

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501018

| | |
|---|------------|
| RONALD D. GODWIN, EMPLOYEE | CLAIMANT |
| J. W. BLACK LUMBER COMPANY, EMPLOYER | RESPONDENT |
| BITUMINOUS CASUALTY CORPORATION, INSURANCE CARRIER/TPA | RESPONDENT |

OPINION FILED SEPTEMBER 9, 2005

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

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Randy P. Murphy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted July 22, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on May 11, 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 subject to further clarification concerning the period of temporary total disability in the event compensability was overcome. Specifically, the parties agreed that the claimant worked for various periods of time following the alleged injury and that the respondents would be entitled to a credit for any days worked if the claim was found compensable.

It was stipulated that the employment relationship existed at all relevant times, including September 13, 2004; that the claimant's average weekly wage was sufficient to entitle him to compensation rates of \$220.00 per week for temporary total disability and \$165.00 per week for permanent partial disability; and that the respondents had controverted the claim in its entirety.

By agreement of the parties, the sole issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that he sustained a compensable injury to his right knee as the result of a specific event identifiable in time and place of occurrence on or about September 13, 2004; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability for the period beginning January 5, 2005, and continuing through the present, maintaining that his healing period had not ended; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents maintained that the claimant did not sustain an injury arising out of and during the course of his employment with J. W. Black Lumber Company.

The claimant testified in his own behalf. John Black was called as a witness for the respondents. The record is composed solely of the transcript of the July 22,

2005, hearing containing various 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 sustained an injury to his right knee as the result of a specific event identifiable in time and place of occurrence which arose out of and during the course of his employment with J. W. Black Lumber Company.
4. The claimant has failed to prove, by a preponderance of the evidence, that his injury, need for treatment, and disability are causally related to an injury sustained while working for the employer herein.

DISCUSSION

The record in this case is replete with inconsistencies and contradictions. The claimant bears the burden of proving the compensability of his claim by a preponderance of the evidence. The immediate claim turns entirely upon the

credibility of the claimant. A claimant's testimony is never considered uncontroverted. In fact, the testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

As will be set out further below, the claimant failed to offer any evidence to corroborate that he sustained a work-related injury arising out of and during the course of his employment. The claimant's testimony concerning the report of a work-related injury is contradicted by John Black, one of the owners of the employer company. Admittedly, Mr. Black is also an interested party and, therefore, his testimony should not be considered uncontroverted. However, based upon my observations, I found Mr. Black to be a credible witness. Mr. Black candidly acknowledged observing the claimant limping at work on or about September 13, 2004, at which time Mr. Black inquired concerning his observation. A portion of his illuminating testimony is set out below:

Q All right, sir. There's been some testimony by Mr. Godwin that on or around September 13, 2004 you had a conversation with him. Do you remember having a conversation with him?

A In a rough sort of way, and he's related more or less correctly. I saw him – I always felt like he favored his right knee to some extent, nothing exaggerated, but when he came by, I could tell he was limping more than what I would call normal. So I questioned him, "Have you hurt yourself?" or "How did you hurt yourself?" or whatever. He told me he slipped on some bark or tripped on some bark, and, apparently, I asked him if he needed medical treatment. He declined, and then I just sort of watched, you know, subsequent to that, and the limp subsided and he was able to do his job. He didn't report, you know, "I can't do this or that." He didn't

say, "I won't or I can't or anything." The problem evaporated.

Q Now, was Mr. Godwin just kind of walking by in the plant vicinity when you saw him limping?

A It wasn't the plant. This was out in the woods. My recollection of it was that we were eating lunch. They had returned from this trip to Troy like he described and they were walking by, and that's when I noticed his limp.

Q Not to put words in your mouth, but Mr. Godwin basically said, "I'm going to be okay." You recall that fairly accurate?

A Yes. I mean, that's my recollection of it.

Q And –

A If he had requested medical treatment or to see a doctor, we would have had to went along.

Q In fact, his memory is that you specifically asked him if he needed medical treatment?

A Well, if he says I did, I guess I did. I don't remember that, but I commonly would offer something like that.

Q All right, sir. Now, you said Mr. Godwin continued to work his regular duties and he has testified basically to that, and that is consistent with your memory?

A Yes.

Q Okay. In September, October, November and December, up until J. W. Black Lumber Company took off for Christmas break?

A Yes.

Q And what were his regular duties during that time frame?

A Most of that time we would have still been logging. He would have been either driving a skidder or driving a log truck.

Q Would you have had a –

A Then when we are not logging, he usually worked in the shop helping the mechanics.

Q Okay. Would you have had daily contact or almost daily contact with Mr. Godwin?

A I would have seen him most days, yes.

Q And after September 13, 2004, you said the limp subsided. Tell us what you observed.

A It wasn't as noticeable as it was on September the 13th, so I assumed by that he was getting better. He never indicated it was, you know, getting worse, or "I'm hurting," or "I need to see a doctor," or "I can't take the pain anymore." It looked like to me he went back to normal. If he hadn't, I would have questioned him further.

Q Now, after you asked Mr. Godwin on September 13th about the limp, did you have any further occasions based on your observations to say, "Hey, you're still limping," or "What's wrong with your leg?"

A No, none whatsoever.

Q And that's consistent with what Mr. Godwin has told us, too. You heard him say the same thing. He didn't have any further conversation with you, and that's your memory about that?

A Yes, and it was a nonevent from September the 13th until, for us, the 11th of January.

Q What happened on the 11th of January?

A Got a call from the Pocahontas whatever, the hospital or doctor. They wanted to know if the – they performed a – let's see, on the 11th they called about a workmen's compensation claim on Ronald Godwin, and the secretary came to me with her hands on her hips sort of, and "What about this injury to Ronald?" that, "I didn't know anything about." And I said, "Well, the reason I didn't tell you is because until you brought it to me, I didn't know anything about it either."

Q Before he went to the hospital, had Mr. Godwin after September 13th ever mentioned any further problem with his knee?

A No.

Q Now, you heard some testimony from him today about an incident at the mill on the chipper where he said he leaned, I guess, in a wrong or bad position and felt pain in the back of his knee. Was anything like that ever reported?

A No.

Q Was your first notice on January 11th after Mr. Godwin had sought medical?

A Yes, that's how we – after or when he was seeking medical. When this came about, when she approached me, the secretary, and I told her I didn't know anything about it, then the next thing I did was go to Mr. Vannada, who was the logging superintendent.

Q Is that Jerry Vannada.

A Jerry Vannada, and he would have seen him in the shop. They both work in the shop when we're off from the woods. What happened was Ronald came back to work on the 4th, which is a Tuesday. He was not at work on the 3rd, the Monday that everybody else came back.

Q Now, did you ask Mr. Vannada if he knew anything about these problems?

A Yes, when I started backtracking. I didn't know, the secretary hadn't received any notice of an injury. I went to him. He said that –

MR. BURTON: Object to hearsay.

JUDGE GREENBAUM: Sustained.

BY MR. MURPHY:

Q Did anybody know anything about an injury that was reported? Well, you heard Mr. Godwin say he never reported it to Jerry Vannada, right? Did you hear him say that?

A I don't remember that, but no one reported an injury.

MR. MURPHY: Pass the witness.

MR. BURTON: Just a couple of questions, Mr. Black, if I may.

CROSS EXAMINATION

BY MR. BURTON:

Q If I understand your testimony correctly up to this point, you're saying that the only conversation you ever had with Mr. Godwin with reference to a knee injury of any kind was in September, is that correct, sir?

A Yes, that is correct.

Q Did you ever have conversation to talk to Mr. Godwin at any time after September?

A Well, of course.

Q Okay. You said you saw him on a fairly regular basis, I think?

A Yes.

Q All right. And there was never any discussion of the medical care he was having or –

A No, I didn't know he was having any medical care.

Q – the continuing problem he was having with the knee?

A No.

Q And as far as his incident right after the first of the year in 2005, when he describes he was cleaning out the chipper and it locked up on him at that time, you never had a conversation with him about that?

A The knee was already locked up when he came back to work.

Q Well, sir, I'm aware of that. He's testified to the fact that the knee was locking up during that period as verified by the doctor's statements. Now, my question is this, after this episode when he was cleaning out the chipper there in January, did he have a conversation with you –

A No.

Q – about the knee locking up, either that day or the next day?

A No.

Q Do you think you would recall that?

A Yes.

Q I understand you're a busy man.

A I would have recalled it. We didn't have any such conversation.

Q And so it's your testimony the first time you heard anything was when the Randolph County Hospital or the doctor – do you remember who called, Dr. Joseph or the Randolph County Hospital?

A The doctor never called. This day is the day that Abby from Randolph County Medical Center, Pocahontas, called to inquire about workmen's comp on a claim for Ronald Godwin. So it's Abby, whoever Abby is.

Q All right. And that was when?

A That was the 11th, January the 11th.

Q So the week before you had never had any conversation with Mr. Godwin about –

A No.

Q – anything happening on the chipper?

A No. (Tr. 48-55)

The claimant, Ronald Dean Godwin, testified in his own behalf. The claimant is forty-eight (48) years old. Suffice it to say, the record reflects that Mr. Godwin has a poor memory which is not necessarily indicative of his credibility. He is a poor historian. It is undisputed that Mr. Godwin had a pre-existing injury and surgery involving his right knee which he stated occurred approximately twenty (20) years before the within claim. The claimant stated that he worked for the respondent-employer on two (2) separate occasions, the first during the late 1990s, at which

time he terminated his employment and worked in the construction industry before returning to work for the employer in 2002 or -03 as a truck driver, skidder driver, timber cutter, and mechanic. On cross-examination, it was pointed out that the claimant was actually rehired on May 31, 2004, less than four (4) months prior to the alleged injury. The claimant testified that the injury occurred on or about September 13, 2004. He stated that he was walking around the back of a truck and that he slipped on a piece of cottonwood bark, twisting his knee. He maintained that the incident was observed by one Steve Vannada. The claimant related that he continued working the remainder of the day and reported the incident after John Black inquired concerning why he was limping that day. Again, it does not appear that the occurrence of an incident is disputed, but, rather, whether the claimant's subsequent problems were in any way causally related to the incident. It is further undisputed that the claimant did not miss any work after September 13, 2004, and continued to perform his regular job duties until after January 5, 2005. The record reflects that the claimant did not seek any medical treatment of any nature or kind until January 11, 2005, at which time he was seen by Dr. Thomas Joseph, an orthopedic surgeon in Pocahontas, Arkansas. Although the claimant maintained that he reported the specific incident to Dr. Joseph, Dr. Joseph's history does not reflect same. It did reflect complaints of right knee pain for several months. (Jt. Ex. A, p.1)

Dr. Joseph ordered various diagnostic testing prior to performing surgery on

the claimant's right knee on January 23, 2005. The claimant stated that he returned to work on March 7, 2005, and continued performing his regular job duties with some limitations; however, continued to experience problems. Thereafter, the claimant returned to Dr. Joseph and underwent a total knee replacement on May 16, 2005. The claimant has not returned to gainful employment since May 16, 2005.

On cross-examination, the claimant acknowledged that he made no further complaints to Mr. John Black concerning his knee after September 13, 2004, while continuing to perform his regular duties. On further cross-examination, the claimant related a second alleged injury occurring on or about January 5, 2005. He stated that he was leaning over a chipper that had gotten clogged and felt a burning feeling in the back of his leg which he reported to Bob Tucker and Bob Black, John Black's brother and a part-owner, but, again, did not request medical treatment. The record reflects that the claimant did not file a workers' compensation claim until after seeing a doctor and determining that surgery was necessary. Apparently, even after that time, the claimant filed his medical claim under a health insurance plan. Again, the claimant's report of alleged injury only reflected the September 13, 2004, incident and not the alleged, subsequent event in January, 2005. (Tr.18-20, 29-35)

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc. vs. Van Wagner*, 237 Ark. 443, 990

S.W.2d 522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall vs. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett vs. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962); *Wentz vs. Servicemaster*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

It is well-settled that 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 vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the

doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The record contains many inconsistencies and contradictions. Admittedly, the claimant was observed limping at the workplace and reported a work-related incident. However, the record reflects that the claimant had a prior right knee injury. John Black's credible testimony reflects that he had always observed the claimant having some limited physical problems prior to the reported incident; that he inquired concerning whether the claimant needed medical treatment which was refused; and that, thereafter, the claimant seemed to improve without requesting medical treatment. Further, the claimant's course of conduct and work history from September 13, 2005, until January, 2005, is inconsistent with his claim of injury. The claimant's alleged report of a second incident is not corroborated.

Under the prior law, where no explanation is offered for the absence of a company employee as witnesses, who are in a position to contradict the claimant's testimony if it was not true, the Commission, as triers of fact, could properly draw the inference that their testimony would have been unfavorable to the company. *Brower Mfg. Co., et al vs. Willis, et al*, 252 Ark. 755, 480 S.W.2d 950 (1972). However, the Full Workers' Compensation Commission has held that under the reform legislation of 1987 and 1993, the aforesaid decision is no longer the law and that the Commission can no longer make such an inference, pointing out that the

claimant carries the burden of proof, and it is incumbent upon the claimant to produce all witnesses necessary to prove his claim. *Hooper vs. Maverick Tube*, AWCC #F202296, Full Commission Opinion filed February 15, 2005.

The claimant is required to prove his claim. In determining whether a claimant has sustained his burden of proof, the Commission must weigh the evidence impartially, without giving the benefit of the doubt to either party and without making impermissible inferences. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge