

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E910464

JAMES LIAROMATIS,
EMPLOYEE

CLAIMANT

BAXTER COUNTY REGIONAL HOSPITAL,
EMPLOYER

RESPONDENT NO. 1

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND,

RESPONDENT NO. 2

OPINION FILED APRIL 5, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 were represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 2, 2005 in Mountain Home, Arkansas. A prehearing order was entered in this case on September 11, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the prehearing order and are hereby accepted:

1. Respondents No. 1 accepted May 29, 1997 and October 18, 1998 injuries as compensable (medical only claims).
2. Respondents No. 1 have denied the July 26, 1999 alleged injury in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability of an injury allegedly sustained on July 26, 1999.
2. Attorney's fees.

In addition, during the course of the hearing an evidentiary issue arose regarding the admissibility of testimony of alleged prior criminal conduct.

The record consists of the February 2, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Admissibility Of Testimony Regarding Alleged Prior Criminal Record

The Arkansas Workers' Compensation Commission is not normally bound by the technical rules of civil procedure or

evidence. However, I believe that these rules can serve with some degree of guidance on evidentiary issues. I note that Arkansas Rule of Evidence 609 permits the admissibility as evidence of the conviction of certain types of prior crimes to attack the credibility of a witness. In the present case however, I see no affirmative admission or statement by the claimant that he was ever convicted of any crime. Consequently, I find that the potential prejudice of the testimony on pages 19 and 20 in its entirety out-weighs its probative value regarding the claimant's credibility. This proffered testimony is therefore excluded from the record for purposes of rendering a decision in this case.

2. Compensability Of Back Injury Allegedly Sustained At Work On July 26, 1999

In the present case, the claimant seeks benefits for a low back injury sustained while lifting a patient while working as a paramedic on July 26, 1999. To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical

services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant's attorney explained at the start of the hearing that the claimant asserts that he sustained low back injuries at the L4-5 and L5-S1 levels of the spine. The claimant's attorney pointed to objective findings in the record, including an MRI showing a small central disk protrusion at L4-5 on page 33 of Claimant's Exhibit No. 1, with an interpretation of nerve root compression at the L5-S1 neuroforamina. The claimant's attorney noted that Dr. McBride, on page 34 of Claimant's Exhibit No. 1 likewise indicated that the MRI shows a central disk protrusion at L4-5. The claimant's attorney noted that Dr. Clarke on page 35 of Claimant's Exhibit No. 1, likewise indicated the probable existence of a herniated disk at the L4-5 level.

While I find credible Mr. Liaromatis' description of his symptom onset, and while I agree that the medical records cited to me by the claimant's attorney contained

objective medical findings, I am nevertheless constrained on this record to find that the claimant has failed to establish the existence of new objective findings in the medical documentation cited. In this regard, I note that Dr. Matt Wilson, who apparently review both the claimant's 1999 MRI and a 1996 CT Scan of his lumbosacral spine, has indicated that the findings in 1999 are unchanged from the findings in 1996. During his deposition, Dr. McBride indicated that he would not disagree with Dr. Wilson's findings, and Dr. McBride ultimately testified that there are no diagnostic test showing any differences before and after the 1999 alleged injury. (Dep. 9). Notably, while Dr. McBride has concluded that part of the claimant's pain problem was worsened because of the 1999 injury, Dr. McBride has also conceded in his deposition that he never determined the exact source of the claimant's pain caused by a 1999 injury. (Dep. 12-13). While Dr. McBride assigned the claimant a 3% impairment rating for his 1999 injury, Dr. McBride has conceded that this 3% impairment is based on pain levels, and is not based on any diagnostic test results since the claimant's diagnostic test results were unchanged before and after the 1999 injury.

In short, the preponderance of the evidence in the record indicates that all of the objective medical findings identified in the record pre-existed any injury sustained on July 26, 1999, and I am therefore constrained to find that the claimant has failed to prove the existence of any new injury on July 26, 1999 by medical evidence supported by objective findings.

Because the claimant has failed to establish the occurrence of a new injury on July 26, 1999 by medical evidence supported by objective findings, I find that the claimant's attorney is not entitled to a controverted attorney's fee in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents No. 1 accepted May 29, 1997 and October 18, 1998 injuries as compensable (medical only claims)

2. Respondents No. 1 have denied the July 26, 1999 alleged injury in its entirety.

3. The proffered testimony of Mr. Liaromatis regarding any alleged prior criminal record has been excluded from consideration in rendering a decision in this case.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on July 26, 1999. Specifically, the claimant has failed to prove by a preponderance of the evidence the existence of the injury by medical evidence supported by objective findings.

ORDER

For the reasons discussed herein, this claim must be, and hereby is denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge