

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408164

EARL McCALLIE, JR., EMPLOYEE	CLAIMANT
MISSISSIPPI COUNTY JUDGE, EMPLOYER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 21, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on September 16, 2005, at Luxora, Mississippi County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Gail O. Matthews, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted September 16, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on August 10, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times, including July 22, 2004; that the claimant's average

weekly wage was sufficient to entitle him to compensation rates of \$282.00 per week for temporary total disability and \$212.00 for permanent partial disability in the event the claim was found compensable; that respondents paid for the initial treatment by Dr. Sumner prior to controverting the claim in its entirety. In addition, it was agreed that if compensability was overcome, that the claimant was entitled to temporary total disability benefits for the following dates: July 26 through 29, 2004; August 4, 5, 9, 10, 11, and 12, 2004; and October 4 through October 15, 2004.

Claimant contended, in summary, that he sustained a compensable back injury as the result of a specific event identifiable in time and place of occurrence on July 22, 2004; that he was entitled to temporary total disability benefits for the aforementioned dates which he was required to miss work and utilize accrued leave time; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents maintained that the claimant's injury did not arise out of and during the course of his employment.

The claimant was the only witness to testify. The record is composed solely of the transcript of the September 16, 2005, hearing containing numerous medical exhibits.

From a review of the record as a whole, to include medical reports,

documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable back injury as the result of a specific event identifiable in time and place of occurrence on July 22, 2004.
4. A preponderance of the credible evidence reflects that the claimant's physical problems, need for treatment, and disability, if any, was related to either an idiopathic event or a pre-existing back injury rather than related to a July 22, 2004, event.

DISCUSSION

_____The relevant facts in this case are undisputed. The claimant, Earl McCallie, Jr., has worked for Mississippi County in its road department for approximately eighteen (18) years. The claimant worked primarily as a mechanic and was considered the shop foreman. The record reflects that the claimant sustained a

prior back injury arising out of and during the course of his employment with the employer herein during 1999. The 1999 injury occurred when the claimant and a co-worker were picking up a heavy piece of metal and the co-worker dropped his end, causing an injury to the claimant's low back. Apparently, respondents paid related medical and indemnity for the 1999 event which is not the subject of the within claim.

As reflected by the stipulations, the claimant maintained that he sustained another work-related incident on July 22, 2004. However, on direct-examination, the claimant, who I found to be a credible witness, candidly acknowledged that he did not experience any back pain on July 22, 2004. Rather, the claimant attributed his subsequent physical problems to bending over and lifting an extremely heavy starter on July 22, 2004. Again, the claimant admitted that no specific event occurred while lifting or working on the starter. Instead, the claimant testified that the following work day, while walking, he developed a catch in his back which caused him pain. The claimant reported his physical problems to Richard Sills. The claimant maintained that he told Mr. Sills his back was hurting and that when Mr. Sills questioned him concerning how he hurt his back, he responded that he did not know, but it must have been working on the starter.

On cross-examination, the claimant admitted that he had experienced back pain off and on since 1999. On further cross-examination, the claimant acknowledged that his back had given way previously. Finally, on cross-

examination, the claimant conceded that he reported to several co-workers that he did not know the specific cause of his back problem.

In response to questions from this administrative law judge, it was apparent that the claimant could not identify a specific event on July 22, 2004, but, rather, attributed his problems to the lifting incident because lifting the starter was an extremely, physically demanding activity.

Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr.*

C.Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained an injury arising out of and during the course of his employment which can be identified by a specific incident identifiable in time and place of occurrence. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge