December 8, 1995, injury suffered in the employment of respondent. There is not a dispute that claimant reported an injury to his low back to respondent on December 8, 1995, growing out of his employment while lifting a carton of tapes. The evidence further reflects that respondents paid both medical and indemnity benefits for a period of time. Respondents ultimately controverted the compensability of the claim, and a hearing was held before an administrative law judge of the Arkansas Workers' Compensation Commission. Following an adverse ruling, claimant appealed the decision of the administrative law judge to the Full Workers' Compensation Commission, which affirmed the ruling of the administrative law judge. The prior rulings found that claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury based upon objective findings.

Claimant asserts that he now has objective medical findings relative to his injury and is

entitled to additional workers' compensation benefits relative to same. Respondents take the position that the claim for additional medical benefits is barred by operation of law of the case. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a results of an injury having been sustained subsequent to the effective date of the afore provision.

At the time of the initial June 20, 1996, hearing before the administrative law judge claimant was charged with the responsibility of establishing compensability of his claim pursuant to the provisions of Act 796 of 1993. In the September 24, 1996 ruling, generated as a results of the hearing, the administrative law judge found that the claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained a compensable injury, in part due to the lack of objective findings establishing the injury as required by Ark Code Ann §11-9-102.

The adverse ruling of the administrative law judge was appealed by the claimant to the Full Arkansas Workers' Compensation Commission. While the appeal was pending before the Full Commission claimant requested permission to submit additional medical evidence. In an opinion filed June 27, 1997, the Commission denied the claimant's request. On September 10, 1997, the Full Commission affirmed and adopted the September 24, 1996, ruling of the administrative law judge regarding the compensability of the claim.

The Arkansas appellate courts have held that the doctrine of res judicata applies to a final judgement of the Arkansas Workers' Compensation Commission, Beaver v. John Q. Hammons Hotel, 355 Ark. 359, 138 S. W. 3d 664 (2003); Mohawk Tire & Rubber Co. v. Brider, 259 Ark. 728, 536 S.W. 2d 126, (1976); Perry v. Leisure Lodges, Inc., 19 Ark App. 143, 718 S.W. 2d 114 (1986). In Andrews v. Gross and James Tire Company, 210, 216 S. W.2d 386 (1948), the

Arkansas Supreme Court noted:

While the Compensation Commission is not a court, it exercises quasi-judicial functions in its investigation and determinations and its awards are the nature of judgements. The doctrine of res judicata which forbids the reopening of matter once judicially determine by competent authority applies as well to decisions of a commission or board administering workers' compensation Acts as to judgements of courts having general judicial powers. 50 C.J. S., Judgements, §690. The rule generally followed its stated in 71 C.J., p.1195, as follows:

The award and compensation proceedings has the force and effect of the verdict of a jury being in the nature of a judgement, it finally and conclusively determines the rights of parties under the workers' compensation acts unless set aside in a proper manner and is as bindings as a judgement for a court and entitled to the same faith and credit as such a judgement. See, also Anno. 122 A.L. R. 550.

In the instant claim the evidence preponderates that the issue claimant now asserts before the Commission has been previously addressed in the prior rulings of the Commission.

Accordingly, the claimant claim for additional workers' compensation benefits is barred pursuant to the doctrine of ras judicata. This claim is respectively denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge