BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408540

JONATHAN HALL, EMPLOYEE	**CLAIMANT**
TARGET DIST. CTR., SELF-INSURED EMPLOYER	**RESPONDENT**
CONSTITUTION STAT SERVICE CO., TPA	**RESPONDENT**

OPINION FILED JANUARY 25, 2004

Hearing before Administrative Law Judge Andrew L. Blood, on December 9, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable Gary Davis, Attorney-At-Law, Little Rock, Arkansas.

Respondent represented by the Honorable Guy A. Wade, Attorney-At-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On October 26, 2004, a pre-hearing conference was conducted in this claim, from 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 the course of the hearing, and the parties respective positions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The parties further stipulated that the claimant's average weekly wage in his employment with respondent was $506.00.

The testimony of Jonathan Hall, the claimant; Debbie Hall; Brian Rogers; Gary Hall; Bill

Wiley; James Bryant; and Luke Wright, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Jonathan Hall, the claimant, with a date of birth of November 13, 1981, is a highschool graduate with some post-secondary education. Claimant commenced his employment with respondent on October 4, 2003, as a full time warehouse worker. Claimant asserts that he suffered an injury to his back while discharging employment duties for respondent on July 4, 2004.

Claimant's work history reflects a period of employment with Muzak installing satellite dishes. Claimant was employed at Molex as an inspector; four years of sales off and on with Abercrombie and Fitch; Bales Chevrolet ; selling shoes at Dillard's; and construction work entailing laying brick and framing.

There is no evidence in the record to reflect that claimant experienced any restrictions or limitations relative to his back prior to his employment with respondent on October 4, 2003. Further, there is no medical evidence in the record to reflect that claimant registered complaints relative to his back prior to July 2004, or that encountered difficulties performing his job duties prior July 2004.

Claimant has lived at the residence of his parents since his divorce, which was prior to the pertinent time period relative to this claim. Claimant's work schedule in his employment with respondent was Saturday, Sunday, and Monday, from 4:00 P.M. to 4:00 A.M. Claimant also worked a part-time job in sales with a different employer. Claimant asserts that on July 4, 2004, he suffered the injury which serves as the basis for the present claim.

The evidence in the record reflects that at respondent claimant primarily worked in outbound, which entailed sorting packages that are getting ready to leave the distribution facility. The testimony reflects that outbound consisted of two (2) departments, Depal and shipping. In Depal, there is a line of pallets stacked with boxes. The assigned employee to the afore throw the boxes from the pallet onto a conveyor belt, which separates the package by bar codes to go to different areas. In shipping the assigned employee's duties entail either sorting (which is sorting boxes off a pallet rider into different doors), or receiving the boxes down another conveyor line and stacking them into a trailer.

Non-conveyable sort or non-sort entailed sorting which could not be placed on the conveyor belt. In performing the afore, the assigned employee rides a pallet rider reading the bar codes and matching the box with a particular trailer that is leaving the warehouse. In performing the afore the employee goes all around the shipping wing of the warehouse. In Depal the employee works stationary from one of twelve lines.

Claimant's testimony reflects on July 4, 2004, he did not work his regular job, but instead worked a non-con sort, where the boxes cannot go on the conveyor belt due to size (either too large or too small) are placed in front of the store door. Claimant testified that the reason he worked non-con sort on July 4, 2004, the label drop did not come in so respondent did not really have any work. Claimant explained that the least amount of hours that respondent could furnish if an employee reported for work was three (3) hours.

Claimant asserts that he suffered an injury on July 4, 2004, while performing his assigned job duties. Regarding the onset of his symptoms, claimant testified:

I was just moving a box off my pallet rider onto a pallet,

> and I felt what I thought was a cramp at the time. I didn't think it was anything like this. But it felt like a cramp as the pain shot down my leg. (T.15).

Claimant noted that the items he moved ranged from toothpaste to furniture. Claimant explained that since he only worked three (3) hours and felt that he had only experienced a cramp, he did not report the incident to anyone when it occurred on July 4, 2004, before leaving.

After work claimant maintains that he went home. Although still experiencing the cramp-like symptoms, claimant's testimony reflects that he fully expected them to resolve on their own. While claimant testified that he recall his father asking him what was wrong, he is uncertain whether the inquiry occurred when he arrived home or on a different day. Claimant is confident that by the next day he definitely said something about the injury because he was hurting and realized the complaint was more than just a cramp.

The testimony of the claimant reflects that he probably got up at 2:00 p.m , on July 5, 2004, in order to report to work as his regular scheduled time of 4:00 p.m. Claimant's testimony reflects, regarding how he was feeling when he woke up:

> It was just - - that pain was still there as I walked. It was - - earlier, when it first happened, it was really hard to even like walk. Every time I would extend my leg to walk, that motion is what would make the pain shoot down my leg. (T. 19).

