

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409801

SAMUEL L. QUARLES, EMPLOYEE	CLAIMANT
BRIDGESTONE DIVERSIFIED PRODUCTS, EMPLOYER	RESPONDENT
GALLAGHER BASSETT, TPA	RESPONDENT

OPINION FILED OCTOBER 3, 2005

Hearing before Administrative Law Judge J. Mark White on September 1, 2005, in Hope, Hempstead County, Arkansas.

Claimant represented by Mr. Philip Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Joseph Purvis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 1, 2005, the above-captioned claim came on for a hearing in Hope, Arkansas. A pre-hearing conference was conducted on June 6, 2005, and a Prehearing Order was entered that same day. A copy of the June 6, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; and that the employee/employer/carrier

relationship existed at all relevant times, including August 31, 2004.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether medical treatment is reasonably necessary in connection with a compensable injury; whether the claimant is entitled to temporary total disability benefits; and controversion and attorney's fees. At the hearing, the parties agreed to add as an issue determination of the claimant's compensation rate.

The claimant contends that he sustained either a specific-incident or gradual-onset injury while working for the respondent-employer; that the date of injury can be determined only after the respondents answer discovery; that he has had surgery and is entitled to temporary total disability benefits from the date last worked to a date yet to be determined; that his medical expenses should be paid; and that he is entitled to the appropriate attorney's fees.

The respondents contend that the claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Act; and that respondents had no notice of this claim until they received a Form C dated September 21, 2004, on or about February 18, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of 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 an injury arising out of and in the course of his employment.
4. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant testified that he injured his back picking up an "18-inch roll" while working for the respondent-employer. He testified that this incident occurred while he was working the second shift, under supervisor Stanley Rhodes. He testified that when he reported the incident to Rhodes a few moments later, Rhodes turned around and walked off without saying anything. The claimant continued working, but he testified that over time he had more and more trouble with his back, to the point that he missed work.

On his own, he sought treatment from Dr. Thomas A. Fox on August 20, 2004. Dr. Fox noted, "Pt. complains of another episode of low back pain for the last 5 months. No trauma. No radiation. No bowel or bladder symptoms. No treatment." X-rays taken that day showed straightening of the lumbar spine, and Dr. Fox gave his diagnosis as, "back pain, low." An MRI performed August 28 revealed a herniation on the right at L5-S1. Dr. Fox referred the claimant to neurosurgeon Dr. Scott Schlesinger, and Dr. Schlesinger performed surgery on September 21, a "right L5-S1 microdiscectomy." At some point prior to the surgery, the claimant ceased working, and as of the hearing he had not returned to work. Dr. Schlesinger released the claimant from care on May 20, 2005, with a permanent impairment

rating of 10% to the body as a whole.

The claimant testified that when he injured his back, three other employees were present and witnessed the incident: Kelly Swift, Sandra Paden, and Georgia Box. All three testified, and their descriptions of the incident were consistent with that of the claimant. All three agreed the incident occurred on the second shift, that Stanley Rhodes was their supervisor at the time, and that Rhodes ignored the claimant's report of injury.

What is notable about this case is that none of the witnesses, including the claimant, can state with specificity the day or even month in which this accident took place. Indeed, aside from Box, neither the claimant nor his witnesses would even venture to guess what *year* in which the accident took place. Box testified she "thought" the accident occurred in July or August of 2004, relating it in time to a vacation she took in September 2004. The closest the other witnesses came to specifying the date of the accident is that the weather was "warm" or "hot" when the accident occurred.

Tim Wells, a manager for the respondent-employer, testified that Kelly Swift transferred to a different position in May 2004 and was not working with the claimant after that date. At some point, the respondent-employer changed its work schedule from three shifts to four shifts, and Georgia Box testified that she and the

claimant changed to the fourth shift. Sandra Paden testified she did not work with the claimant after the change to four shifts.

Stanley Rhodes, the supervisor to whom the claimant allegedly reported this injury, testified that the change to four shifts occurred in mid-February 2004, and that he did not supervise the claimant at any point thereafter. Rhodes specifically denied that the claimant reported any injury to him. Jason Anderson, another supervisor for the respondent-employer, agreed that the change to four shifts occurred in mid-February 2004, and that thereafter he was the claimant's supervisor. Anderson testified that the claimant told him he had hurt himself at work sometime before Anderson became his supervisor – Anderson initially testified he understood the claimant to mean the injury had happened before August 2003.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported

by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* To prove compensability, a claimant is not required to identify the precise time and date of the injury; rather, the claimant must show only that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). However, in weighing the credibility of the evidence the Commission may consider a claimant's inability to identify a specific date. *Id.*

The claimant and his witnesses were unanimous in testifying that this incident occurred on second shift under the supervision of Stanley Rhodes when the claimant, Box, Paden and Swift were working together. There is no evidence to specifically contradict the testimony of Rhodes, Tim Wells, and Jason Anderson that the claimant, Box, Paden and Swift did not work together on second shift under the supervision of Rhodes after mid-February 2004. Therefore, this accident had to have occurred prior to mid-February 2004. Given the testimony of the claimant's

witnesses that the weather was “hot” at the time, it seems more likely the accident occurred in the summer of 2003. In reaching this conclusion, I realize that Box “thought” the accident occurred in July or August 2004, but the opposing evidence outlined above far outweighs Box’s guess.

The claimant first sought treatment for his back on August 20, 2004. His accident could not have occurred any later than mid-February 2004, some five months prior, and as noted above I think it more likely the accident occurred even earlier. There is no evidence the claimant sought any medical treatment whatsoever for his alleged back injury in the months (or years) preceding his August 20, 2004, visit with Dr. Fox. Given this significant lapse of time and the nature of the claimant’s injury, I am not convinced that a causal connection exists between the claimant’s back injury and the accident described by him and his witnesses. I find that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Because I so find, the remaining issues are moot and need not be addressed.

I note that the claimant contended in the alternative that he sustained a gradual-onset injury. Such an injury must likewise be shown to have arisen out of

and in the course of employment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001). Therefore, my finding above precludes the claimant from proving any compensable injury, whether gradual-onset or specific-incident.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge