

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F501814

JOHNNIE WARD, Employee	CLAIMANT
THE VILLAGE, INC., Employer	RESPONDENT
AIG CLAIM SERVICES, Carrier	RESPONDENT

OPINION FILED NOVEMBER 29, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by KEN OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 3, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 27, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties on January 24, 2005.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$540.00 which would entitle him to compensation at the rate of \$360.00 for temporary total disability benefits and \$270.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's back on January 24, 2005.
2. Temporary total disability benefits from January 24, 2005 through a date yet to

be determined.

3. Medical.
4. Attorney fee.

The claimant contends he injured his back while putting tree stumps in the back of a pickup. Claimant is seeking benefits for temporary total disability, medical expenses, and an attorney's fee.

The respondents contend the claimant did not suffer a compensable injury while working for respondent employer on January 24, 2005. As such, respondents contend there are no benefits associated with any such injury.

From a review of 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 made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 27, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$540.00 which would entitle him to compensation at the rate of \$360.00 per week for temporary total disability benefits and \$270.00 per week for permanent partial disability benefits is also hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent.

### FACTUAL BACKGROUND

The respondent is a nursing facility whose housing includes individual rooms, duplexes, and apartments. The respondent also has some houses where administrators and nursing staff reside.

The claimant went to work for the respondent in October 2000 as a maintenance supervisor. Claimant testified that his job duties required him to be responsible for 35 acres of lawn care as well as moving individuals and their furniture into the facility. Claimant testified that his job required him to perform heavy lifting on a daily basis.

Claimant testified that on January 24, 2005, he was cutting down trees at the respondent's facility and was in the process of putting a tree trunk in the back of a pickup when he developed pain in his low back which radiated into his hip and legs. Claimant testified that this accident occurred at approximately 2:30 p.m. and he continued working the remainder of his shift until 3:00 p.m.

Claimant testified that he did not report the injury to respondent until the next day. Claimant received medical treatment from the emergency room at Washington Regional Medical Center on January 25. The documentary evidence contains numerous medical records indicating that claimant continued to receive medical treatment from the emergency room.

Claimant has filed this claim contending that he suffered a compensable injury to his back on January 24, 2005 while working for the respondent. Claimant requests temporary total disability benefits beginning January 24, 2005 and continuing through a date yet to be determined, medical benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his back while lifting a tree trunk on January 24, 2005. Claimant's claim is for a specific incident identifiable by

time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 injury;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent.

Claimant testified that while he was lifting the tree trunk he had immediate pain in his back which radiated into his hips and legs. Although claimant admitted that he did not report the injury on the date it occurred, it was claimant's testimony that he reported an injury to his back the next day to Bob Mello and to a secretary. Claimant testified that after he reported his back injury to those individuals he sought medical treatment at the Washington Regional Medical Center where he complained of both pain in his back and legs.

Initially, I note that claimant admitted that the respondent's procedure is to report an injury at work to someone in the office or to the nursing staff. Claimant admittedly did not report the injury on the day it occurred. Furthermore, while claimant testified that he

reported an injury to his back to Bob Mello, Mello testified that claimant did not mention an injury to his back but instead mentioned a problem with his shoulder.

Also testifying at the hearing was Amy Fugman, the executive director for the respondent. Fugman testified that she had numerous contacts with the claimant subsequent to the alleged date of injury on January 24, 2005. According to Fugman's testimony, the claimant never mentioned an injury to his back but instead only mentioned problems with his right shoulder, elbow, and gall bladder.

More significantly, the initial medical report following claimant's alleged injury does not mention any complaints of back pain. Claimant's first medical treatment subsequent to January 24, 2005 occurred at the Washington Regional Medical Center on January 25, 2005. A review of that medical report indicates that claimant's complaints that day involved his right shoulder, bilateral arms, and right foot. The medical reports also indicate that these complaints had their onset the night before. The medical report does contain a history of claimant having cut down a tree the day before, but indicated that the claimant "denies known injury." The report also indicates that one piece of the tree was heavy and claimant indicated that he had sharp pains in both of his elbows. Significantly, a review of that medical report does not contain a history of any complaints of back, hip, or leg pain. In short, this medical report does not support claimant's testimony that he made complaints of back pain known to the medical providers at the time of his first medical treatment. The first mention of complaints of back pain does not appear in the medical records until February 5, 2005.

In short, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent. While claimant testified that he had immediate pain into his back which radiated into his hips and legs while lifting a tree trunk on January 24, 2005 which he reported to the respondent and to the medical providers the next day, the

remaining evidence does not support that testimony. First, claimant admittedly did not report the injury on the day it occurred. Furthermore, although claimant testified that he reported a back injury to Mello, Mello testified that claimant did not mention an injury to his back but instead mentioned his shoulder. Furthermore, the medical records from Washington Regional Medical Center dated January 25, 2005, the day after this alleged injury, make no mention of any complaints regarding claimant's back, hips, or legs. Given this evidence, I find that claimant has simply failed to meet his burden of proof. Finally, I note that even though other parts of claimant's body are mentioned in the medical reports, claimant's claim at the hearing was for an injury to his back.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE