

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F404314

DEE D. WEBSTER, EMPLOYEE

CLAIMANT

**ARMSTRONGS DELIVERY SERVICE,
EMPLOYER**

RESPONDENT

UNINSURED

OPINION FILED APRIL 28, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on February 10, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents did not appear.

A hearing was held on February 10, 2005, to determine the compensability of the claim filed herein.

There were no stipulations.

Claimant contends that on September 8, 2003, he sustained an injury to his right hip when he fell off the loading dock while working for respondent-employer. He seeks only past and future medical expenses in relation to this injury. He asserts that he was working for an average weekly wage of \$750.00.

Respondents failed to provide responses to the Prehearing Questionnaire or participate in the Prehearing Telephone Conference of this case. As a result, pursuant to the Prehearing Order, filed on January 3, 2005, respondents were precluded from

asserting defenses or offering evidence at the hearing. Respondents failed to appear for the hearing.

STATEMENT OF THE CASE

Claimant testified that he was working as the dock supervisor for respondent-employer on September 8, 2003, when he noticed that a small piece of freight had fallen off between a truck that was being unloaded and the dock. Claimant testified that as he started to get off the dock to retrieve the piece of freight, he fell, breaking his hip. He immediately went to the hospital via ambulance for medical treatment. Claimant testified that he was unable to work for some period of time after that but continued to be paid during the time he was off-work due to his injury.

Wallace Penn Kelley, Operations Manager for respondent-employer at the time of claimant's injury and claimant's direct supervisor, also testified on claimant's behalf. He testified that he had worked for respondent-employer for approximately six years at that time. Mr. Kelley corroborated claimant's testimony regarding claimant's injury. Mr. Kelley testified that he is the one who summoned for an ambulance following claimant's injury.

Mr. Kelley testified that he informed the Armstrongs, owners of respondent-employer, immediately after claimant's injury. Mr. Kelley testified that he, like claimant, was working under the assumption that respondent-employer had workers'

compensation insurance at the time of claimant's injury. Mr. Kelley testified that respondent-employer had been out of business since the end of May 2004.

Claimant testified that none of his medical bills have been paid. He testified that he was given a document by his employer that purported to show workers' compensation coverage, but the document was old and had lapsed. Claimant testified that although the doctor issued an impairment rating for his injury, he is only seeking payment of his past and future medical bills in relation to this injury and no other benefits.

The record reflects that respondent-employer has filed bankruptcy.

FINDINGS OF FACT

1. Claimant has proven, by a preponderance of the evidence, that he sustained a compensable injury on September 8, 2003;

2. Claimant is entitled to both past and future medical treatment at respondent's expense for complaints associated with his September 8, 2003, hip injury.

DISCUSSION

Claimant has the burden of proving his compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(I) (Repl. 2002). A compensable injury is one arising out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(I) (Repl. 2002). Arkansas Code Annotated Section 11-9-102(4)(D)

provides that a compensable injury must be established by medical evidence supported by objective findings. Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16); *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). In order to prove a compensable injury 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).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998).

In this case, claimant offered credible testimony and evidence that he sustained a compensable hip injury as a result of his employment with respondent-employer on September 8, 2003. Respondents were notified of the prehearing conference and full hearing dates and chose not to participate to offer any defense to claimant's allegations. Claimant has proven that he sustained a compensable hip injury on September 8, 2003, and is entitled to the benefits he seeks at respondent's expense.

AWARD

Respondents are directed to pay past and future reasonable, necessary, and related medical expenses the claimant has and may incur as a result of his compensable injury of September 8, 2003.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge