

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502419

DALLAS HARRIS, EMPLOYEE	CLAIMANT
WEST MEMPHIS STEEL & PIPE, INC, EMPLOYER	RESPONDENT
UNION STANDARD INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JULY 14, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 24, 2005, at Marion, Crittenden County, Arkansas.

Claimant represented by the HONORABLE MARC I. BARETZ, Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On May 10, 2005, a prehearing conference was conducted in this claim from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order in herein designated a part of the record as Commission's Exhibit No. 1.

The testimony of Dallas Harris, the claimant, Nathan Carter, Rhonda McCloud, Tony Robinson, Jerry Smith, and Jerome Clark, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Dallas Harris, the claimant, with a date of birth of August 2., 1966, is a high school graduate who has also completed a truck driving school. Claimant is also an eight year veteran of the U S Army, having served two periods of active duty, 1985-1993 and 2000 -2001. While in the regular armed services claimant discharge duties as a EMT, transportation, and as a MP.

The claimant, who is six feet tall and weighs 215 pounds, testified that he was in excellent physical condition in February 2004 when he commenced his employment with respondent. Claimant asserts that the position for which he was hired was that of relief truck driver, however, he was later assigned job duties on the saw, and ultimately promoted to a supervisory position in mid-January 2005. In addition to discharging his employment duties with respondent claimant's testimony reflects that he performed construction or contract work as a side venture. Claimant's testimony further reflects that he engaged in routine activities during the weekend which included cutting grass, washing vehicles, upkeep and maintenance at his residence.

Claimant testified that he did not recall ever having sustained an injury to his left shoulder or neck prior to his employment with respondent. Further, claimant denied that he experienced any physical restrictions or limitations relative to his neck or shoulder prior to his employment with respondent.

Claimant testified that he suffered an injury to his left shoulder on December 22, 2004, within the course and scope of his employment with respondent. Specifically, claimant asserts that he was in the process being promoted to a supervisory position during the pertinent time period. In furtherance of the afore, claimant maintains that he was training another employee,

Nathan Carter, on the operation of the saw. Claimant asserts that he was directed by Jerry Smith, the shop manager, to assist another employee, Tony Robinson, in moving a length of pipe. The length of pipe was described as twenty feet long and weighing between fifty and one hundred pounds. Claimant testified that he was on one end of the pipe and Tony Robinson was on the other end; that he had the pipe on his left shoulder and was backing up when he tripped over a metal rack ,which was in the floor, causing him to fall back into other pipes striking the back of his left shoulder.

Claimant maintains that his left shoulder was jarred in the accident causing him to be unable to continue holding his end of the steel pipe. As a consequence of the afore he hollowed to Mr. Robinson to drop the pipe, and that he thrust his end of the pipe out, causing the steel pipe to land on the surface of the shop floor resulting in a loud noise. Further, claimant asserts that he fell to the floor. There is testimony in the record to reflect that as accident did in fact occur with the claimant tripping over a metal rack while he and another employee, Tony Robinson, were moving the pipe resulting in the claimant suffering a laceration to his lower leg.

Claimant asserts that after the December 22, 2004, accident, other employees asked if he needed assistance getting up off the floor. After getting up, claimant testified that he initially reported the accident to Jerome Clark, who had formerly been his supervisor. Claimant acknowledged Mr. Clark had been demoted as a supervisor at the time he reported the incident to him. Claimant asserts that Mr. Clark directed him to report the injury to Jerry Smith, the shop manager. Claimant further maintains that when he reported t he injury to Mr. Smith he relayed that he thought that he had mess up his shoulder. The claimant is right hand dominant. Claimant maintains that while Mr. Smith did not discourage from seeking medical treatment he was not

encourage to do so either.

Claimant's testimony reflects that the atmosphere at the job site was such that employees was discouraged from missing work with threats of loss of jobs. In addition to conversations with other employees and supervisory personnel of respondent, claimant relayed as a basis for his belief regarding the likely termination of employment due to missed time from work an instance where he had been to the doctor because he was sick and returned with a doctor's statement. As a consequence of the afore claimant asserts that he was informed that he could not be missing work and that if he had to miss work he could find some place else to work. Accordingly, when he suffered the December 22, 2004, injury, claimant testified that he elected not to seek medical treatment, but rather continue performing employment duties.

Claimant maintains that prior to the December 22, 2004, injury, while performing supervisory duties, he also performed substantial manual labor along with the employees that he supervised. Claimant asserts that subsequent to the injury while he continued discharging employment duties for respondent he increased the amount of work that he delegated and decreased the amount of physical manual labor that he performed.

Claimant's testimony reflects that as he continued to discharge his employment duties his symptoms and complaints relative to his left shoulder grew progressively worse to the point that he was unable to even lift a folding chair. The testimony of the claimant reflects that his work day with respondent commenced at 7:00 a.m., and, depending on the amount of overtime work could end at 8:00 P.M. Claimant's testimony reflects that typically he began getting ready for work at approximately 5:00 a.m. Claimant asserts that on the date that he sought medical treatment at the emergency room of Crittenden Memorial Hospital his symptoms were such that

while getting dress for work he was unable to do so. Thereafter claimant reported to the emergency room for medical treatment relative to the shoulder.

The medical in the record reflects that the claimant was seen at the emergency room of Crittenden Memorial Hospital on February 21, 2005. Claimant asserts that at the time he sought the medical treatment relative to his left shoulder he relayed a history of his work-related injury. Further, claimant maintains that after initial emergency medical treatment he was directed by the attending emergency room physician to remain off work until he was seen by his family doctor. Claimant was provided a written slip and furnished same to the plant manager, Jerry Smith, following the emergency room visit.

Claimant asserts that when he returned to respondent to pick up his pay check at the conclusion of the work week of February 21, 2005, he was informed that before he could get his pay check he had to turn in his work uniforms. While claimant acknowledged that he was not informed by the plant manager that his employment had been terminated, he took the request to turn in his uniforms as evidence of same.

With respect to medical treatment, claimant's testimony reflects that after being seen at the emergency room of Crittenden Memorial Hospital on February 22, 2005, he was seen in follow-up by his family physician, Dr. Trent Pierce. The testimony of the claimant reflects that following treatment and diagnostic studies under the care of Dr. Pierce, to include an MRI of his left shoulder, he was referred by same to Dr. John J. Lochemes, a Memphis orthopedic physician. Claimant testified that he relayed an accurate and honest history of his injury to Dr. Lochemes. Claimant attributes any discrepancies in the records of his medical providers, to include Crittenden Memorial Hospital, Dr Pierce, and Dr. Lochemes, to his response to the

question being asked by the provider. Accordingly, claimant denies that he suffered an injury to his left shoulder as a result of moving furniture at home or at work. Claimant asserts that he relayed to medical providers, and particularly Dr. Lochemes, that he realized that he needed medical treatment when he was unable to lift a simple folding chair.

On March 21, 2005, claimant underwent surgery under the care of Dr. Lochemes for a diagnosed anterior-inferior shoulder instability on the left. Claimant asserts, pursuant to his request, he was released to light duty work on or about April 28, 2005, by Dr. Lochemes. Thereafter, claimant sought and obtained employment with a different employer on May 3, 2005.

Ms. Rhonda McCloud, the claimant's fiancé, provided testimony corroborative of that of the claimant. Specifically, Ms. McCloud's testimony reflects that a couple days prior to Christmas 2004, claimant relayed that he had hurt his arm lifting steel at work. Ms. McCloud testified that the claimant was unable to assist with putting up the Christmas tree because of his complaints relative to his arm. Further, Ms. McCloud testified regarding her observations of the claimant, subsequent to the reported injury, regarding his inability and/or restrictions in performing simple routine tasks around the house. Ms. McCloud further testified that as time progressed the claimant continued to complain about pain in his shoulder to the point that he sought treatment at the emergency room. Ms. McCloud did not accompany the claimant to the emergency room for the treatment relative to his shoulder. Ms. McCloud further testified that she was aware of the claimant suffering an increase in pain relative to his shoulder while removing a home make ladder from his truck, however the incident occurred after the accident at work.

The testimony of Mr. Nathan Carter reflects that he was employed by respondent from February 2004 until June 2005. Mr. Carter acknowledged that he had known the claimant most of

his life. While he was employed at respondent Mr. Carter testified that the claimant was his supervisor and trained him on the saw. Mr. Carter's testimony reflects that he was promoted to the position on the saw at the same time claimant was promoted to supervisory position. Further, Mr. Carter testified that he was aware of the accident which occurred while the claimant and Tony Robinson were moving length of steel pipe. Mr. Carter testified that while he did not see the accident he did observe claimant on one knee continuing to hold the steel pipe following the accident. Mr. Carter's testimony reflects that the accident involving the steel pipe occurred short prior to the time claimant ceased employment with respondents.

Mr. Tony Robinson testified that he has been employed by respondent for two and a half years and remains in the employment of same. Mr. Robinson's testimony reflects that the claimant was promoted to a position of supervisor in January/February 2005. Mr. Robinson noted the claimant was his supervisor. Mr. Robinson further testified regarding an incident in which he and the claimant were carrying a length of steel pipe when the claimant tripped over a rack. According to Mr. Robinson's testimony, the claimant tripped and went forward, and injured his lower leg in the process. Mr. Robinson denies that the claimant fell backward or that the length of pipe the two were carrying fell to the floor. Mr. Robinson noted that the claimant fell to one knee during the accident. Mr. Robinson estimated that the weight of the twenty-one foot piece of pipe was forty-five pounds. Mr. Robinson's testimony reflects that the claimant was a supervisor at the time of the accident because he was assisting him.

Further, Mr. Robinson testified that the claimant complained of pain and numbness in his forearm prior to the time of being pulled off the saw, which was when the claimant became a supervisor. The testimony of Mr. Robinson further reflects that the claimant continued to work

for approximately three weeks after the tripping incident. Further, Mr. Robinson's testimony reflects the claimant continued to perform his regular duties following the incident.

The testimony of Mr. Robinson reflects that on Monday, February 21, 2005, claimant returned to respondent after having been seen at the emergency room of Crittenden Memorial Hospital. Mr. Robinson testified that the claimant relayed that he had been to the emergency room, received treatment for his left shoulder, and that he had possibly hurt it while at the job.

The testimony of Mr. Jerome Clark reflects that prior to December 2004, he worked as a supervisor. Mr. Clark further testified that when he was demoted claimant was promoted to the position which he formerly held as a supervisor. Mr. Clark denies that he witness the claimant being involved in an accident in December 2004 or January 2005. Further, Mr. Clark denies that the claimant ever reported to him that he had injured his shoulder in an accident.

Mr. Terry Smith, a seven and a half years employee of respondent and the shop manager, testified that there were two supervisors under his supervision, one of whom was Jerome Clark through December 2004. In January 2005, Mr. Smith testified, the claimant was promoted to the position of supervisor. Mr. Smith denies that the claimant reported having sustained an injury to him on December 22, 2004.

Mr. Smith acknowledged that on February 21, 2005, claimant reported that he had hurt his shoulder at work and had gone to the emergency room. Mr. Smith noted that on Friday, February 18, 2005, when claimant left work at the conclusion of the shift, he had been able to do his regular job duties, to include loading the truck, without apparent restrictions or limitations. Further, that claimant did not indicate that he was experiencing any difficulties or complaints relative to his shoulder on said date. Mr. Smith's testimony reflects that when the claimant

reported that he had hurt his shoulder and had been to the emergency room, the plant manager was in a meeting. As a consequence of the afore, Mr. Smith made a copy of the emergency room release slip for the files and return the original to the claimant.

Mr. Smith maintains that the respondent has one of the most relaxed attendance policy of an employer that he is aware of. Mr. Smith testified, however, that employees are required to call in if they are not going to report to work, or otherwise could face termination of the employment.

The medical in the record reflects that the claimant was seen at the emergency room of Crittenden Memorial Hospital on February 21, 2005. While the claimant's employer is identified on the hospital admittance records, the group health care provider and the policy number are reflected in terms of insurance company responsible for the cost of treatment. The nurses note relative to the claimant's February 21, 2005, emergency room visit reflects that the claimant was the historian, relayed complaints of pain in his left shoulder which was of three days duration caused by lifting furniture with the location "at work" being circled. The after care instructions sheet furnished to the claimant during the February 21, 2005, visit reflects a diagnosis of an old fracture humerus. Claimant was directed to follow-up with Dr. Pierce and to remain off work for five days, with a return date of February 26, 2005. (CX 1, p14-23)

Claimant underwent an MRI on February 21, 2005, at Crittenden Memorial Hospital. Among the findings reflected in the MRI report was an absence of acute abnormality of the shoulder, severe tendinophthy in the supraspinatus, and in the most anterior portion such that the same may represent old chronic fenestrated full thickness damage. (CX. 1, p.19)

The record reflects that claimant was seen by Dr. Trent Pierce on February 25, 2005, in

follow-up to a visit to the emergency room relative to his left shoulder. As a consequence of the afore, an appointment was scheduled for the claimant to be seen by Dr. John Lochemes, a Memphis orthopedic physician. Dr. Pierce noted that the MRI disclosed that the claimant had an impacted humeral fracture and numerous tendon tears. (CX 1, p25)

The medical in the record reflects that claimant was initially seen on February 28, 2005, by Dr. John Lochemes, pursuant to a referral by Dr. Pierce. The February 28, 2005 report of Dr. Lochemes, relative to the claimant, reflects, in pertinent part:

PI: This is a pleasant gentleman who developed symptoms in his shoulder. He remembers back several months ago when he was trying to take a home made ladder off his truck and his left shoulder jerked. He felt a pop. It sort of popped back in place, but subsequently has had intraarticular pathology. He is a tough guy, promoted to supervisor, handles steel for a living, but also is quite proficient at home building. He is a licenses contractor. He has instability symptoms as well as impingement type symptoms. (CX 1, p29)

Following the physical examination and diagnostic studies, claimant underwent surgery under the care of Dr. Lochemes on March 21, 2005. The claimant was seen in follow-up by Dr.

Lochemes on March 31, 2005. After noting the results of the physical examination, the office note relative to the visit reflects, in pertinent part:

Regarding work related, he says that he fell while carrying some steel. He fell and had and outstretched arm episode during the fall on the right side. He wished me, due to the arthroscopic findings, to determine when the injury occurred. I do think that his mechanism of injury with falling with the steel on the job could have played a contributing role here, but it's impossible to know which was the actual inciting event that threw it

over the edge, so to speak. I would base it on the track record thus far prior to my meeting him with the determination there. I did want to state that his mechanism of injury does appear to be consistent with the pathology found. . . (CX 1. p48)

After a through 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, coupled with the 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 December 22, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On December 22, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$348.00/\$261.00 for temporary total/permanent partial disability.
4. On December 22, 2004, the claimant did not sustain an injury arising out of and in the course of his employment.

CONCLUSIONS

Claimant asserts that he suffered an injury to left shoulder on December 22, 2004, within the course and scope of his employment with respondent, and seeks corresponding temporary total and medical benefits. Respondent deny that the claimant suffered a compensable injury within its employment. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant assert entitlement workers' compensation benefits as a result of an injury having

been sustained subsequent to the effective date of the afore provision.

Since the claimant asserts that the injury to his left shoulder is the product of a specific incident in the employment of respondent identifiable by time and place of occurrence, in order to prove a compensable injury, he must establish by a preponderance of the evidence: an injury arising out of and in course of his 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 identified by time and place of occurrence. Ark. Code Ann. 11-9-102(4)(A)(i). Should the claimant fail to establish by a preponderance of the evidence either of the requirements for establishing the compensability of the claim, compensation must be denied. Mikle v. Engineering Specialty Plastic, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

In the instant claim, claimant asserts that he suffered a specific injury on December 22, 2004, to his left shoulder when he tripped and fell while carrying a length of steel pipe with another employee. Claimant maintains that in the tripping episode his left shoulder was jarred because he was holding the length of pipe on the left shoulder and that when he fell backward his shoulder impacted another pipe. Further, claimant maintains that in the process of the accident he called out to the co-worker, Tony Robinson, to release the pipe because the claimant was unable to maintain his end. As a consequence of the afore, claimant asserts that the pipe that the two were carrying struck the surface, and made a loud sound.

The evidence preponderance that while the claimant suffered a tripping incident while carrying a pipe with Tony Robinson, the same did not occur on December 22, 2004. Further,

contrary to claimant's assertion that he reported having suffered an injury to his shoulder in the tripping episode, the evidence in the record is not supportive of same by a preponderance.

The credible evidence in the record, to include witnesses called by the claimant on his behalf, reflects that the tripping episode occurred after claimant had been made a supervisor. Further, the evidence in the record reflects that the claimant became a supervisor in mid-January 2005. Additionally, the evidence in the record does not reflect that the pipe that claimant and Tony Robinson were carrying at the time of tripping resulted in pipe being thrown to the surface.

The claimant sought medical treatment at the emergency room of Crittenden Memorial Hospital on February 21, 2005, for complaint relative to his left shoulder. Claimant is right hand dominate. There is no evidence in the record to reflect that claimant relayed a history of tripping and falling at work injuring his left shoulder in either December 2004, or February 2005, as the basis for the need for medical treatment during the February 21, 2005, emergency room visit. The medical records reflect that claimant recited that he had experience pain in his left shoulder for three days prior to the February 21, 2005, emergency room visit, and that the same was the product of moving furniture. Prior to the February 21, 2005, emergency room visit, claimant last discharged employment duties for respondent on Friday, February 18, 2005. Claimant's employment duties with respondent did not entail moving furniture. Further, the evidence reflects claimant successful discharged his employment duties on February 18, 2005, and did not relay to his supervisor, Jerry Smith, the shop manager, that he was having problems with his left shoulder.

The claimant was referred by his family physician, Trent Pierce, who he saw on February 25, 2005, pursuant to the direction of the emergency room physician. Dr. Pierce referred the

claimant to Dr. John J. Lochemes, a Memphis orthopedic physician. Claimant was initially seen by Dr. Lochemes on February 28, 2005. The history of his injury as relayed by the claimant to Dr. Lochemes on February 28, 2005, is devoid of a work-related nexus involving the claimant's employment with respondent.

The evidence in the record fails to establish by a preponderance that the claimant suffered an injury arising out of and in the course of his employment with respondent on December 22, 2004, as a result of a specific incident identifiable by time and place of occurrence. This claim is respectfully denied and dismissed.

IT IS SO ORDER.

Andrew L. Blood
Administrative Law Judge