

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400125

JOHN GARDNER,  
EMPLOYEE

CLAIMANT

ARKANSAS OUTDOOR WORLD, INC.,  
EMPLOYER

RESPONDENT

SENTRY SELECT INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED OCTOBER 19, 2005**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Conway, Faulkner County, Arkansas.

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

The respondents were represented by HONORABLE WENDY S. WOOD, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on July 20, 2005 in Conway, Arkansas. A prehearing order was entered in this case on March 14, 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 conference or during the course of the hearing and are hereby accepted:

1. The employee-employer-carrier relationship on the date of alleged injury, December 24, 2003, and at all pertinent times.
2. The claimant earned wages sufficient to entitle him to compensation at the rate of \$440 per week for total disability and \$330 per week for permanent partial disability if this claim is found compensable.

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

1. Aggravation/new injury with respondents.
2. Payment of TTD from approximately 12/24/2003 to 6/7/2004.
3. Payment of PPD equal to 5% to the whole person, based on Dr. Sprinkle's rating.

The record consists of the July 20, 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).

In the present case, the testimony of Greg James, Cody Gardner, Johnny Gardner, and Rory Thompson persuades me that Johnny Gardner experienced a severe onset of back pain on December 24, 2003 while handling a box while standing on a ladder at work. Handling the box was a specific incident, and the box was being moved during the course and scope of Mr. Gardner's employment. Mr. Gardner immediately reported an injury to his supervisor Rory Thompson, and the medical records on and after December 24, 2003 persuade me that the symptoms which Mr. Gardner experienced after December 24, 2003 required medical treatment and were consistent with the L5-S1 disk abnormality and left S1 nerve root compression identified by MRI testing performed on January 19, 2004.

However, I also note that MRI testing performed on October 29, 2001, during the course of a similar bout of symptoms, also revealed an L5-S1 disk abnormality and left S1 nerve root compression. In light of the similar 2001 MRI indicating L5-S1 disk abnormality causing left S1 nerve root compression, I am constrained to find that the preponderance of the evidence establishes that 2004 MRI results indicate a pre-existing abnormality and therefore do not contain objective medical findings to establish the existence of a new injury sustained on December 24, 2003.

I also find that the record fails to establish an aggravation of the pre-existing L5-S1 disk abnormality and S1 nerve root compression with medical evidence supported by objective findings. In reaching this conclusion, I recognize that a medical provider's observation of muscle spasms can be an objective medical finding of back injury, and I note that the April 20, 2004 physical therapy evaluation in the record has the term "spasm" circled on the form with the term "L>R" (presumably "left greater right") and indecipherable notations under section number 11 of the form's "Problem List". However, the report gives me no discernable guidance as to whether the reference to "spasm" on the Problem List refers to a condition the physical

therapist detected on an examination or instead refers to a description provided by Mr. Gardner. Clearly, a patient's own description of muscle spasms is a finding which would come within the patient's control, and would therefore not be objective within the meaning of Ark. Code Ann. § 11-9-102.

Consequently, for the reasons discussed herein, I find that Mr. Gardner has failed to establish his alleged back injury with medical evidence supported by objective findings.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee-employer-carrier relationship on the date of alleged injury, December 24, 2003, and at all pertinent times.

2. The claimant earned wages sufficient to entitle him to compensation at the rate of \$440 per week for total disability and \$330 per week for permanent partial disability if this claim is found compensable.

3. The claimant has failed to establish the occurrence of a December 24, 2003 back injury with medical evidence supported by objective findings. Because the claimant has failed to establish that he sustained a

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compensable injury the remaining issues identified by the parties are moot.

**ORDER**

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

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge