

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F405653**

**BILLY J. ELLISON**

**CLAIMANT**

**LAKESIDE MACHINE SHOP**

**RESPONDENT EMPLOYER**

**COREGIS INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 12, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared pro se.

Respondents represented by the HONORABLE ANDY CALDWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on November 19, 2004. A prehearing conference was held on October 19, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and before the hearing, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on May 24, 2004.

The claimant contends that he sustained a specific incident injury arising out of his employment and is entitled to medical benefits.

Respondents contend the claimant did not sustain a compensable injury supported by objective findings. The claim has been controverted in its entirety.

## **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.

From a review of the record as a whole, to include medical reports, documents, video 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 Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on May 24, 2004.
2. The claimant has failed to prove by a preponderance of the evidence that he has sustained a compensable injury supported by objective findings.

### **DISCUSSION**

The claimant began his employment as a machinist for the respondent about November 1, 2003. According to the claimant, he sustained an injury on Monday, May 24, 2004, and went to the doctor on May 27, 2004. According to the claimant, on Monday, May 24, 2004, the machine he was using was tightened down so tight that he strained his arm and pulled a muscle trying to crank the carriage. The claimant testified that he had to use both hands to turn the wheel on the lathe and cranking it back and pushing down is what hurt his right shoulder. The claimant felt a stinging burning sensation in his shoulder. According to the claimant, he reported the incident to his

employer on Tuesday morning, as he advised him he had to go to the doctor. The claimant further testified that he could not get a doctor's appointment on Tuesday so he continued to work. The claimant saw Dr. Randy Hill on Thursday, May 27, 2004, and had two x-rays and received some pain medication. According to the claimant, his shoulder is better now; however, he still does not do some things he did before, such as handgun shooting. The claimant continued working until about October 2004, when he was terminated.

John Glassford, owner of the business, testified that the first knowledge he had of the claimant contending he had a work injury was when Dr. Hill's nurse called and advised him that an employee was there contending he had a work injury.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury supported by objective findings. The record consists of one medical report from Dr. Randy Hill on May 27, 2004, about three days after the alleged incident. Dr. Hill took two x-rays of the shoulder and diagnosed a shoulder sprain and prescribed some pain medication.

In order for the claimant to meet all the elements of a compensable injury, he must prove there were "objective findings." Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16); *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). In order to prove a compensable injury, the claimant must prove, among other things, a causal relationship between his employment and the injury. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 72 S.W.3d 889 (2002). In the present case, there are no specific objective findings noted by the doctor when the claimant saw him on the one occasion. The doctor examined the claimant and ordered x-rays revealing no fractures or dislocations. There were no muscle spasms noted nor swelling or other observable finding. Without objective findings, the claim is not compensable.

#### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury supported by objective findings. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**