Claimant asserts that when he reported for work on July 5, 2004, he reported the injury to his supervisor, Ms. Sandy Goode.

The testimony of the claimant reflects that to his knowledge no one witnessed his July 4, 2004, injury. Further the claimant testified that by the time he reported to work on July 5, 2004, the residuals of his injury was affecting his walking, which could be observed by anyone.

Claimant worked ten (10) hours on July 5, 2004, however, added that the entire time was not devoted to actual physical labor. Claimant noted that part of the time was consumed reporting the injury to Ms. Goode and completing an incident report. Additionally, claimant testified that he came into work because he knew he would be in Depal, which did not require walking, but rather standing in one spot. Claimant added that he told everybody how he got hurt.

Claimant asserts that after the injury was reported to Ms. Goode they went and called the MedCorp Health Line. Regarding the afore, claimant testified:

> That's where you report the injury. And you fill out paper-work. And they told me over the phone, on the MedCorp Health Line they told me that it sounded like a cramp, that I needed to put ice on it. And then I was suppose to follow-up with Luke Wright, who is the MedCorp nurse at Target, the following week. (T. 20).

Claimant testified that Ms. Goode completed paperwork on the day he reported the injury to her, July 5, 2004. Claimant denies that he has ever contended or reported that his injury on a date other then July 4, 2004, or while performing activities other than those discharged in non-con sort on July 4, 2004. With respect to any reference to July 5, 2004, as being the date of his injury in reports completed by his supervisor, claimant offered:

> I don't know whether it was just from Sandy writing July 5th down from the time that I reported it and that's how it got mixed up. But July 4th is when I got hurt. (T. 37).

Claimant acknowledged that on July 5, 2004, he was into his shift when he reported the injury to his supervisor.

The testimony of the claimant reflects that in August 2004, he signed another document, which had already been prepared, pursuant to the direction of Mr. Bill Wiley, his supervisor at the time. Claimant characterized the afore as a follow-up to the July 4, 2004, injury and

reporting. Claimant added that he had to sign the document in August 2004, before he could return to work. Claimant's testimony reflects, regarding the August 2004, document:

> The only thin about that that I did hear them say was that was supposed to be filled out. They weren't - - they didn't fill that out within the certain time frame of my injury anyway. That was suppose to be like a week after my actual injury. And they had did that and when we started talking about the injury, there was another gentlemen that sat in with me and Bill Wiley - - a black gentleman. I can't remember his name. But they were talking about what they were going to do in regards to what date to put down. That may be where that had come from. I'm not sure. (T. 50).

Following the conclusion of his 10-hour shift on July 5, 2004, claimant was not again scheduled to work until Saturday, July 10, 2004. Claimant asserts that during the interval period he had sessions with Mr. Luke Wright, the company nurse on the premises of respondents. Regarding the sessions, claimant's testimony reflects:

> He said that my hips were out of alignment, that it's a common injury. And he did exercises to, I guess, realign my hips. And we did that and then he put ice - - like ice on my back, and that's what we would do. (T. 22).

Claimant acknowledged missing one of the sessions with Mr. Wright. Claimant asserts that he got somewhat better with respect to walking, however the pain never went away. At the conclusion of the week, claimant asserts, Mr. Wright relayed that since there was not an improvement he would be sent to a workers' comp doctor.

During the period between his scheduled three days of work for respondent claimant work in retail sales in the mall at Abercrombie and Fitch. Claimant asserts that his schedule at the store was flexible such that he could show up and work when he wanted. The testimony of

the claimant further reflects that approximately one and one-half months prior to the December 9, 2004, hearing in this claim he had secured another job in sales at HYLA Connections. Claimant's earnings in his current employment is commissioned based; he sets his own schedule, although he is provided with appointments by his employer.

The testimony of the claimant reflects that within the time frame of the present claim the only other job he had was occasionally working at Abercrombie and Fitch. Other that the afore and his employment with respondent, claimant asserts that his non-working time was spent visiting his friend, Ryan Rogers watching a movie or something.

Claimant asserts that he reported the injury and complaints of pain to supervisory personnel of respondent, to include Ms. Goode and Mr. Bill Wiley, who became supervisor after Ms. Goode left. Claimant maintains that he also told his parents about the injury.

The testimony of the claimant reflects that on August 6, 2004, he was seen by Dr. Meador for complaints attributable to the July 4, 2004, injury. Claimant asserts that during his first visit with Dr. Meador an off-work slip was authored, however it was unclear with respect to work activities. Claimant submitted the document to his supervisor, Mr. Wiley, and was placed on light duty. Claimant estimates that he was on light duty for a couple of weekends.

Claimant's testimony reflects that he was referred by Dr. Meador to HealthSouth for physical therapy. Claimant maintains that he attended the therapy sessions until respondent refused to further authorize them and denied the claim. After the claim was denied claimant was informed by his supervisors that he could not return to respondent until he was cleared by a physician as being 100% recovered from the injury. (T. 27).

After his claim was denied by respondent claimant was again seen by Mr. Wright, the

nurse assigned to respondent. Claimant asserts that Mr. Wright recommended that he see a chiropractor. Thereafter, claimant made arrangement to obtain treatment under the care of Dr. Ed Engelhoven, D.C., to whom he was referred by Dr. Bryon Curtner, his family physician. Claimant maintains that Mr. Wright instructed him in the mechanics of the referral such that the cost would be covered by his regular health care carrier.

Claimant's testimony reflects that after a couple of visits to Dr. Englehoven an MRI scan was obtained. Thereafter, claimant was seen by Dr. James Adametz, a Little Rock neurosurgeon. Claimant noted that he was seen by Dr. Adametz slightly over a month, and was directed to scheduled a follow-up appointment. Claimant asserts that he continues to experience pain in his hip as well as pain shooting down his leg, and is unable to perform his regular job duties with respondent in Depal.

Regarding prior injuries and complaints, claimant's testimony reflects that while employed by Molex in the 1999/2000 time period he experienced a shoulder cramp problem for which he receive medical treatment under the care of D. Curtner in the form of medication, Tylenol. Claimant also acknowledge sustaining injuries to his ankle and thumb while playing basketball. Claimant denies the complaints attributable to the July 4, 2004, incident were the product of playing basketball. Further, claimant denies ever hurting his back, hip or leg playing basketball.

Mr. Ryan Rogers testified that he has been employed by respondent since September 2003. The testimony of Mr. Rogers reflects that he and claimant were friends since they were seven to ten years of age, and that they had always done things together since that point. Mr. Rogers maintains that prior to July 2004, he had never known the claimant to complain about

pain in his leg and hip. Subsequent to July 4, 2004, Mr. Rogers noted that something was wrong with the claimant based on how claimant was walking. Regarding the point of reference to July 4, 2004, Mr. Rogers testified:

> I remember that night because, you know, it wasn't like a regular night. We only worked three hours that night. And I know that - - I believe it was the next day or the next time that we came into work. We usually come into work together, like into the building. So I noticed that he was walking, you know, not normal. (T. 68).

Mr. Rogers noted that he would see claimant a few times per week prior, and that prior to July 4, 2004, claimant had never complained about problems with his leg or hip.

Mr. Rogers worked the same hours at respondent as did the claimant. Mr. Rogers worked in inbound receiving, and claimant worked in outbound. Mr. Rogers testified that he did not see the claimant on July 5, 2004, prior to going to work.

Mrs. Debbie Hall, the claimant's mother, testified that while she is employed working for an individual in a private residence, the same has only been the case since June 2004. Prior to the afore, Mrs. Hall had been caring for her mother until her death in March 2004, and was pretty much at home. Claimant moved back to his parents residence in August 2003, shortly after his separation.

Mrs. Hall testified that she would see the claimant every day; that since their bedroom was downstairs, she could hear the claimant walking upstairs when he arrived home from work. Mrs. Hall's testimony reflects that when claimant worked his shift at respondent, which was basically the weekend, he arrived home during the early morning hours and slept during the day. On those occasions when he was not working his shift at respondent, Mrs. Hall testified that while claimant remained a day sleeper she would see him more often. During the period between

March 2004, and July 2004, Mrs. Hall testified that she did not observe the claimant having any physical problems.

Regarding her knowledge of the claimant having physical problems, Mrs. Hall's testimony reflects that she remember sitting on the couch and claimant coming through and saying his hip and leg were hurting. (T. 76-77) Mrs. Hall asserts that the next day, claimant relayed that he had reported the injury at work. The testimony of Mrs. Hall reflects that claimant relayed to her when he was scheduled to receive physical therapy, and later, when the same was denied with respect to the workers' compensation claim. Mrs. Hall's testimony reflects that the claimant has continued to complain about pain in his hip and down his leg.

Mr. Gary Hall, the claimant's father, has been employed as a van driver at the Doubletree Hotel for two (2) years. Mr. Hall confirmed that the claimant has been back home since his separation, and that during a typical week, in light of their respective schedules, he would see the claimant several times. Mr. Hall testified that he had never known the claimant to have a problem with his hip, back, or leg prior to July 2004. Mr. Hall's testimony reflects, regarding when he first became aware of claimant's physical problems:

> Well, it was a few days - - I can't remember the exact time but it was close to the 4th, maybe a couple of days after the the 4th. I was sitting in the living room and as he walked by he was limping pretty severely. And I asked him what was wrong and he said he had hurt himself. (T. 83).

Mr. Hall acknowledged that his only information of the claimant's injury is based on what claimant relayed to him.

Mr. William Powell Wiley testified that he is employed as a Group Leader for the Outbound Department of respondent. The Group Leader job is a supervisory role over 30 to 45

"teammates", employees. Mr. Wiley testified that he became the claimant's Group Leader in mid-July 2004. Mr. Wiley's testimony reflects that circumstances under which he first became aware that claimant was having complaints:

> For the first couple of weeks it was just - - I talked to him just on a personal level. And then after that - - we have a productivity that we keep each night for each teammate, tracking numbers basically, tracking productivity. And I noticed over a few days - - we only work three days at a time but over a few days I noticed that his numbers were a little bit lower than they - - than some of the other teammates. And I asked him about it and that's when he said that his back had been hurting him, his back - - his lower back, whatever. (T. 88).

Mr. Wiley offered that the claimant's injury had occurred prior to the time that he became his supervisor, "a month or two prior". (T. 89).

Regarding his involvement in the completion of any paperwork as a result of his discussion with the claimant, Mr. Wiley testified:

> . . . On the 15th of August, I believe it was, it was bought to my attention that an incident review form had to be filled out as to - - and it's a detailed listing of what happened. And so I pulled Jonathan back in my office that night and we did the incident review form. He told me word-for-word what had happened. (T. 89).

Mr. Wiley asserts that any information contained on the documentation was gained directly from the claimant, since he was his supervisor at the time of the occurrence. The date of injury as reflected on the document completed on August 15, 2004, is June 27, 2004, while doing non-con sort. Mr. Wiley acknowledged that he completed the document, although the claimant signed it.

The testimony of Mr. Wiley reflects that he later learned that previous incident review form had been completed. Mr. Wiley testified:

> When I went - - each time we finish those, we have to

> turn them in to Luke Wright, the Medic. When I turned it in to him, he opened up Jonathan's medical file and found that there was another one already completed by his former GL, his former Group Leader. (T. 92).

Mr. Wiley review the prior to document to see if there were any differences. Mr. Wiley noted that in addition to there being a difference of a week between the incident date, June 27 vs. July 3, the area that claimant worked in was also different on the forms, non-con sort vs. Depal. Mr. Wiley acknowledged that at the time he completed the August 15, 2004, incident review form, he did not ask the claimant if previous form had been completed. Mr. Wiley estimated that the duration of time to complete the document was 40-45 minutes. Mr. Wiley testified that after learning of the conflicts in the documents, or the existence of the other document, he did not have an opportunity to asked the claimant about it. Mr. Wiley added that he was not sure from a H.R. perspective how much of that was his job responsibility. (T. 105).

The testimony of Mr. Wiley reflects that the incident review forms are retained in the medical file of the claimant at the nurses' station. In describing the incident review form, Mr. Wiley testified:

> It's basically - - it's a detailed form that shows - - we have like four pages and you go through each section and it will list like an area that it was in. And you check the area that it was in, so it was in the Depal area. Or in this case, the shipping area. It will give you a list of things that the teammate might have been doing. In this case he said he was lifting non-con sort, so you check that out.(T. 101).

Mr. Wiley testified that the individual which held the position he now holds was Ms. Goode, who now works for respondent in Virginia.

Mr. Wiley's testimony reflects regarding the procedure performed by respondent upon the

reporting of a work-related injury:

> Generally, what we do - - we do the incident review form.
>
> We turn it in to the Medic. And that from there the Medic does whatever the company deems - - if it's - - if they deem it's a work related issue, I would guess they would at that point take care of it. (T. 97).

Mr. Wiley's testimony reflects that he worked as Group Leader of A2 shift for six (6) weeks, and that the claimant left respondent the week before he left the shift. Mr. Wiley acknowledge observing the claimant seemingly experiencing low back pain when working, rubbing the small of his back after lifting and standing up.

Mr. Wiley testified that he had several discussions with Mr. Wright, the plant nurse, regarding the conflicts in the two Incident Review Forms:

> We had several conversations after that just to figure out what was going on exactly, I mean, because we were all perplexed as to why there was, you know, the differences in the two.
>
> * * *
>
> No. There generally would not be two forms. We have an individual who's in charge of the incident review forms, like a captain if what we call him. And he asked me - - he called me on the 15th of August and asked me if I could complete one on Jonathan since I was his new supervisor. He asked me to do that and so we did it that afternoon. (T. 105-106).

Mr. Wiley was directed to complete the above incident review form by Mr. Mike Rizzo, a Facility Operations Group Leader. Regarding his directions from Mr. Rizzo and whether the request was for a follow-up form or a new form, Mr. Wiley testified:

> I believe what had happened was he had just taken over captaining this particular incident review and he asked me - -

> I don't think he knew that there was already a file done for Mr. Hall. (T. 107).

Mr. Wiley is uncertain who previously performed the job responsibilities of Mr. Rizzo regarding the incident review forms. While the incident review form completed by Mr. Wiley reflects that he completed the same on August 15, 2004, claimant's signature reflects the date August 14, 2004.

Mr. James R. Bryant, a three and one half (3 ½) years employee of respondent in the Outbound Department, testified that he primarily work in Depal, which entails throwing boxes on a conveyor line. Mr. Bryant testified that in June and July 2004, he worked the A2 schedule which consisted of working Saturday, Sunday, and Monday from 4:00 p.m. to 4:00 a.m. , the same shift as claimant. Mr. Bryant testified that he knew the claimant in that he worked in Depal. Mr. Bryant added that there were a few times when he and claimant would "be throwing right next to" each other or a line away.

Mr. Bryant testified regarding a conversation he had with the claimant regarding claimant's back:

> He come in one day - - I couldn't tell you exactly when it was but, I mean, it was just on job, bull crap, you know. So - - and he said it was - - he was playing basketball and he hurt his back and his butt. Said it was hurting like a shooting pain or something like that. Then it was like the - - I don't know. Then he was gon for a few days. It was like the next week he came in and he was throwing like on line seven, I was on nine. And he gone, "Hey, watch this. I'm not going to have to throw another box." (T. 112).

Regarding his impression from the claimant's statement, Mr. Bryant testified:

> . . . . Well, I mean, to me he's always been pretty lazy. He'll get out of work any time he - - you know - - any time he could, he would. Or try to find the easiest way to make his hours there. Which

that put him on light duty. (T. 113).

Mr. Bryant testified that after making the comment, claimant was gone for a few days, and thereafter came back on light duty, doing re-work. Mr. Bryant's testimony reflects that he never had a whole lot to do with the claimant, who impressed him as being a lazy person. Mr. Bryant testified that there was no doubt in his mind that the claimant had attributed the complaint of back pain to an injury suffered on the basketball court.

Mr. Bryant's testimony reflects that on the day the claimant mentioned having hurt his back playing basketball they were working their regular 12-hour shift, however claimant left early and did not work the full shift. Mr. Bryant estimates that claimant worked six hours, having left after the first break, which was at 8:00 p.m. While Mr. Bryant's testimony reflects that he work his regular shift on July 4, 2004, he is uncertain if claimant did so. Mr. Bryant testified that claimant's statement regarding not having to again lift boxes was made in close proximity to the July 4, 2004, time period. Mr. Bryant and claimant worked the A2 shift, (weekend shift). Mr. Bryant's testimony reflects that following the claimant's six-hour shift, by the next weekend claimant was on light duty.

The testimony of Mr. Bryant reflects that claimant's statements regarding hurting his back playing basketball and not having to throw another box were made of different days, approximately a week apart. Further, Mr. Bryant testified the on the day claimant reported hurting his back playing basketball was the same day that claimant worked the approximately six hour shift.

Mr. Luke T. Wright is employed by MedCorp Health Services, and is located the Target Distribution Center. Mr. Wilson's testimony reflects that he has flex hours, ranging from 6:00

a.m. until 9:00 p.m, so long as it eight to ten hours within the time frame. Mr. Wilson testified that on July 5,2004, he first learned that claimant was claiming a work related injury, when he received a telephone call from Ms. Sandra Goode relaying that the claimant would be coming to see him. Mr. Wright acknowledged that he received his information regarding the claimant's injury from both Ms. Goode and the incident review form completed by her. Mr. Wright's testimony reflects that he talked to the claimant over the phone before seeing him in person regarding the injury.

Regarding the purpose for the nurses' station visit of the claimant, Mr. Wright testified:

> I do an evaluation. Any time anybody claims an injury of any sort while they're at work they come in and I do an evaluation. And we determine at that point if I can correct the problem with first-aid or is this going to be something I need to refer on to a physician. (T. 135).

Mr. Wright testified that he did conduct some therapy sessions with claimant:

> Some very light - - you know - - I showed him some exercises, some stretching just so he can stretch out. Because his explanation was it was tight and it was hurting down through the buttocks into the leg. And the tightness, you know, generally can be - - any time that there is a sprain, generally a stretching can release the muscle. And so we did that. And, of course, we did ice which is standard procedure for any type of muscle sprain. And then we applied some Bio-freeze, which is some gel that we put on for - - it's kind of pain relief, muscle relaxer. (T. 135).

Mr. Wright's testimony reflects that he obtained a history of the claimant's injury at the time of the reporting and evaluation. Mr. Wright noted that he also provide treatment at the nurses's station for non-worked injuries and illness of employees of respondent.

Mr. Wright provided the following testimony regarding a second incident review form completed regarding the claimant:

> Well, I knew that one had been completed because during the treatment regimen that we put together with Jonathan I asked him, I said, "You're going to have to come in three days a week, then we'll re-evaluate." And he didn't come in. And so he did come in at a later date and I told him then, I said, "Well, you really need to come in for these treatments or it's going to get worse." But I never saw him again. So I knew that a report had already been completed. So about - - I think it was about a month later is when Bill Wiley came to me and handed me a report and said, "Jonathan Hall has said he's been hurting and we've completed an incident report." So at that time I said, "Well, you know, there's already been one completed." Bill Wiley didn't know that so we pulled it out to make sure. (T. 137)

Mr. Wright testified that at one of the appointment for therapy claimant was late, and that while obtaining the medical history, claimant relayed that he was not really sure how it really happened at the time. Mr. Wright testified that claimant responded to his inquiry of if he did anything else during his off-time that might give some indication of why he was injured, that he had another job, sales with Abercrombie and Fitch.

The testimony of Mr. Wright reflects that after the second report regarding the claimant was completed on August 15, 2004, a referral was made to Dr. Sharon Meador. Mr. Wright noted that while the claimant was actually seen by Dr. Meador pursuant to the referral, at a later point a determination was made that the claim would not be accepted as a workers' compensation claim. Mr. Wright informed the claimant of the denial of the claim. When it was pointed out to Mr. Wright that the first visit of the claimant to Dr. Meador resulted in a report dated August 6, 2004, Mr. Wright testified:

> Well, that would be then when he bought it to me. I don't know why that was the date. I referred him the date that Bill Wiley sent him up to me.
>
> It was the 6th or 7th. The 6th is when we had the - - because I have in my notes that it was the 6th that I referred him, because

that's when she saw him. (T. 142).

Mr. Wright concedes that the August 15, 2004, incident review report was completed a week following the claimant's visit to Dr. Meador. Mr. Wright acknowledged informing the claimant that since the claim had been denied as a workers' compensation claim, further medical treatment should be sought under his group health care provider.

Mr. Wright's testimony reflects that claimant never attributed his injury to anything other than his employment duties with respondent. Claimant denies that he ever said anything to Mr. Bryant about hurting himself playing basketball. Further, claimant denies telling Mr. Bryant that he was going to get out of throwing boxes.

The medical in the record reflects that claimant was seen on August 6, 2004, at Conway Occumed Clinic by Dr. A. Sharon Meador, pursuant to the direction of respondent relative to a work-related injury. A review of the history relayed to Dr. Meador by the claimant reflects consistency with the testimony generated by the claimant during the hearing before the Commission. Further, the August 6, 2004, reports recites the claimant's date of injury as July 4, 2004, and the discharge of duties in non-con sort at the time of the occurrence. Following her evaluation of the claimant, Dr. Meador assessed the claimant's complaint as "right buttock and leg pain, etiology unclear". In terms of treatment recommendations, the August 6, 2004, report of Dr. Meador reflects modified duty, physical therapy, ibuprofen, and a follow-up visit in two weeks. (CX. #1, p. 1-2). In her "Workability Report" generated during the August 6, 2004, examination of the claimant, Dr. Meador identified specific physical restrictions relative to claimant's employment activities. (CX. #1, p. 4-5).

On August 18, 2004, claimant underwent physical therapy at HealthSouth, pursuant to the

August 6, 2004, evaluation and recommendation of Dr. Meador. In addition to reflecting a consistent history relative to the mechanism of the July 4, 2004, injury, the August 18, 2004, physical therapy report reflects, "Clinical findings are consistent with a musculoskeletal pattern of impaired joint mobility, motor function, muscle performance, and range of motion associated with connective tissue dysfunction." (CX. #1, p. 7).

The evidence reflects that once the August 15, 2004, incident review form completed by Mr. Wiley relative to the claimant entered the system of respondent, the claimant's claim for workers' compensation benefits was denied. Claimant received notification of the denial while pursuing the physical therapy recommended by Dr. Meador. Claimant was also informed that he could not return to the employment of respondent until he was fully released to perform his regular job duties without restrictions.

Thereafter claimant sought treatment under the care of a chiropractic physician relative to his low back/leg complaints. On September 1, 2004, claimant was seen by Dr. Ed Engelhoven, D.C. (CX. #1, p. 10a-12). In a September 8, 2004, report, Dr. Engelhoven place specific restrictions of the claimant's employment activities, with respect to lifting, prolonged standing and sitting. (CX. #1, p. 13).

On September 10, 2004, claimant was seen by his primary care physician, Dr. Bryon Curtner, for complaints associated with his low back and leg. Claimant attributed his complaints a work injury in his employment with respondent. After conducting a physical examination Dr. Curtner scheduled a MRI scan for the claimant. (CX. 1, p. 13b).

On September 13, 2004, claimant underwent an MRI scan at Baptist Health Medical Center- North Little Rock, pursuant to the direction of Dr. Curtner. In addition to citing the

finding of a disc herniation, the MRI report also reflects, "I suspect there is a small posterior annular tear at the 5-S1 level". (CX. #1, p. 14). Claimant was seen in follow-up by Dr. Curtner on September 16, 2004, after the MRI scan. Dr. Curtner's report reflect, with respect to the claimant's visit:

> S: Jonathan comes back today to follow-up on his MRI. He does have a herniated disk at L4, L5 that does encroach on the left nerve root. His symptoms are about the same and he's not having any weakness, or numbness or tingling in his feet or legs.
>
> A:
> l. Herniated disk. It sounds like it happened on July 4th .
>
> P:
> 1: I will go ahead and give him a referral over to see the neurosurgeon for this. He will follow-up with me as needed. I have given him some samples of Flexeril 5 mg., to take at night. (CX. #1, p. 14b).

An October 15, 2004, appointment was scheduled for the claimant with Dr. James Admatez by Dr. Curtner. (CX. #1, p. 14a).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On July 4, 2004, the relationship of employee-employer existed between the parties.

3. On July 4, 2004, the claimant earned an average weekly wage of $506.00, which generates weekly compensation benefit rates of $338.00/$253.00, for temporary total/permanent

partial disability.

4. On July 4, 2004, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant was temporarily totally disabled for the period August 16, 2004, through September 28, 2004, and temporarily partially disabled thereafter, until such time as he reaches the end of his healing period, or no longer suffers a reductions in his earnings as a result of the compensable injury.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 4, 2004.

7. The respondent has controverted this claim in its entirety.

DISCUSSION

The claimant asserts that he suffered an injury to his low back within the course and scope of his employment with respondent on July 4, 2004, which required medical treatment and resulted in physical restrictions on his employment activities. While respondent initially provided medical benefits and accommodated his light duty restrictions, claimant asserts that once the claim was controverted he was rendered totally incapacitated from engaging in gainful employment due to respondent's refusal to accommodate his medical restrictions. Claimant seeks corresponding temporary total and medical benefits, as well as controverted attorney fees. Respondent contends that claimant did not suffer a compensable injury. 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 result of an injury having been sustained subsequent to the effective date of the afore provision.

Claimant commenced his employment with respondent on October 4, 2003. The is no evidence in the record to reflect that claimant experienced limitation or restrictions relative to his low back prior to his employment by respondent. Further, there is no documented evidence in the record to reflect that claimant required or sought medical treatment relative to his low back prior to July 4, 2004.

On July 4, 2004, claimant reported for work at his regular scheduled time, 4:00 p.m. The policy of respondent mandates that if an employee reports for work as scheduled, the minimum number of hours the employee will work is three (3) in the event there is an insufficient amount of work. Such was the case with respect to the claimant on July 4, 2004. Claimant did not discharge his job duties in his regular area, Depal, but rather was assigned non-con sort. While lifting a box, claimant experienced what he felt was a "cramp" in his back. Claimant did not report the injury or incident to supervisory personnel prior to the conclusion of his three-hour shift.

The credible evidence in the record reflects that when claimant reported for work at his next scheduled shift, July 5, 2004, the injury was reported to his supervisor, Sandra Goode. Claimant was not performing the same job duty on July 5, 2004, as he was performing on July 4, 2004. When Ms. Goode completed the incident review form in connection with the claimant's reporting of his injury, she included the job that claimant was performing on the day of the reporting, rather the day of the injury. Claimant did not complete the form, but only signed it. Claimant's symptoms attributable to the July 4, 2004, injury did not abate.

Claimant worked the A2 shift or weekend shift. While respondent provided therapy sessions with the plant nurse relative to claimant's symptoms growing out of the July 4, 2004,

injury, a referral was not had to physician. In mid-July 2004, there was a change in the claimant's supervisor or Group Leader. The new supervisor, William Wiley, noticed a reduction in claimant's productivity. Claimant informed Mr. Wiley that he was continuing to experience residuals from his injury when questioned regarding the productivity. Claimant was referred back to the plant nurse, Mr. Luke Wright, who in turn referred him to a physician, Dr. Sharon Meador, on August 6, 2004. Claimant was provided light or modified duty pursuant to the recommendation of Dr. Meador.

A subsequent incident review form was completed by the claimant's new supervisor in mid-August 2004, pursuant to the direction of his supervisor, Mr. Mike Rizzo, Facility Operations Group Leader. The impact of the afore was that it gave the impression that two (2) injuries were being reported by the claimant, instead of continuing complaints in association with the July 4, 2004, incident. Both incident review forms were completed by the supervisors and contained inaccurate information. Unfortunately, when the two documents were compared the same resulted in the claim being controverted.

The evidence in the record preponderates that claimant suffered an injury to his back on July 4, 2004, within the course and scope of his employment. The injury was reported to appropriate supervisory personnel of respondent of July 5, 2004. The claimant continued to experience residuals of the injury, and was referred to a physician by respondent on August 6, 2004. Respondent provided medical benefits to the claimant and work within his medical restrictions until on or about August 16, 2004, when the claim was controverted.

Once respondent controverted the claim, claimant sought treatment under the care of a chiropractic physician and his primary care physician for his July 4, 2004, injury. Diagnostic

studies disclosed the presence of a herniate disc in the claimant's lumbar spine. Claimant has been referred to a neurosurgeon for further treatment.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant has to establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4) (A) (i) (Repl. 2002). *Mikel v. Engineered Specialty Plastics,* 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim, the evidence preponderates that claimant worked three hours on July 4, 2004, and that he suffered the injury to his back on said date. There is no evidence in the record reflecting complaints relative to claimant's back and or leg prior to July 4, 2004. Claimant worked weekends in his employment with respondent, which consisted of three (3) twelve hour shifts. The record reflects that on July 5, 2004, the day claimant reported the July 4, 2004, injury to his supervisor, claimant only worked ten (10) hours, due to residuals of the injury. Claimant has provided a consistent history relative to his injury to medical providers, to include his job activities at the time of the onset of symptoms. Claimant provided to same consistent account to his supervisors. The error occurred when the supervisor inaccurately recorded the information.

Claimant was referred to plant nurse on or about August 6, 2004, by his supervisor. The plant nurse recorded that claimant was continuing to have problems as a result of the July 2004,

injury for which he had been referred and treated previously. According, the nurse referred the claimant to a physician. The history relayed to the physician by the claimant at the time of August 6, 2004, visit is consistent with his account of the injury which occurred on July 4, 2004. However, when a incident review form was completed by the claimant's supervisor some nine days later, August 15, 2004, it contained approximations of the date of injury, June 27, 2004.

The credible evidence in the record reflects that claimant has consistently attributed his low back/leg complaints to his employment duties of July 4, 2004. The testimony of the claimant's parents, plant nurse, and friend/co-worker is corroborative of the afore, in addition to the medical history of the treating physicians. Claimant denies that he was injured playing basketball, told anyone the he was so injured, or used such an injury as a pretext to get out of doing his regular job duties. Base on my review of the documentary evidence, to include medical reports, coupled with the testimony of the witnesses, I find that the claimant has sustained his burden of proof by a preponderance of the credible evidence that he suffered an injury within the course and scope of his employment with respondent of July 4, 2004. Respondent has controverted this claim in its entirety.

Ark. Code Ann. § 11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. The evidence reflects that claimant remained symptomatic subsequent to the July 4, 2004, compensable injury and in need of medical treatment. Following his initial visit to a physician relative to the injury treatment was provided in the form of medication. Additionally, modified job duties were recommended along with physical therapy. Claimant was provided work within his restriction until the claim was controverted on or about August 16, 2004. The medical treatment rendered

to the claimant subsequent to the point in time that respondent controverted same was reasonably necessary in connection to claimant's July 4, 2004, compensable injury. Respondent is liable for the cost of said treatment.

Entitlement to temporary total disability benefits for an unscheduled injury is contingent upon a showing that the claimant is completely incapacitated from earning wages and remains within his healing period. *Arkansas State Hwy & Transp. Dep't. v. Breshears,* 272 Ark. 244, 613 S.W.2d. 392 (1981). A claimant is entitled to temporary total disability benefits during his healing period if he shows by a preponderance of the evidence that he had a total incapacity to earn wages. *Carroll General Hospital v. Green,* 54 Ark. App. 102, 923 S.W.2d. 878 (1996). Claimant was informed by respondent that he would not be permitted to return to work until such time as he could perform his regular job duties without restrictions. There is no showing that claimant has reached the end of his healing period relative to the July 4,2004, compensable injury. Indeed, the converse is the case. Claimant remains under the care of a neurosurgeon relative to the injury. Claimant was totally incapacitated from on or about August 16, 2004, until he secured new employment on or about September 28, 2004, and correspondingly entitled to the payment of temporary total disability benefits. Subsequent to September 28, 2004, claimant is entitled to the payment of temporary partial disability benefits since he remains in his healing period, in the event there is a reduction in his earning, pursuant to Ark. Code Ann. § 11-9-520.

AWARD

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of $338.00, for the period commencing on or about August 16, 2004, and continuing through September 28, 2004, as a result of his compensable injury of July 4,

2004. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonably necessary medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of July 4, 2004, to include medical related travel.

Respondent is herein ordered and directed to reimburse any other insurance carrier for sums expended on behalf of the claimant relative to medical treatment growing out of the July 4, 2004, compensable injury.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

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Andrew L. Blood, Administrative Law Judge