

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504405

| | |
|--|------------|
| PAUL MONROE | CLAIMANT |
| LABOR FINDERS | RESPONDENT |
| ACE AMERICAN INS. CO. INSURANCE CARRIER | RESPONDENT |

OPINION FILED NOVEMBER 16, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 30, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 7, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On April 18, 2005, the relationship of employee-employer-carrier existed between the parties.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to his right eye.

2. Related medical.
3. Temporary total disability from April 19, 2005, to May 19, 2005.
5. The appropriate compensation rate for this claimant.
6. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured on April 18, 2005. His right eye was injured when he was weed eating around a fence and a rock flew up and hit his eye causing a cornea abrasion.

In regard to the foregoing issues the respondents contend that when claimant reported to work on Monday, April 18, 2005, he had a swollen right eye and cut on his face. He informed other personnel at work that he had been in a fight over the weekend. After claimant was at work a short period of time, he claimed that he was weed eating and was struck in the eye by a rock. A drug test performed on April 18, 2005, was positive for marijuana. Respondents denied claimant sustained a compensable injury on April 18, 2005, however, respondents had work available for the claimant at all times thereafter. The respondents further contends that the claimant is entitled to a compensation rate of \$49.00 per week based on an average weekly wage of \$75.00 per week.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1, payroll records marked

Respondents' Exhibit No. 2, the deposition of Ronald Wyatt marked Respondents' Exhibit No. 3, the deposition of Steven Moon marked Respondents' Exhibit No. 4 and a statement taken from the claimant marked Respondents' Exhibit No. 5. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was twenty-nine years old, not married and does not have children. The claimant testified that he worked on construction clean up for the respondent doing just whatever needed to be done. The claimant testified that as of April 18, 2005, he had been working for the respondent approximately thirteen weeks. The claimant testified that on April 18, 2005, he was working for RSM stocking shingles on the roof for roofers. The claimant testified that he worked from four to ten hours a day for RSM five days a week.

The claimant testified that on April 18, 2005, he reported to RSM for work and was weed eating along a fence when a rock got tangled up in the line and slung up and hit his right eye. The claimant remembers that he had arrived at around 6:30 or 6:45 at the job site on April 18, 2005, and that his work day began at 7:30. The claimant testified that from the time he arrived at work until they opened the gate at 7:30 he laid in the car and slept and listened to the radio. The claimant remembers that it was raining a little bit that day so they were not able to do roofing and that was why he was weed eating. The claimant testified that after this accident happened he reported the event to Ron Wyatt and then he

called Ms. Moon and told her that he had been hit by a rock in the eye and was hurt. The claimant testified that Ms. Moon sent him to the doctor at the Family Medical Clinic in Springdale. The claimant testified that when he arrived at the clinic he was immediately referred to Dr. Brown, an eye specialist. The claimant testified that Dr. Brown gave him an eye exam and looked at his eyes. The claimant testified that he understood that his problem was diagnosed as a cornea abrasion and he was given medications. The claimant testified that he had to drive himself to the doctor and it was difficult because he could not keep his eye open. The claimant testified that Dr. Brown took him off work for ten days. The claimant testified that after he saw Dr. Brown he did call the respondent and ask where he should get his prescriptions filled and was given this information.

The claimant testified that after his accident his eye was painful and it felt like he had sand paper in his eye. The claimant testified that he also was very light sensitive and could not watch TV without getting headaches nor could he go outside unless it was evening or night. The claimant testified that it was also difficult to drive because of his eye problem. The claimant testified that currently his eye is not as bad.

The claimant testified that prior to April 18, 2005, he did not have any problem with his right eye and that he had not injured his eye over the weekend. The claimant testified that his eye might have been a little swollen from sleeping in his car on the morning of his accident.

The claimant testified that Steven Moon is Brenda Moon's nephew and that he works at RSM. The claimant testified that he had smoked marijuana approximately two weeks before April 18, 2005. The claimant testified that he had run out of his medications and was stressed. The claimant stated that before he got his medications in order to relieve his stress he "took a couple of hits." The claimant explained that he is on Xanax to calm himself down so he can sleep and that it helps him with his stress. The claimant testified that on the morning of April 18, 2005, he was not feeling any of the effects of the marijuana he had smoked two weeks earlier. The claimant testified that he had driven approximately thirty-five miles to get to work that day and that he was not having any problem doing his work until his accident.

The claimant testified that he has had a long history of drug use and abuse. The claimant testified that he has used alcohol as far back as he can remember and that he started smoking marijuana when he was eleven. The claimant testified that when he applied for work with the respondent his address was the drug rehab center. The claimant testified that he also has been in prison from 1998 to 2002 due to his drug and alcohol problems. The claimant testified that the respondent was also aware that he had been in prison at the time he was hired.

On cross examination, the claimant agreed that April 18, 2005, was a Monday. The claimant testified that he was not in any kind of physical altercation or any kind of fight over the weekend. The claimant testified that he was aware that evidence was being

introduced in this case indicating that when he arrived at work he told people at RSM that he had been in a fight over the weekend and got punched in the eye. The claimant testified that he also was aware that there was evidence introduced in this case that one of the employees at RSM, who saw him first thing that morning, testified that his eye was puffy and swollen when he got to work. The claimant testified that from May 13, 2005, through May 15, 2005, he was hospitalized in the Springdale Memorial Hospital for pneumonia and a possible cracked rib. The claimant testified that he does not recall telling the emergency room personnel that he was self employed and cleaned houses. The claimant was asked who he was working for doing framing work on May 13, 2005, and the claimant responded that he did not know the man's name. The claimant was asked when he started working for the gentleman framing houses and the claimant stated that he had just started working for him. The claimant testified that he could not remember what date he went to work framing houses. The claimant testified that after he was discharged from the hospital he did not go back to work framing houses because he had to go back to court. The claimant testified that when he went to court he was incarcerated due to his failure to pay his fines. The claimant testified that he was in jail for eight days. The claimant testified that after he got out of jail he did not go back to framing houses because he was waiting for a job in Little Rock which he eventually got. The claimant testified that after the Little Rock job played out, he became employed with Arkansas Steel Erectors where it his currently

employed. The claimant testified that before he began working framing houses sometime before May 13, 2005, he had not worked anywhere else since April 18, 2005. The claimant testified that during his deposition when he was asked if he had smoked marijuana prior to April 18, 2005, he panicked and gave an incorrect answer. The claimant testified that he filed for unemployment benefits approximately two weeks after April 18, 2005, and agreed at that time he was ready, willing and able to work. The claimant testified that he recalled talking to the workers' comp insurance adjuster, Frances Brown, some ten to fifteen times. The claimant testified that when he spoke with Ms. Brown, he was "drugged out of my head in a dark room." The claimant testified that the drugs he was using were his prescribed Xanax as well as the ibuprofen prescribed for his discomfort. The claimant agreed that on April 18, 2005, he drove himself to the medical clinic and that the woman that he lived with came and picked him up and drove him to Dr. Brown's office. The claimant agreed that this lady drove him to Walgreens to get his prescription filled and then he got a call from Ms. Moon instructing him to go back to the clinic to take his drug test. The claimant agreed that Ms. Foster, his live in girlfriend, drove him back to the clinic to take his drug test and then she drove him to the respondent's office where he talked to Ms. Moon. The claimant testified that he thought that he took some sort of paperwork to Ms. Moon indicating that he was to be off work for approximately ten days.

On redirect examination, the claimant explained that when he talked to the workers' comp adjuster he was taking medications which were prescribed for him by his doctor as well as staying in a dark room resting. The claimant testified that it was recommended by his physician to rest for at least a week and to wear an eye patch. The claimant testified that when he did try to return to Dr. Brown for a follow up appointment, he learned that this visit was not authorized.

Brenda Moon testified that she was the assistant manager for the respondent and was familiar with the claimant. Ms. Moon testified that the respondent is a temporary employment agency for day labor employment and that each employee is paid on a daily basis. Ms. Moon explained that an employee does not show up for work they are not considered fired they just are not paid for that day. This witness agreed that it was up to the employee if they wished to show up for work or not. Ms. Moon was shown Respondents' Exhibit No. 2 and testified that these pay records set out that the claimant went to work for RSM on March 15, 2005, at an hourly wage of \$9.00. Ms. Moon testified that on April 18, 2005, she was contacted by the claimant by telephone and also talked to Ron Wyatt from RSM by phone. This witness testified that the claimant reported that he had suffered an on the job injury and wanted to go to the doctor. Ms. Moon testified that the respondent has a mandatory drug testing policy and that the claimant was drug tested that day and the results faxed to her. Ms. Moon testified that the claimant did come to see her in the afternoon on April 18, 2005,

but that he did not bring her an off work slip. Ms. Moon testified that she and the claimant had a conversation on April 18 about getting a workers' compensation check. Ms. Moon testified that she told the claimant that he would not be receiving a check because they would have work available for him. Ms. Moon explained that when an employee shows that he has tested positive for drugs they must present a current clean drug screen before they can be put back to work. Ms. Moon testified that the claimant has never brought to her a clean drug screen which she had told him that he would have to have before they could put him back to work.

Ronald Eugene Wyatt testified by deposition that he was employed with RSM. Mr. Wyatt testified that he had been working for RSM since May 2001. Mr. Wyatt testified that he remembers working with the claimant and remembers the last day the claimant worked for RSM. Mr. Wyatt testified that he recalls that the claimant was getting around ok but he looked like he had been in a scuffle of some kind, noticing that his eye was kind of puffy. Mr. Wyatt testified that he noticed this about the claimant before the claimant began working. Mr. Wyatt testified that he recalls that the claimant went out to weed eat and later came in and reported that he had gotten hit in the eye by a rock. This witness testified that the claimant's eye did look a little red but since he was not an employee of RSM he was not inclined to send him to the doctor but did suggest that the claimant call Ms. Moon to report what had happened. Mr. Wyatt testified that the claimant hung around and said he really did not think he needed to do

anything but that after about twenty minutes the claimant said that his eye was still kind of bothering him and again he, Mr. Wyatt, told the claimant that he ought to call Brenda Moon and let her know what happened and to see if they would send him to someone to have it looked at. Mr. Wyatt testified that the claimant checked out and that was the last he had seen of him. Mr. Wyatt was asked if the eye which the claimant claimed he had gotten hit with a rock was the same eye that appeared swollen when he first reported to work and Mr. Wyatt testified that it looked like it hit the same eye.

On cross examination, Mr. Wyatt testified that the claimant's eye looked just kind of puffy, like someone popped him in the eye. Mr. Wyatt was asked if he had any reason to think that the claimant had been in a fight. Mr. Wyatt responded that the only reason he knew was that he had heard that the claimant had told some of the other employees in the warehouse that over the weekend one of the claimant's buddies hit him.

Steven Moon testified that he was employed by RSM roofing and had been so employed for two and a half years. Mr. Moon testified that he recalls the last day the claimant worked at RSM. This witness testified that when he got to work he over heard the claimant speaking to some other guys about getting into a fight somewhere in Fort Smith. Mr. Moon testified that he was just walking by and over heard this conversation. Mr. Moon testified that he did not notice whether the claimant's face was swollen or not but does remember that the claimant had on sun glasses. Mr.

Moon testified that he just thought the claimant was bragging about having a fight. Mr. Moon testified that he does recall hearing the claimant saying that he got beat in the face during this fight.

On cross examination, Mr. Moon testified that the claimant was the type of guy that was very cocky and arrogant as well as being a big man. This witness testified that the claimant said that two or three jumped him and hit him in the eyes and in the face and that he had to beat them up. This witness was asked if he and the claimant got along very well and Mr. Moon responded, "Not really. Not really."

The medical records set forth that the claimant was seen at the Northwest Family Care Clinic on April 18, 2005. Dr. Ronald Bertram writes that the claimant reports that he was weed eating on the job when the weed eater threw a rock into his right eye. The claimant was diagnosed after examination with corneal abrasion and vision loss and referred to Dr. Brown at the Brandon Eye Clinic. Dr. Bertram put a patch on the claimant's eye and estimated that his healing period would take approximately one week. The claimant was seen at the Brandon Eye Clinic and after examination was diagnosed with having a corneal abrasion for which medications were prescribed and a return visit scheduled for April 21. The claimant underwent a drug test on April 18, 2005, which showed positive for the use of marijuana.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his right eye while

working for the respondent on April 18, 2005. It is not questioned that this claimant had an injury to his right eye but it is questioned as to when this injury occurred. The claimant, in his statement to the insurance adjuster, did admit being in an altercation prior to April 18, 2005, and two witnesses have testified by deposition that the claimant was boasting about being in a fight and having to beat up people over the weekend prior to April 18, 2005. One of the witnesses testified that they observed the claimant's right eyes being swollen and puffy when he arrived at work on the morning of April 18. Besides the uncertainty of whether the injury occurred exactly as the claimant has alleged, there is also a question as to whether his drug use may have contributed to his injury. The claimant tested positive for marijuana and he had testified that he did use this drug some two weeks prior to his injury. The claimant by his own testimony as well as his statements and the medical records set forth a life time of drug abuse. My decision in this matter, however, is based primarily on the questionable circumstances under which the claimant alleges he was injured. This claim, therefore, should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On April 18, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury while working for the respondent on April 18, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury while working for the respondent on April 18, 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE