

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410657

WAYLAND STINSON, EMPLOYEE	CLAIMANT
GEORGIA PACIFIC CORPORATION, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED JUNE 6, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on March 14, 2005 at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney's fees.

At issue is the compensability of the claim as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 19, 2004, at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$453.00/\$340.00. This claim was initially accepted as compensable and benefits were paid (from July 19 to August 17, 2004) until the claim was controverted as of July 14, 2004. Some expenses have been paid by Blue Cross Blue Shield of Illinois and some benefits have been paid by MetLife.

The claimant contends he injured his back at work on February 19, 2004 culminating in surgery on August 19, 2004 by Dr. P. B. Simpson. The claimant seeks payment of medical expenses, temporary total disability benefits from July 19, 2004 to November 28, 2004, an impairment rating

of 10% and attorney's fees.

The respondents contend the claimant's condition (herniation at L5-S1) was not diagnosed until after an independent intervening injury was sustained umpiring a baseball game on or about July 14, 2004. Therefore, his disability and need for treatment is unrelated to the compensable injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript; along with the deposition of general practitioner, Dr. Ben Walsh (taken February 22, 2005) incorporated by reference.

The following witnesses testified at the hearing: the claimant and his wife, Margaret; twenty-five year employee, Jeff Woods; thirty-one year employee, Gene Bates; thirty-eight year employee, Sammy Bolin, thirty-seven year employee, Leon Wood; and eighteen year employee, Eric Snellgrove. The witnesses did not see the injury but confirmed that the claimant told them he slipped and fell at work. Mr. Woods observed the claimant limping and using a back brace at work after the incident. Mr. Bates testified that condensation does routinely form on the floor near the place where the claimant fell. Mr. Snellgrove verified that the claimant umpired a softball game in June. There are usually two games a night lasting about 1-1/2 hours each. I found the claimant and his wife to be credible witnesses.

The claimant, age 47 (D.O.B. April 7, 1958), has worked for the respondent-employer for twenty-five years. His health history includes neck surgery in 1997.

On February 19, 2004, while walking up the stairs to the control room, he slipped and fell on the concrete floor. The claimant explained the area stays wet with condensation. He described the injury as "doing the splits" and striking his tail bone. He developed low back pain and tingling in his left leg.

The claimant reported the accident to his supervisor, Jerry Stanley and filled out an incident report. His employer did not send him to the company physician for a drug test or to be examined.

He continued to work the next several months wearing a back brace purchased from Wal-Mart. On March 8, the claimant saw Dr. Malloy, one of the company physicians along with Dr. Walsh. The claimant thought his overall condition improved but he remained symptomatic with occasional back pain.

Following his shift on Wednesday, July 14, the claimant's left leg symptoms returned, necessitating the use of a cane and wheelchair. He saw Dr. Walsh who ordered an MRI scan and referred the claimant to surgeon, Dr. P.B. Simpson. The claimant's case manager, Clyde Baker accompanied the claimant and his wife to the doctor. Mr. Baker authorized Dr. Simpson's examination and assured the claimant that he would be "taken care of". Mr. Baker was not called as a witness to refute this testimony. Although the claimant did not advance an estoppel argument, Mr. Baker is an agent of the respondent and the claimant is entitled to rely on information provided by Mr. Baker.

The next day, the claims adjuster, Susan Strand conducted a telephone interview with the claimant. She asked him about his hobbies and the claimant told her he was a softball umpire. At that point, the claim was controverted. The claimant testified the adjuster had no medical records at the time the claim was denied, and he never reported an injury from umpiring to either the adjuster or a physician. The decision to controvert the case was based on speculation.

The claimant's back surgery was performed on August 19 by Dr. Simpson who diagnosed an HNP (herniated nucleus pulposus) at L5-S1 on the left. The claimant returned to work on November 28, 2004 and was assessed a 10% impairment rating.

The claimant explained that he umpired about twenty games between February and July 2004 but he was not injured on the ball field. Even after the end of the tournament on July 4, he was physically able to drive his daughter to Texas. His symptoms did not return until the next week after he worked on Wednesday, July 14.

MEDICAL EVIDENCE

Although the claimant fell on February 19, 2004, he did not see a physician until March 8,

2004. The clinic note describes a history of injury and symptoms consistent with the claimant's testimony. An x-ray was done of the pelvis but no fractures were identified. The claimant did not return to the doctor until July 16, 2004. The claimant reported improvement until three days earlier when he developed pain and numbness in the left leg with tingling in his toes. A spinal x-ray showed narrowing at L5-S1. An MRI scan taken July 19, 2004 was interpreted as showing a "moderate sized left paracentral herniation of the degenerating L5-S1 disc with accompanying multilevel posterior facet synovitis." Dr. P. B. Simpson recommended a lumbar micro disectomy for an HNP (herniated nucleus pulposus) at L5-S1 on the left. Surgery was performed on August 19, 2004. The claimant was released on November 28, 2004 with a 10% rating but no work restrictions.

Dr. Walsh authored a report dated September 16, 2004, causally relating the claimant's February 19, 2004 work-related accident to his symptoms, clinical findings, need for surgery and resulting disability, based on the claimant's history.

Drs. Malloy and Walsh, general practitioners, evaluated the claimant in March 2004 about two to three weeks after his fall at work. In his deposition, Dr. Walsh explained that the claimant had complaints of pain in his tail bone and numbness in his left leg. X-rays of the pelvis were negative and the claimant returned to work. He was advised to return in one month if his symptoms did not resolve.

The claimant did not return to the doctor until July 16, 2004, about four months later. Once again, he complained of left hip and leg pain. Lumbar x-rays showed narrowing at the L5-S1 disc space. The claimant was returned to work with a follow-up appointment in one week, however, he returned to the doctor on July 19, 2004 because of increasing pain. An MRI scan confirmed an HNP at L5-S1 and the claimant was taken off work. The doctor prescribed a wheelchair for the claimant's use in July, 2004, and referred him to Dr. Simpson.

Dr. Walsh was not aware that the claimant was umpiring softball games. He opined that it was "possible" that the claimant's sporting activities made his condition worse, however, he did not

change his opinion on causation. Dr. Walsh felt the claimant's symptoms and need for surgery were causally related to the injury at work based on the claimant's history, his clinical evaluation, and the claimant's symptoms (parasthesia and the location of the paresthesia).

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury is one arising out of and in the course of employment, Ark. Code Ann. §11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between his employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

The Court has held that if:

[a] claimant's disability arises soon after the accident and is logically

attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the [C]ommission's refusal to make an award. Clark v. Ottenheimer Bros., 229 Ark. 383, 314 S.W.2d 497. But if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the [C]ommission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172.

Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

The evidence of record shows the claimant was injured at work in a slip and fall on a concrete floor on February 19, 2004 and complained of pain in the tail bone and numbness in the left leg. He didn't immediately seek medical treatment and continued to work. On March 8, he saw a general practitioner who conducted a pelvic x-ray which was normal. The claimant continued working full time at regular duty with occasional back pain and wearing a back brace. He also umpired softball games at night. After the end of the softball tournament on July 4, the claimant was able to drive out of state. He continued working until his leg pain returned on July 14.

Medical records show a consistent history of injury with symptoms on the left side. It was only after diagnostic testing that the left leg paresthesia was related to a lumbar disc herniation, changing the diagnosis to radiculopathy.

There is no evidence the claimant was injured during the softball season. During this period of time the claimant was working full time and had no restrictions on his work or activities. His increase in pain did not occur during the softball games but only after completing a shift at work. I found the claimant to be a credible witness. There is no evidence of an independent intervening cause.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on February 19, 2004, at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$453.00/\$340.00. This claim was initially accepted as compensable and benefits were paid (from July 19 to August 17, 2004) until the claim was controverted as of July 14, 2004. Some

expenses have been paid by Blue Cross Blue Shield of Illinois and some benefits have been paid by MetLife.

2. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102. The claimant's need for surgery and resulting disability is causally related to the injury.
3. Respondents are directed to pay all medical expenses within thirty days pursuant to Rule 30. Respondents are directed to reimburse Blue Cross Blue Shield of Illinois on their lien of \$5,724.90.
4. Respondents are directed to pay temporary total disability benefits from July 19, 2004 to November 28, 2004 as the claimant remained in a healing period, unable to work. Respondents are directed to reimburse MetLife for disability benefits paid.
5. Respondents are directed to pay permanent partial disability benefits equivalent to the 10% rating to the body as a whole assessed by Dr. Simpson.
6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

7. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum

without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge