

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F400116**

**CARLOS JOHNSON, EMPLOYEE**

**CLAIMANT**

**R P ELECTRIC, EMPLOYER**

**RESPONDENT**

**STATE AUTOMOBILE MUTUAL  
INSURANCE COMPANY, CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 10, 2005**

A hearing in this case was conducted on July 6, 2004, before ADMINISTRATIVE LAW JUDGE C. MICHAEL WHITE, at Texarkana, Miller County, Arkansas.

Claimant was represented by Michael Stevens, Attorney at Law, Texarkana, Texas.

Respondents were represented by Nelson V. Shaw, Attorney at Law, Texarkana, Texas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on July 6, 2004, in Texarkana, Arkansas. Although Administrative Law Judge C. Michael White conducted this hearing, he departed the Arkansas Workers' Compensation Commission before an opinion could be prepared. After notice, neither party objected to reassignment of this case and preparation of an opinion based on the existing record.

A prehearing telephone conference was held on this claim on May 19, 2004; a Prehearing Order was filed in this matter on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to four stipulations, all of which were set forth in the Prehearing Order and were confirmed by the parties at the hearing. The stipulations that follow are

hereby accepted:

1. The employer/employee/carrier relationship existed on May 20, 2003.
2. The Claimant was involved in a motor vehicle accident while he was a passenger in a vehicle owned and operated by Randy Pressnell, owner of the respondent employer.
3. At the time of the accident the Claimant was earning \$8.00 per hour and \$320.00 per week.
4. The Respondents have controverted this claim in its entirety.

At the July 6, 2004 hearing, the parties agreed that the sole issue to be litigated and resolved is as follows:

1. Whether the Claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Law.

Claimant contends that he sustained a compensable injury on May 20, 2003, while employed by R P Electric, and that he is entitled to medical and temporary total disability benefits as well as an attorney's fee. Respondents contend that Claimant did not sustain a compensable injury on May 20, 2003, and in the alternative, that there was not timely notice of any job related injury given to the employer.

## **DISCUSSION**

### **A. Compensability of the Claim**

On May 20, 2003, Claimant was employed by the respondent employer to engage in electrical work, making \$8.00 an hour. On that date, Claimant and his employer, Randy Pressnell, finished lunch, obtained some supplies at Dealers Electric, and were traveling in Pressnell's truck when an accident occurred. Claimant confirmed that Pressnell's truck

was hit head on, the impact was severe, and that Claimant was knocked around inside the vehicle. Claimant did not know that he was injured right away; he recalled telling Pressnell that "I thought I was okay." After tending to the accident, Claimant and Pressnell returned to Pressnell's shop to get his other truck; they took the second truck to the auto body shop where the first truck was located to transfer some ladders and other items to the second truck. Claimant testified that Pressnell "took me back to the shop and I called my mom. He told me that I didn't have to do no more work for the rest of the day, that he would give me credit for it." Claimant recalled that he took the rest of the afternoon off.

Pressnell's recollection of the accident is similar to Claimant's; he testified that they were en route to a work site, with Pressnell driving, when the accident occurred. After the accident Pressnell asked Claimant if he was okay, and Claimant "said yes." Pressnell thought Claimant looked fine, noted that he was able to walk around, and remembered that Claimant told the police officer "that he wasn't hurt."

Pressnell itemized the equipment moved from the damaged truck to the second truck: "There was an extension ladder, a step-ladder, extension cords, the power drills, the high dollar stuff that you don't want to walk off by accident, stuff like that." Pressnell testified that, after helping Claimant move the ladders, Claimant moved the remaining equipment. Contrary to Claimant's testimony, Pressnell testified that they then returned to the work site, worked for up to two hours, then returned to Pressnell's shop. Pressnell remembered that Claimant discussed his physical condition before leaving at the end of the day; it was Pressnell's impression that "everybody was okay."

Claimant returned home; "[a]bout 9:00 or 10:00 o'clock that night I laid down and went to sleep and I got woke up out of my sleep by extreme pain." Claimant's lower and

upper back hurt, so he presented to the hospital for an emergency visit. The accident occurred on a Tuesday, as did Claimant's emergency room visit; the medical records reflect that Claimant was excused from work until the following Monday. Claimant notified Pressnell of his condition no later than the following Thursday, two days after the accident.

It appears that Claimant reported to the hospital emergency room at approximately 10:31 p.m. on the date of the accident. He gave a history of involvement in a motor vehicle accident and complained of pain in his spine and between his shoulder blades. X-ray studies of Claimant's thoracic and lumbar spine produced impressions of "normal study." Nonetheless, Claimant was released from regular work. Among other instructions, the physician noted: "Soma + three times a day or bedtime for muscle spasms."

On May 22, 2003, Claimant presented for treatment from the Doctor's Care Clinic. A record of that same date notes "tenderness and muscle spasms." Claimant was kept off work, and prohibited from engaging in "prolonged sitting, standing, lifting or bending." The diagnosis is given as "C, LS strain."

Claimant continued to receive care from the Doctor's Care Clinic. Dr. Rodney Chandler of that clinic authored a letter dated July 23, 2003 that summarized Claimant's treatment. Concerning his May 22, 2003 visit, Dr. Chandler referenced the accident and then wrote:

He complained of neck pain and lower back pain. He also complained of pain radiating down left arm and left leg and pain between shoulders. He also complained of severe pain so bad that he could not stand or sit longer than five minutes. He complained of numbness, tenderness, muscle spasms in back and neck, and decreased range of motion. He had a straight leg raise of + 30°....

X-rays of the Cervical Spine were taken at Doctor's Care Clinic. The following are the readings: Straightening of lordotic curve with 2 mm avulsion

fracture anterior C6.

Dr. Chandler prescribed Claimant “therapy consisting of ultrasound, electrical stimulation, massage, moist heat packs, and a home exercise program.” Dr. Chandler noticed some improvement on Claimant’s June 18, 2003 follow-up medical evaluation. Despite continued complaints of pain, Dr. Chandler also noted continued improvement at a July 1, 2003 follow-up visit. He concluded:

Mr. Johnson responded well to the therapy treatments. Therapy helped decrease pain, increase range of motion, and decrease swelling. Mr. Johnson was released on July 16, 2003. He is much improved, but due to the nature and extent of his injuries in this auto accident, problems could arise in the future.

After treating with Dr. Chandler, Claimant was treated by Dr. Charles Marrow and by Dr. H. P. Weems, an orthopaedic specialist. These doctors still have him off work; Claimant testified that he is not able to work.

Q. What is it that you can’t do now that you could do immediately prior to this accident?

A. I can’t do none of the lifting. I can’t sit for long periods of time, I have to stand up due to the pressure that is on my lower back. I have - I don’t know if it is nerves or what but my left leg goes numb every now and then and I get tingling in my arm.

Q. Can you lift?

A. No, sir.

Q. Can you stoop?

A. I can stoop but just by not bending down so fast or just, you know, straight bending, but it’s tremendous pain when I do that.

While he could work without any problems prior to the accident, Claimant has not worked since the accident. He is still under the care of Dr. Weems and Dr. Marrow. Dr. Weems

wants to attempt injections, and Claimant would like to undergo those but does not have the money to pay for them.

Respondents offered the police report of the May 20, 2003 accident into evidence. In a box labeled "Injury Code" next to Claimant's name, the letter "N" has been entered. The code indicates that this means "not injured." This entry is consistent with Claimant's testimony that he did not believe that he was injured at first and with Pressnell's testimony that Claimant did not complain of an injury at the time of the accident or later that afternoon.

Claimant must prove that he sustained a compensable injury.

"Compensable injury" means:... An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence....

Ark. Code Ann. § 11-9-102(4)(A)(i); see Hargis (War Eagle) Transp. v. Chesser, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (September 8, 2004). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

The employee must sustain his burden of proving a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant has proven by a preponderance of the evidence that he

sustained a compensable injury on May 20, 2003. The elements necessary to prove a compensable injury will be discussed in turn.

Claimant's injury arose out of and occurred in the course of his employment.

In order to prove a compensable injury a claimant must prove, among other things, a causal relationship between the injury and the employment... Objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relation to a work-related incident.

Horticare Landscape Mgmt. v. McDonald, 80 Ark. App. 45, 50, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2002) (citations omitted). Here, the parties stipulated that the employer/employee relationship existed on May 20, 2003. The record reflects that Claimant and his employer finished lunch, obtained some supplies, and were en route to a work site when the accident occurred. Claimant was in his employer's truck, which his employer was driving. Claimant was involved in a head on collision for which he sought medical treatment later that same day. The evidence of greater convincing force establishes the causal relationship between the injury and a work-related accident.

Claimant's injury was caused by a specific incident, identifiable by time and place of occurrence. Claimant and Pressnell agree as to the date, preceding events, and approximate time of the accident. The police report entered into evidence provides additional specificity concerning the accident and the time and place of its occurrence.

Claimant's injury caused physical harm to his body. The medical evidence establishes that Claimant sought treatment on the same date that the accident occurred. Claimant testified that he could work without problems prior to the accident, but that his physical condition was impaired afterwards. Further, the record contains medical evidence

supported by objective findings establishing Claimant's injury; these findings include the May 20, 2003 prescription of Soma for "muscle spasms," the May 22, 2003 observation of "muscle spasms," and Dr. Chandler's July 23, 2003 reference to an x-ray reading of "straightening of lordotic curve." See Ark. Code Ann. § 11-9-102(4)(D) and (16)(A)(i); Fred's Inc. v. Jefferson, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (December 15, 2004) (prescription for muscle spasms); University of Arkansas Med. Sciences v. Hart, 60 Ark. App. 13, 958 S.W.2d 546 (1997) (observation of muscle spasms).

Claimant's injury required medical services. Again, the medical record establishes that Claimant required medical treatment. Dr. Chandler's letter of July 23, 2003 summarizes Claimant's early treatment and the relief it provided. Claimant testified to his need for continuing medical treatment.

To summarize, the evidence of greater convincing force establishes that Claimant sustained a compensable injury on May 20, 2003. Claimant was a passenger in a vehicle operated by his employer, traveling to a work site, when he was involved in a head on collision; Claimant sought and received medical treatment starting later that evening. As noted by the Arkansas Supreme Court, "[i]f the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the commission's refusal to make an award." Hall v. Pittman Constr. Co., 235 Ark. 104, 105, 357 S.W.2d 263, \_\_\_ (1962) (citation omitted).

## **B. Notice**

As noted, the injury occurred on a Tuesday; Pressnell testified that Claimant was not scheduled to work the next day, Wednesday. Pressnell was questioned concerning

the first time he heard from Claimant following the accident.

Q. How many days was that after the accident?

A. The wreck was on Tuesday and it was Thursday, around 10:00, 10:30, somewhere along in there when he called me.

Q. Did you expect him to work on that Thursday?

A. Yes, sir.

Q. What did he tell you once you got that phone call?

A. That he felt like he was hurt and he had to go to the doctor.

Q. And what did you say?

A. The first think I asked him was how did you get hurt, and he said it was in that wreck. I said, well, you didn't say anything. He said, well, I feel like I was hurt. I had to go to the doctor. So I said, let me know what is going on....

Pressnell first learned that Claimant was pursuing this claim on the Monday following the accident.

On cross-examination, Pressnell was asked about any conversation he may have had with Claimant concerning workers' compensation insurance.

Q. So you were notified at least that Mr. Johnson was claiming that he was hurt on that Thursday after the accident, correct? He called you up and said I'm hurt?

A. On Thursday, yes, sir.

Q. And you don't remember if you told him whether or not you had workers' comp insurance, do you?

A. Probably - I don't really remember.

Q. Probably that you didn't tell him?

A. Right, but he knew that I had the insurance because during the wreck my-

[Claimant's counsel] That's all.

Claimant denied that Pressnell ever discussed workers' compensation insurance with him: "No, sir. I never got informed. I never knew anything about any workman's comp or insurance or anything."

Ark. Code Ann. § 11-9-701 governs notice of injury or death. An employee shall report his injury to the employer in a prescribed manner, "unless an injury ... is made known to the employer immediately after it occurs"; otherwise, the employer shall not be responsible for benefits prior to receipt of the employee's report. Ark. Code Ann. § 11-9-701(a)(1). However, failure to give notice does not bar a claim "[i]f the employer had knowledge of the injury..." Ark. Code Ann. § 11-9-701(b)(1)(A).

Under the circumstances of this case, I find that Claimant's failure to give the prescribed notice is excused by the employer's knowledge of Claimant's injury. Claimant's employer, Pressnell, owned and was driving the company truck involved in the accident leading to Claimant's injuries. Pressnell knew the accident was serious enough to cause injury, as evidenced by his testimony that after the accident Pressnell asked Claimant if he was okay. While Claimant may not have manifested symptoms of an injury that very moment, he certainly did later that evening, outside of the respondent employer's regular business hours. No later than two days after the injury, Claimant notified the respondent employer that he required medical attention. Given Pressnell's knowledge of the injury, Claimant's failure to give notice is not a bar to his claim. Compare Mavity v. Pulaski County Special Sch. Dist., Full Workers' Compensation Commission Opinion filed May 13, 1997 (E500231) ("[C]laimant's supervisor ... was fully aware on the day of the injury that claimant had fallen at work and was at least potentially injured. A failure to give notice is

excused when an employer has knowledge of an injury..., and we are persuaded to find that [the supervisor's] awareness of claimant's mishap is sufficient to attribute knowledge of the injury to respondent employer.").

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employer/employee/carrier relationship existed on May 20, 2003.
3. The Claimant was involved in a motor vehicle accident while he was a passenger in a vehicle owned and operated by Randy Pressnell, owner of the respondent employer.
4. At the time of the accident the Claimant was earning \$8.00 per hour and \$320.00 per week.
5. The Respondents have controverted this claim in its entirety.
- \_\_\_\_\_6. Claimant proved by a preponderance of the evidence that he sustained a compensable injury on May 20, 2003. Claimant was accompanying his employer en route to a work site, after having obtained work-related supplies, when the accident occurred. Claimant's injury was caused by a specific accident on May 20, 2003. Medical evidence in the record establishes that Claimant's injury caused physical harm to his body; objective findings in support of this medical evidence include a prescription for muscle spasms, an observation of muscle spasms, and a study indicating straightening of Claimant's lordotic curve. And finally, Claimant's testimony and the medical record both establish that he required medical services.
7. Claimant's failure to give notice by reporting his injury is excused, given the respondent employer's immediate knowledge of the accident in which Claimant's injuries were sustained.

8. Because the only issue raised by the parties in the Prehearing Order concerned the compensability of this claim, this opinion specifically reserves any determination concerning Claimant's entitlement to benefits, medical, disability, or otherwise.

**AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law as set forth herein.

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

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