

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411480

CHARLES TIPTON,
EMPLOYEE

CLAIMANT

NU WAY CLEANING & LAUNDRY,
EMPLOYER

RESPONDENT

LEMIC INSURANCE COMPANY,
CARRIER

RESPONDENT

OPINION FILED OCTOBER 19, 2005

Hearing before Administrative Law Judge Mark Churchwell on July 27, 2005 in Batesville, Independence County, Arkansas.

Claimant appeared pro se.

Respondents represented by Honorable Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on July 27, 2005 in Batesville, Arkansas. A Prehearing Order was entered in this case on May 17, 2005. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the Prehearing Order or during the course of the hearing and are hereby accepted:

1. The employer/employee relationship existed on October 19, 2004.

2. On that date, the claimant's average weekly wage was \$616.99.

3. The claimant contends that he sustained a compensable back injury on October 19, 2004.

4. The parties stipulate that Mr. Tipton called Donnie Creighton on the morning of October 20, 2004 at approximately 6:00 a.m.

5. Mr. Tipton had another conversation with Mr. Creighton on October 21, 2004 at approximately 5:35 p.m.

By agreement of the parties, the issues to be litigated and resolved at the present time are limited to the following:

1. Compensability of the claimant's alleged chest and lower back injury.

2. Medical expenses.

3. Temporary total disability through the hearing date exclusive of about 3-4 weeks return to work starting on December 15, 2004.

4. Admissibility of four letters prepared by Dr. Andy Davidson during the period between October 29, 2004 and December 27, 2004 which were not exchanged through the prehearing process.

DISCUSSION

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Speciality Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Arkansas Code Annotated § 11-9-102(16) defines "objective findings" as those findings which cannot come under the voluntary control of the patient.

On October 21, 2004, Mr. Tipton presented to his family physician, Dr. Andy Davidson, for symptoms in his chest and low back which Mr. Tipton attributes to two lifting incidents which occurred on October 19, 2004 while Mr. Tipton substituted as a delivery driver for Nu Way Cleaners on a route between Batesville, Melbourne, and Mountain View.

Mr. Tipton underwent conservative treatment from Dr. Davidson, an MRI, a lumbar myelogram and post-myelogram CT, a period of physical therapy, and evaluation from Dr. Ron Williams, a neurosurgical specialist.

After reviewing the medical evidence presented at the hearing, including the claimant's proffered letters from Dr. Davidson, I find that the claimant has failed to establish the existence of either a chest injury or a low back injury with medical evidence supported by objective findings as defined by Ark. Code Ann. § 11-9-102(16). In reaching that conclusion, I note that the MRI performed on December 14, 2004 was interpreted as indicating a left lateral disk protrusion at the L3-L4 level effacing the epidural fat around the left L3 nerve root. I further note that Dr. Davidson on December 27, 2004 assessed Mr. Tipton with "herniated disk syndrome," and I note that a herniated disk identified by diagnostic testing would be an objective medical finding of injury. However, when Dr. Williams arranged for Mr. Tipton to undergo a lumbar myelogram with post-myelogram CT scanning for a possible small ruptured disk on the left at L3-4, the myelogram report and post-myelogram CT contained no indication of abnormality at L3-4, and EMG and nerve conduction studies were interpreted as

normal by Dr. Williams. In light of the negative results on myelogram and post-myelogram CT for lumbar disk or nerve injury, I find that the preponderance of the credible medical evidence establishes that the MRI indication of lumbar disk abnormality at L3-4 was in error, and Mr. Tipton did not sustain any lumbar disk injury.

Finally, I note that Mr. Tipton's symptoms apparently resolved over time, consistent with the strain-type injury which Mr. Tipton testified at the hearing that he understood that he sustained. However, as discussed above, on reviewing the medical record presented, the record lacks objective findings indicative of a strain injury, a disk injury, or a nerve root compression injury. Under these circumstances, I am constrained to find that Mr. Tipton has failed to establish by a preponderance of the evidence that any injury to his chest or his back is established by medical evidence supported by objective findings. I am therefore constrained to find that Mr. Tipton failed to establish by a preponderance of the evidence that he sustained a compensable injury.

Because I find that Mr. Tipton has failed to establish the existence of either a chest injury or a back injury with medical evidence supported by objective findings, with or

without considering the proffered letters from Dr. Davidson, I find that the admissibility of the letters offered by Dr. Davidson and proffered by Mr. Tipton at the hearing is essentially a moot issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer/employee relationship existed on October 19, 2004.

2. On that date, the claimant's average weekly wage was \$616.99.

3. The claimant contends that he sustained a compensable back injury on October 19, 2004.

4. The parties stipulate that Mr. Tipton called Donnie Creighton on the morning of October 20, 2004 at approximately 6:00 a.m.

5. Mr. Tipton had another conversation with Mr. Creighton on October 21, 2004 at approximately 5:35 p.m.

6. The claimant has failed to establish the existence of either a chest injury or a low back injury with medical evidence supported by objective findings. Therefore, the claimant has failed to establish one of the elements necessary to establish the existence of a compensable injury.

ORDER

For the reasons discussed herein, this claim must be,
and hereby is, respectfully denied.

IT IS SO ORDERED.

HONORABLE MARK CHURCHWELL
Administrative Law Judge