

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409096

JAMES M. HUGHES, EMPLOYEE	CLAIMANT
RDS INVESTMENTS GROUP, INC., EMPLOYER	RESPONDENT
SAFECO INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 15, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 18, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, and attorney's fees.

At issue is whether or not the claimant sustained a compensable specific injury as defined by Ark. Code Ann. §11-9-102 and whether he gave notice to his employer of an injury pursuant to Ark. Code Ann. §11-9-701. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on August 27, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$283.00/\$212.00, in the event this claim is found to be compensable.

The claimant contends he sustained specific injuries to his neck and back in a lifting incident on August 27, 2004. He seeks payment of medical expenses and attorney's fees.

The respondents contend the claimant's condition, syringohydromyelia, was preexisting and was not caused by any injury at work. Alternatively, in the event of an award, the respondents would

not be liable for any benefits prior to the time they received notice.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and his manager, Terry McNew.

The claimant, age 20 (D.O.B. September 13, 1985) has a tenth grade education and a G.E.D. He is presently enrolled at Pulaski Technical College.

The claimant was hired by the respondent-employer with the understanding that he was on probation for three months, ending in September, 2004. His job duties required him to lift 2-100 pounds of paper, wrapping and boxing the product and placing it on a pallet. He gradually developed back pain and difficulty sleeping. He borrowed his aunt's back brace to wear to work during the month of August. He told Mr. McNew that his back hurt and the assistant manager helped him with lifting. This conversation took place during the last week of August.

The claimant planned to see his general practitioner, Dr. Kaemmerling, about his back. However, he cut his toe on his left foot at home and had to go to the emergency room (ER) at Baptist. While he was there, he asked them to take a look at his back.

The manager, Mr. Lumpke, knew about the claimant's doctor's appointments. The claimant and his father talked with Mr. Lumpke but never reported a work-related injury. The claimant was fired on September 1, 2004.

The claimant didn't seem to have any orientation training about the job. He was unaware back braces were provided by the employer and he didn't even know the name of his supervisor. I would be surprised if the employer explained the workers' compensation procedure to him.

Mr. McNew, the assistant manager, testified the claimant was fired because he needed to be off work for a week with the foot injury. Mr. McNew acknowledged that the claimant complained of back pain toward the end of August, but it was his understanding that the claimant had this condition for a long time. Th claimant never reported a work-related injury to him or asked for medical treatment. He became aware of a workers' compensation claim sometime after the claimant

was fired. He doesn't recall the claimant ever wearing a back brace at work.

MEDICAL EVIDENCE

The claimant reported a foot injury and back pain during his ER visit on August 29, 2004. He related the gradual onset of back pain to his new job lifting boxes, but no specific incident was identified. A physical examination revealed a normal cervical and thoracic spine, but muscle spasm was evident in the lumbar spine.

The claimant saw his family physician, Dr. Kaemmerling, the next day on August 30, 2004:

James has been having problems with his back for a while. He has had some numbness and tingling in his legs... He doesn't remember doing anything specific, but he has a job that requires quite a bit of lifting.

An MRI scan taken September 1, 2004 revealed a syringohydromyelia in the thoracic spine but the etiology of the condition was unclear.

While this may be idiopathic, congenital, or post-traumatic in etiology, MR of the thoracic spine would be helpful to exclude a more cephalad obstructing mass.

Further diagnostic testing on September 7, 2004 revealed a large focal syrinx at C6-C7 and a smaller syrinx at T-10-T-12. The radiologist, Dr. Getzoff, opined there was no evidence of malignancy or trauma and the most likely explanation was a congenital condition.

Dr. Kaemmerling referred the claimant to Children's Hospital. An MRI of the cervical, thoracic and lumbar spine was repeated along with a brain scan. Dr. Adada recommended conservative treatment with 5-7 days of bed rest, physical therapy and medication (Vioxx and Ultram). The claimant was diagnosed with a syrinx at C5-C7 and T9-T12/L1, and released to return to work on April 7, 2005 with a limitation on lifting weights over 20 pounds to prevent muscle strain.

Dr. Adada's Report of 10-14-05:

...His back pain has markedly improved... He has no radiation of pain to his lower extremities. He does complain of numbness and tingling in bilateral upper extremities that was present when he was working, which has completely resolved... Our plan is to undergo urodynamic studies to rule out any physiologic evidence of tethering of his lower spinal cord or thecal sac. We will also obtain an MRI of the thoracic

spine to follow up on the syrxinx...

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. Under the Act, the claimant has the burden of proving the following requirements by a preponderance of the evidence of record:

1. An injury arising out of and in the course of employment
2. An injury causing internal or external harm to the body, requiring medical services or resulting in disability or death
3. An injury established by objective medical findings
4. (a) An injury caused by a specific event identifiable by time and place of occurrence

or
5. (b) A gradual injury, caused by rapid and repetitive motion, which is the major cause of the disability or need for medical treatment.

A compensable injury is one arising out of and in the course of employment, Ark. Code Ann. §11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between his employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

As I interpret the lay testimony, the claimant gradually developed low back pain after several weeks of lifting at work. The assistant manager was aware of this problem sometime during the last week of August, but did not bother to ask how the claimant injured his back. There was no testimony that the claimant injured his neck or upper back at work. There was no testimony that the claimant sustained a specific incident. There was no testimony that the claimant's work duties were rapid or repetitive.

As I interpret the medical evidence, the claimant developed mechanical low back pain which was substantiated by muscle spasm. The problem resolved after conservative treatment. While investigating the low back symptoms, a congenital condition in the neck and upper back were

discovered. This congenital condition will require periodic follow-up in the future.

The evidence of record shows that the claimant cannot meet his burden of proof with regard to a gradual, rapid and repetitive low back injury nor can he prove a causal connection between lumbar back spasms and a congenital condition in the neck and upper back.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on August 27, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$283.00/\$212.00, in the event this claim is found to be compensable.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that he sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge