

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306718/F306719

JACKIE SMITH

CLAIMANT

RIVERSIDE FURNITURE CORP.
SELF INSURED

RESPONDENT

OPINION FILED FEBRUARY 2, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on November 12, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 16, 2004. 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 March 24, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$267.00 for temporary total disability and \$200.00 for permanent partial disability.

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

1. Compensability of the claimant's low back injury in early March of 2003 and subsequent aggravations.

2. Related medical.

3. Temporary total disability from May 12, 2003, to a date to be determined.

4. Attorney's fees.

5. Lack of notice until July 1, 2003.

In regard to the foregoing issues the claimant contends that on March 24, 2003, he sustained an injury arising out of and in the course of his employment and that his job duties after that date aggravated his condition to the point that he became disabled on May 12, 2003. The claimant contends that he is entitled to temporary total disability benefits from May 13, 2003, until a date yet to be determined and reasonable and necessary medical treatment. The claimant contends that his attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that they deny claimant sustained a compensable injury. Further, respondents raise lack of notice.

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 Respondent's Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he has been working for the respondent for nineteen years, noting that it is the only job he has ever had. The claimant testified that he ran a boring machine and that his job duties required lifting doors and other things as well as drilling them. The claimant explained that the doors weighed approximately thirty to forty pounds and sometimes he would run two at a time in order to get his quota. The claimant testified that in early March 2003 at work he developed a terrible catch in his back with a lot of pain to the point where he could hardly straighten up for a few minutes. The claimant remembers that he reported this to his lead man, Ronnie Robertson, and he told him to tell the supervisor, Brad Smith. The claimant testified that he did not miss any work as a result of this incident.

The claimant testified that on March 24, 2003, he was walking toward his machine, felt an explosion of pain in his back and he fell down. The claimant testified that he gets to work around 6:45 a.m. and that this incident happened early in the morning because the plant nurse had not gotten to work yet. The claimant testified that he went straight to his supervisor and he instructed him to continue working until the nurse got there. The claimant testified that he was having trouble walking and he had a lot of pain in his left leg, in his back and tingling like he had been electrocuted.

The claimant testified that the plant nurse sent him home and then to the doctor. The claimant testified that he missed about four to six days of work following this incident but did return to work for the respondent. The claimant testified that he continued to work his same job duties until May 12, 2003. The claimant testified that on this date he was lifting some oak boards and got a terrible explosion of pain in his back, fell and could not get back up. The claimant explained that an explosion of pain in his back was a large amount of pain going in several different directions feeling like he had been electrocuted, noting that his legs would not work and they would just jump. The claimant stated that he was unable to get up and was taken to the nurse's station in a wheelchair. The claimant testified that he was sent home and has been physically unable to return to work since that date. The claimant was asked what was wrong with him on May 12, 2003, and he stated, "My legs wasn't working and my back was hurting." The claimant testified that he ended up having surgery on his back. The claimant stated that he drew some weekly disability benefits from the respondent while he was off work but was cut off after approximately two months. The claimant testified that when he called to inquire about his benefits he was told by someone in the office that because they were being sued his benefits had been terminated. The claimant testified that he was also told that his benefits were a gift so the respondent had the right to discontinue them. The claimant was asked if after he filed his workers' compensation claim did his benefits end and he responded, "Yes."

The claimant agreed that over the nineteen years he worked for the respondent he has had four or five pulled muscles as well as a dry elbow joint and a dry hip joint. The claimant testified about an incident in November 2002 when he was lifting or moving a deer and a few days later got some soreness in his rear end and went to see Dr. King. The claimant agreed that at that time Dr. King treated him for a dry hip joint. The claimant testified that he had had trouble walking after the deer lifting incident but after he saw Dr. King and got a shot he immediately had no further trouble walking. The claimant testified that when he left the plant in November 2002 after the deer lifting incident he probably told his supervisor that he was going to the doctor because his back was hurting. The claimant explained that the doors he worked with were cabinet doors for an entertainment center about six to seven feet long made of oak. The claimant testified that when he had his first incident in March 2003 he reported initially to Robbie Robertson and then to his supervisor Brad Smith. The claimant testified that Mr. Smith sent him to the nurse's station and when he told him that his back was hurting, the nurse told him that it was not going to be work related because nothing extraordinary happened like him falling. The witness testified that the nurse told him that his problem could have been brought on by anything, that it was probably a strain and that he would be better off to work it out. The claimant testified that he did go back to work and that no workers' compensation papers were filled out. The claimant agreed that through the years he has had a

variety of small work related injuries such as a spider bite, a mouse bite and an elbow problem but he does not remember filling out any paperwork on these incidents. The claimant testified that on March 24, 2003, after he had clocked in at work and was walking to his machine he had an explosion of pain and fell down. The claimant agreed that he had been hurting ever since his earlier March incident and was hurting when he came to work. The claimant testified that he again reported this to Brad Smith and that Mr. Smith told him to go back to work until the nurse got to the plant. The claimant agreed that when he saw the nurse he told her what had happened and that again the nurse told him that it was not going to be work related. The claimant testified that he was sent to see Dr. Blankenship and reported to him that his back problems started earlier in March but worsened after getting up out of a chair. The claimant remembers that Dr. Blankenship did not seem interested in what he had to say and he only got to tell the doctor part of what he was doing when he got hurt. The claimant agreed that he told the doctor that his pain started when he was lifting doors. The claimant testified that he did tell Dr. Blankenship that his problems started when he was lifting doors. The claimant agreed that following his March 24, 2003, incident he was absent from work three days plus a weekend. The claimant agreed that when he got back to work he was counseled about his excessive absenteeism. The claimant acknowledged that the respondent had him doing light work because they knew he was having problems. The claimant testified that on May 12, 2003, he was lifting a stack of little oak boards

about a foot high, four to five inches wide and fourteen to sixteen inches long when he felt an explosion of pain and tingling in his legs and he fell. The claimant testified that after this May event he was taken in a wheelchair to the nurse's office and again he told him that this was not going to be work related. The claimant testified that he left work and went to see Dr. Winters, noting that Dr. King, Dr. Blankenship and Dr. Winters were all in the same clinic. The claimant agreed that when he saw Dr. Winters he told him that he hurt his back lifting at work. The claimant agreed that the next physician he saw was Dr. Standefer and that he reported to him that he hurt his back lifting at work. The claimant indicated that he has not worked anywhere since May 12, 2003, that he has had surgery performed by Dr. Standefer and that he has also received about two months of short term disability from the respondent.

On redirect examination, the claimant read from his deposition concerning what he reported to his doctors and the claimant read, "I didn't go into all of that. He was very upset with seeing me because they had to work me in that day and he really didn't want to see me." The claimant indicated that he did not tell the doctor about lifting the doors but he had tried to tell him. The claimant agreed that in his deposition when talking about Dr. Blankenship's visit the claimant stated, "I was--about lifting some doors is when it started." Then the claimant testified, "I told him it worsened after sitting."

Tommy Thrift testified for the respondent stating that he was the assistant mill foreman. Mr. Thrift stated that in late 2002 he noticed that the claimant was walking funny. Mr. Thrift testified that the claimant told him that he had been wrestling a deer. This witness testified that the claimant was walking all bent over holding his back and that he continued to observe the claimant walk this way up until he last worked on May 12, 2003.

On cross examination, Mr. Thrift testified that he does not work in the same part of the plant as the claimant and was unaware of him having a fall on March 24 and leaving work early. Mr. Thrift testified that he was also unaware of the claimant falling at work on May 12, 2003, but was aware that the claimant had been taken to the nurse's station in a wheelchair on the May date. Mr. Thrift was asked how he was aware of the wheelchair event and this witness stated that on May 12, 2003, when his lead person came and got Brad, the claimant's supervisor, he went with them and saw the claimant standing at his machine leaning against the load. Mr. Thrift was asked what he understood the problem was and he responded, "He (the claimant) just---his back was hurting and he couldn't do nothing." Mr. Thrift was asked what was going on as far as his information was concerned and this witness responded, "That a person was hurt on the job or at the job station."

Rex Rhoades testified on behalf of the respondent stating that his position at the plant was running a V-boring machine. Mr. Rhoades testified that he worked right next to the claimant and the claimant told him that he had been deer hunting, shot a deer and

supposedly killed the deer. This witness stated that the claimant reported that he tied a rope around the deer's horn and the other end around him and was pulling the deer up the hill when the deer came alive, jumped up and started dragging him off into the woods. Mr. Rhoades testified that the claimant told him that he managed to get to his feet and grab the rope, pull himself up to the deer and stab the deer to death with a hunting knife. This witness testified that after he had this conversation with the claimant he observed him in what appeared to be pain and back problems. Mr. Rhoades testified that he continued to observe the claimant on a daily basis and that he continued to act like he was in pain and walking stiff. Mr. Rhoades testified that the claimant normally would run cleats on his machine explaining that cleats were approximately sixteen to eighteen inches long but did not know how much each one of them weighed. Mr. Rhoades testified that the claimant would occasionally run doors. This witness stated that these were cabinet doors that weight approximately four to five pounds each. Mr. Rhoades was asked if he had ever seen the claimant run a door on his machine in the year 2003 that weighed thirty to forty pounds and this witness responded, "We don't make them that big, Ma'am." Mr. Rhoades testified that on May 12, 2003, they had started their working day and he noticed the claimant was just standing with his elbows on his table like something was wrong. Mr. Rhoades testified that he asked the claimant what was wrong and the claimant responded that he could not move. Mr. Rhoades testified that he then went and got their lead man. Mr.

Rhoades testified that he went back to his job as he was supposed to but pretty soon he noticed that the nurse had come down with a wheelchair. Mr. Rhoades testified that in the year 2003 the claimant never told him at any time that he had ever hurt his back at work. Mr. Rhoades testified that he and the claimant had had a conversation after the deer incident about the claimant wanting to change careers and that he had checked about disability.

Mr. Brad Smith testified that he was the mill room foreman as well as the claimant's supervisor. Mr. Smith was shown the attendance records of the claimant. Mr. Smith testified that the handwriting on the record is his for the date November 4, 2002. Mr. Smith read from this record that it sets out that the claimant was out at 11:15, went to a doctor, stated he had hurt back during hunting carrying deer. Mr. Smith testified that the claimant came in and reported to him that he had been deer hunting, shot a deer and had tried to drag the deer out of the woods by tying a rope around the animal as well as himself. Mr. Smith stated that the claimant reported that the deer jumped up and began to drag him until finally he, the claimant, was able to get his knife and stop the struggle with the deer. This witness testified that the claimant went to the doctor on November 4, 2002. Mr. Smith agreed that the claimant's record reflects that the claimant was absent from work November 5, 6, 7, and 8. Mr. Smith testified that the claimant returned to work on November 11, 2002, and that from that point forward the claimant favored his back. This witness testified that the claimant would walk around stooped over and a

lot of time he would put his hand on his back. Mr. Smith remembers that the claimant also asked that they not put him on anything heavy because his back hurt and that the respondent honored his request. Mr. Smith testified that the claimant consistently favored his back, noting that he would be hunched over and holding his back up until May 12, 2003. This witness agreed that this was true ever since he returned to work following his four and a half days off after his deer incident. Mr. Smith testified that the claimant, in March 2003, never reported a work related injury or that he hurt his back lifting doors. Mr. Smith testified that on March 24, 2003, the claimant came to work but never got to his job station. This witness remembers that the claimant reported that his back was hurting before he got to work. This witness was asked if he was aware if the claimant's back was hurting so bad that he collapsed and this witness responded, "No, Ma'am." Mr. Smith testified that he told the claimant to go to the nurse's station but when he spoke with the nurse she told him that she had not heard from the claimant. This witness testified that the claimant was off for the next three days and that when he returned to work on March 31, 2003, the claimant was counseled concerning his absenteeism. This witness testified that the claimant continued to work for the respondent until May 12, 2003. Mr. Smith testified that on May 12, 2003, he received word that the claimant had a problem. This witness stated that he went to the claimant's station and the claimant was leaning on a machine reporting that he was hurting and could not move. Mr. Smith testified that the plant

nurse was called and that she took care of him from that point. Mr. Smith testified that the claimant did not report to him at this time that he had hurt his back at work or that he had hurt his back earlier in March while at work. Mr. Smith testified that, to his knowledge, the year 2003 the claimant never lifted any doors that weighed thirty to forty pounds while working for the respondent. Mr. Smith testified that the respondent does not have any doors which weigh thirty to forty pounds and if they did he would be aware of it.

Renda Merkey testified that she had previously been employed by the respondent as their plant nurse. Ms. Merkey testified that she worked for the respondent from August 2002 until January 3, 2004, and that she was acquainted with the claimant. This witness was handed some documents which she identified as her nurse's log while she worked for the respondent. Ms. Merkey testified that when an employee would come in with a problem they would sign in and then she would make notations as to what she did for them. Ms. Merkey was asked if the claimant had come to her with any kind of complaint the first part of March 2003 and this witness responded, "No Ma'am." Ms. Merkey was asked if the claimant made any complaints to her on March 24, 2003, and she responded no. Ms. Merkey agreed that it was not until March 31, 2003, that she first saw the claimant at the nurse's station for the month of March 2003. Ms. Merkey testified that the claimant signed in and told her that he was there for his back, she asked him if he had gotten hurt on the job and he said no his muscles were sore and he needed

something so he could back to work. Ms. Merkey testified that she gave him a medication called Back Pain Off and he returned to work. Ms. Merkey testified that she did not see the claimant at the nurse's station until May 12, 2003. This witness testified that she received a call from the claimant's supervisor and was told that they needed a wheelchair because there was an employee that had been hurt. Ms. Merkey testified that she took a wheelchair and went to the claimant's station and took him back to the nurse's station. Ms. Merkey testified that the claimant reported to her that he could not stand, that his legs were hurting and he could not sit. This witness testified that the claimant told her that he did not do anything and he did not get hurt on the job. Ms. Merkey testified that when she got the claimant to the nurse's station they talked about his injury and how he was feeling. Ms. Merkey testified that the claimant was unsure which leg was bothering him at first but narrowed it down to his left leg and just that he had hurt himself before and needed to go back to his own doctor. Ms. Merkey testified that she specifically documented in her nurse's notes quoting the words used by the claimant in his responses to her questions. Ms. Merkey testified that her notes indicate that she asked him if he hurt his back at work and he responded, "No I hurt it before, not at work."

On cross examination, Ms. Merkey was asked if before March 31, 2003, she had any reason to believe that the claimant was having any problems with his back and she responded no. Ms. Merkey testified that she had asked the claimant if he had gotten hurt on

the job and he said no. Ms. Merkey testified that when she saw the claimant in May she asked him if he got hurt on the job and he said to her, "I got hurt before---hurt my back before in March of 03. I will go back to my doctor."

Ms. Evan Breedlove testified that he was director of human resources for the respondent. Mr. Breedlove testified that he was aware of the claimant's last day of work on May 12, 2003. Mr. Breedlove indicated that the claimant never reported a work related injury to him in March or May 2003 nor did any of the other employees report to him that the claimant had suffered a work related injury during this period of time. Mr. Breedlove testified that the first he was aware that the claimant was filing a workers' compensation claim was when they received the AR-C on the first of July 2003.

The medical records set forth that the claimant was seen on November 5, 2002, with complaints of low back pain after carrying a deer for which he was prescribed medications. The claimant was seen by Dr. Blankenship on March 24, 2003, where it is noted that he has complaints of low back pain with the onset the first of March, however, he has had repeat episodes in April, November and December of last year. Upon examination, Dr. Blankenship writes that the claimant has some tissue texture changes noted over the lumbar sacral spine with some ropiness bilaterally. Dr. Blankenship diagnosed the claimant with having acute lumbago with sacral component and prescribed medications as well as to be off for two days with complete rest. The claimant was next seen on May

13, 2003, by Dr. Richard Winters with complaints of severe back pain. The claimant reports that he has continued to have pain since he was seen by Dr. Blankenship, noting that he has been working but limited as to what he is able to do. Dr. Winters writes that the claimant reports that his pain has gotten worse and is going down his left leg. Dr. Winters notes that the claimant has had a past history of back pain in the year 2002 but that his current problems apparently started on March 1, 2003, and has continued to get worse. Dr. Winters ordered an MRI and prescribed Percocet. The claimant underwent an MRI of his lumbar spine on May 29, 2003, which revealed a large left L5-S1 disc herniation and spurring. On May 28, 2003, Dr. Standefer had a pre-surgery consultation with the claimant. After taking the claimant's history as well as examining the claimant and reviewing the claimant's MRI, Dr. Standefer recommended surgery to address his low back problems. Dr. Standefer took the claimant off work for three to six months. The claimant underwent back surgery on June 2, 2003, and was discharged from the hospital on June 10, 2003. Dr. Standefer writes on July 28 that he has seen the claimant for routine follow up, noting that the claimant is much improved but does note rather severe intermittent low back pain. The claimant was next seen by Dr. Standefer on September 17, 2003, noting that the claimant has not had any significant improvement and that overall he has derived only minimal benefit from his surgery. Dr. Standefer writes that the claimant continues to have low back pain as well as having problems with his lower extremity pain.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent in early March 2003 which was exacerbated on May 12, 2003. The claimant has testified to a specific incident of lifting doors which weighed thirty to forty pounds while working for the respondent in early March which caused his back to have an explosion of pain. The claimant's supervisor, Brad Smith, indicated that the claimant did not report a work related injury in early March and as to the March 24, 2003, incident the testimony was such that the claimant told his supervisor that he had reported to work with his back hurting and that no work related injury was reported at this time. Several witnesses have testified to the claimant talking with them concerning a November 2002 deer hunting incident and that subsequent to this particular event, the claimant showed signs of discomfort and would occasionally walk holding his back. Mr. Rex Rhoades testified that he worked at the machine right next to the claimant and that in the year 2003 the claimant never told him at any time that he had ever hurt his back at work. The claimant was a nineteen-year employee for the respondent and would have been fully aware of the procedure for filing a workers' compensation claim if, in fact, in March or May he felt as if he had sustained a work related injury. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. On March 24, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$267.00 for temporary total disability and \$200.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable back injury while working for the respondent in early March or in May 2003.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a work related back injury while working for the respondent in early March or in May 2003. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE