

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.F305888

JAMES R. GASKINS, EMPLOYEE	CLAIMANT
ROACH MANUFACTURING CORPORATION, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED AUGUST 31, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on July 22, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Phillip Wells, Attorney-at-Law, Jonesboro, Arkansas.

Respondents #1 represented by Mr. Richard A. Lusby, Attorney-at-Law, Jonesboro, Arkansas.

Respondent #2 represented by Mr. David L. Pake, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted July 22, 2005, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on June 1, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, together with the prehearing information filings of respondent #2, filed subsequent to the conference, at which time it set out its contentions. A copy of the Prehearing Order was introduced, without objection, as

“Commission’s Exhibit 1.”

It was stipulated that the employee/employer/carrier relationship existed between the claimant and respondents #1 at all relevant times, including May 2, 2003; that the claimant sustained a compensable injury on said date; that he earned sufficient wages to entitle him to compensation rates of \$440.00 per week for temporary total disability and \$330.00 per week for permanent partial disability; that the claimant’s healing period ended on or before October 6, 2003, at which time he returned to work for the employer herein; that respondents #1 have paid appropriate temporary total disability, as well as a ten percent (10%) whole body impairment; and that both party respondents have controverted claimant’s entitlement to wage-loss disability.

By agreement of the parties, the issues presented for determination included:

- 1) The extent of claimant’s permanent partial disability, specifically, wage-loss disability, if any.
- 2) Whether the Second Injury Fund had liability in this claim.

Claimant contended, in summary, that following his May 2, 2003, compensable injury, he returned to work performing restricted work activities at reduced wages and was, therefore, entitled to wage-loss disability in an amount to be determined by this Commission from either respondents #1 or #2. The claimant acknowledged that he sustained an independent intervening accident on or about February 1, 2005, which he maintained rendered him permanently totally disabled

while maintaining that he sustained wage-loss disability prior to the February 1, 2005, independent intervening accident.

Respondents #1 contended that the claimant did not sustain any wage-loss disability, causally related to the May 2, 2003, admitted injury. It contended that any disability which the claimant sustained was the result of the independent intervening, non-work related injury. Alternatively, respondents #1 contended that any wage-loss disability the claimant may have sustained was the responsibility of the Second Injury Fund, pointing out that the claimant had a pre-existing impairment/disability related to a cervical disc surgery in 2000.

Respondent #2 contended that the claimant could not prove entitlement to any functional disability; that respondents #1 cannot prove Second Injury Fund liability; and that the claimant sustained a non-work-related, independent intervening injury on February 1, 2005, which was the source of the claimant's current disability.

The claimant testified in his own behalf. Jerry Banks and Mike Roach were called as witnesses for the respondents. The record is composed solely of the transcript of the July 22, 2005, hearing containing numerous exhibits.

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 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that he is entitled to any wage-loss disability. A preponderance of the credible evidence reflects that the claimant's current disability is the result of an independent intervening accident, occurring on February 1, 2005, and/or a combination of the claimant's pre-existing impairments and/or disability, together with the independent intervening accident of February 1, 2005, which was a non-work-related incident, and, thus, neither party respondent has liability for wage-loss disability under the workers' compensation laws.

DISCUSSION

The facts in this case are basically undisputed. The claimant, James R. Gaskins, began working for the employer, Roach Manufacturing Corporation, in May, 1983. He continued working for the employer until February 1, 2005, at which time he sustained a cervical injury at home while lifting a bag of potatoes. The record reflects that the claimant has sustained three (3) separate incidents identifiable in time and place of occurrence which caused injuries to his neck and

resulted in three (3) separate surgeries. The first two (2) cervical injuries occurred at work. The final injury, which has apparently left him unable to return to work occurred at home. The claimant first work-related injury occurred in 2000. The claimant testified that following the injury, he underwent surgery on his neck and returned to work within six (6) to eight (8) weeks. In 2000, the claimant worked both as a supervisor, as well as operating a computer program in the laser department. The claimant's primary job involved running the computer program. Neither was physically demanding, but clearly any supervision of the laser department consisting of three (3) individuals did not require any physical activities. Again, the claimant returned to work for the employer in 2000, performing his regular job duties until sustaining a second injury on May 2, 2003, at which time he re-injured his neck while picking up a heavy piece of material off the laser table. Following a failed course of conservative treatment, the claimant underwent a second cervical surgery and returned to work in October, 2003, after missing only two and one half (2-1/2) weeks work. The claimant initially returned to work both as a supervisor and a programmer. In February, 2004, upper management removed the claimant from the foreman's job and the claimant continued to work as a programmer, earning less money from February, 2004, until February 1, 2005, at which time he sustained a third injury at home resulting in a third surgery. The claimant has not returned to gainful employment since the last injury.

Ark. Code Ann. §11-9-522 provides, in part:

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

(2) However, so long as an employee, subsequent to his or her injury, has returned to work, has obtained other employment, or has a *bona fide* and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident, he or she shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence.

Under our prior laws, a worker could receive additional wage-loss disability even though his wages remained the same or increased after the injury. *City of Fayetteville vs. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984). However, under the amended law, aforementioned, it prohibits claimants from receiving wage-loss disability if they have returned to work at wages equal to or greater than the pre-injury earnings. In the instant claim, the claimant returned to his regular job duties following both of his compensable injuries. Respondents #1 paid appropriate temporary total disability, as well as a ten percent (10%) permanent impairment following the claimant's release in October, 2003. The change in the claimant's job duties in February, 2004, was in no way causally related to his injuries. Rather, the credible testimony of both Jerry Banks, the fabrication manager, and Mike Roach, the vice-president of manufacturing, reflects that the decision to eliminate the foreman's position was because it was unnecessary. Admittedly, the claimant began earning less money in February, 2004, when the position was eliminated;

however, the record reflects that the claimant took a second job because the position was eliminated and because his hours were reduced. Rather than conduct a further analysis of the record in this cause, suffice it to say that there is no credible evidence that the claimant sustained any wage-loss disability as the result of his May 2, 2003, admitted injury. The claimant's February 1, 2005, injury appears to be the injury that has affected the claimant's ability to return to work. Said injury was unrelated to the claimant's employment. In view of the foregoing, and after full consideration of the facts, issues, and the law, it is hereby determined that this claim be, and it is, hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge