

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409566

RANDY WILLIAMS, EMPLOYEE	CLAIMANT
PILGRIMS PRIDE CORPORATION, SELF-INSURED EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, TPA	RESPONDENT

OPINION FILED APRIL 20, 2005

Hearing held on January 24, 2005, before the Honorable S. Dale Douthit, Administrative Law Judge, in El Dorado, Union County, Arkansas.

Claimant was represented by Mr. F. Mattison Thomas, III, Attorney at Law, of El Dorado, Arkansas.

Respondents were represented by Mr. Norwood Phillips, Attorney at Law, of El Dorado, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted January 24, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on December 15, 2004, and a prehearing order was filed December 16, 2004. At the hearing the parties announced that the stipulations, issues, and their respective contentions were properly set out in the prehearing order subject to additional stipulations, contentions and issues agreed to at the hearing. A copy of the prehearing order was marked as Commission's Exhibit #1 and made a part of the record without objections.

It was stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim, that the employer/employee/carrier relationship existed at all relevant times,

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including August 10, 2004. The parties agreed the claimant's average weekly wage was \$406.25, and that his TTD/PPD rates were \$271.00/\$203.00, respectively.

By agreement of the parties, the primary issue presented for determination is whether the claimant sustained a compensable specific incident injury on August 10, 2004, and if overcome, whether the claimant is entitled to associated medical benefits, TTD benefits and/or attorney fees. The claimant reserved the issue of potential permanent partial disability.

The claimant contends he sustained a compensable injury on August 10, 2004, and that he is entitled to TTD benefits from August 10, 2004 to December 3, 2004, associated medical benefits and attorney fees.

The respondent contends the claimant did not sustain a compensable injury or aggravation on August 10, 2004, arising out of and in the course of his employment.

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 AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has proven, by a preponderance of the credible evidence, that he sustained a compensable injury as the result of a specific incident, identifiable by time and place of occurrence on August 10, 2004, which arose out of and during the course of his employment with Pilgrims Pride Corporation, entitling him to appropriate workers' compensation benefits.

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- 4) The claimant has proven, by a preponderance of the evidence, that he sustained a compensable injury established by medical evidence supported by objective findings.
- 5) The claimant is entitled to TTD benefits for the period beginning August 18, 2004 and continuing through December 3, 2004.
- 6) Respondents are responsible for all related medical expenses, including, but not limited to, the September 16, 2004 MRI, between August 17, 2004 and December 3, 2004, at which time I find the claimant's healing period ended.
- 7) Respondents are entitled to a credit or off-set equal to, dollar-for-dollar, the amount of benefits the claimant has previously received for medical services which were paid under a group health & accident policy pursuant to A.C.A. §11-9-411 (Repl. 2002).
- 8) The claimant has specifically reserved the issue of permanent disability.
- 9) Respondents have controverted this claim in its entirety.

#### DISCUSSION

The claimant, Randy Williams, is 47 years old. He has been employed by ConAgra/Pilgrims Pride for eleven years. At the time of the alleged injury, the claimant worked as a mixer operator. The claimant acknowledged that he had one other workers' compensation claim while employed by the respondents. In 2003 the claimant suffered a compensable injury to his back and was given a ten percent (10%) impairment rating to the whole body for which appropriate benefits were paid by his employer.

As a result of the 2003 compensable injury, the claimant underwent L4-S5 microdiskectomy surgery on May 6, 2003. Following his surgery, the claimant returned to work and was able to resume his normal duties. Prior to his 2003 surgery, a MRI was taken on April 22, 2003. (CX 1, pg. 16). The claimant returned to work after his May 6, 2003 surgery on June 25, 2003, and worked continuously until the August 10, 2004 incident, which is at controversy

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herein.

The claimant described the August 10, 2004 incident as follows:

Q. Does August 10th refresh your memory?

A. Yes, the 10th.

Q. And on the 10th of August, 2004 what were you doing?

A. We was, the superintendent named Sheila Bagley, was superintendent at the time, she said, Randy, I need to get this order out, most of the guys had gone on break, she said, Randy, I need to get this order out, so I was trying hard to get the order out for her, so I picked up the tank, she said, I need this order, so I always do whatever I can to try to help get the orders out. So I pushed up on the tank (T. pg. 14, lines 16-25) and felt the pain in my back, so I dropped the tank after my back was hurting me real bad.

Q. Let me stop you there. Where did you feel the pain in your back?

A. Here.

Q. Is that the right side?

A. Yes sir.

Q. In 2003 when you injured yourself and ultimately had surgery, did you have any problems with your right side?

A. No, sir, I didn't have no problem with my right side, that was a problem with my left side, after I had hurt my back. (T. pg. 15, lines 1-13)

After the August 10, 2004 incident the clamant testified as follows regarding his complaint in reporting the injury:

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Q. And when the pain or sensation hit you, what did you do?

A. I dropped the tank and I went to the nurse and told her, hey, my back was hurting me. So, at the time I didn't know the extent of the injury, so I just thought I had pulled a muscle or something, so I went up to the nurse and I asked her for some aspirin or Tylenol or something but she was busy.

Q. Which nurse was that?

A. Mona.

Q. Mona?

A. Yes, sir.

Q. Did Mona, did you talk to her?

A. She was on the phone, I think her assistant nurse said she was busy, because she was in the back office. So, she said she was busy and so I left, went back to work, I was still hurting so I worked on the day and I was hurting so bad I couldn't hardly drive home. So, the second day I went over there, there was a guy in there that I think he had a heart attack or passed out or something, and she was seeing about him, so she didn't have time to see me that second day. So, the third day I was in so much pain I couldn't hardly walk. She said, Randy, I'm going to (T. pg. 16, lines 2-25) get you some help. So she sent me to the doctor. (T. pg. 17, line 1)

The claimant continued to work for approximately one week after the August 10, 2004 injury, but stated his condition became so bad that he had to get some help. (T. pg. 19, lines 1-7)  
The claimant testified at that time he went to see his family doctor, Steven Unkel, as evidence by

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CX 1, p. 22. On August 27, 2004, the claimant came under the care of Dr. Greg Smart by referral from his employer. Dr. Smart, in his August 27, 2004 report, said “Mr. Williams is seen in clinic today, referred from Pilgrim Pride, with complaints of back pain. He complains of low back pain, right lumbar with radiation into the right leg. The pain radiates from the right posterior lumbar region down the lateral aspect of the right leg.” (CX 1, pg. 20)

The claimant testified his symptoms from his 2003 compensable injury were always the left side, and not until the 2004 incident did he ever have problems with his right side.

Q. In 2003 when you injured yourself and ultimately had surgery, did you have any problems with your right side?

A. No, sir, I didn't have no problem with my right side, that was a problem with my left side, after I had hurt my back. (T. pg. 15, lines 8-13)

In this case, we have the benefit of a MRI prior to August 10, 2004, and another MRI after August 10, 2004. When comparing the two MRIs, they substantiate Mr. Williams' claim.

The first MRI taken April 22, 2003 gives the following conclusion:

**CONCLUSIONS:**

From L3-4 through L5-S1 there is evidence of degenerative disc disease and posterior herniation of nucleus pulposus.

At L3-4 it is small to moderate and central.

At L4-5 the herniation of nucleus pulposus is moderate with encroachment on the L5 nerve as it runs in the spinal canal.

At L5-S1 The herniation is central and slightly leftward encroaching on the thecal sac.

The second MRI taken on September 16, 2004 states the following impression: (CX1, pg. 13)

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1. Postop changes on the left at L4-5.
2. Focal disc protrusion to the right at L4-5.
3. Mild to moderate posterior protrusion of the L5-S1 disc, more to the left where there is some foraminal compromise.

Clearly the 2003 MRI never showed a right side disc protrusion. This new right side injury is consistent with the symptoms the claimant conveyed to Dr. Smart on August 27, 2004. (CX 1, pg. 20) The MRIs are clearly objective findings of a new injury to the claimant.

The respondents went to great length to deny compensability based upon the claimant's reporting of the August 10, 2004 incident to the company; and based on the claimant's statement about whether he "reinjured his back or whether his back was merely hurting". Mona Johnson, the Occupational Health Manager for Pilgrim's Pride, testified that the first time Mr. Williams came to the nurse's station he didn't say he had reinjured his back, but just said "his back hurt."

Q. Now, the first time that Mr. Williams came to the nurse's station, did he tell you he had reinjured his back?

A. No.

Q. What did he tell you?

A. He said that his back hurt.

Q. Did he ask to go to the doctor?

A. Yes. (T. pg. 45, lines 18-25)

To this examiner, the differences outlined above are like splitting hairs. Additionally, this is where the demeanor of the witness comes into play. I personally observed the soft spoken deportment of the claimant and his communication skills, while testifying. The bottom line is he

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reported his back problems and asked to go to the doctor. The MRIs clearly show a new problem arose with regard to the claimant's right side at L4-5. The only question would be whether the new disc protrusion was an aggravation or new injury, but in either event, would be the responsibility of the employer. I find the medical evidence supports a new injury.

Ms. Mattie Huckaby, a licensed practical nurse, also testified at the hearing. She corroborated Mr. Williams' account of coming to see Ms. Mona Johnson about his back but was told Ms. Johnson was busy.

Q. Do you recall Randy Williams coming in to talk to you and you told him Mona wasn't available?

A. Yes, I do.

Q. Did he report to you that he had injured his back?

A. He referenced that he was in back due to an old injury he had received. (sic)

(T. pg. 51, lines 19-25)

After the MRI, the claimant was sent for physical therapy and pain management. After the therapy and pain management the claimant was released back to work by his primary physician, Dr. Unkel, on December 3, 2004. The claimant has worked continuously for the respondent from December 31, 2004 through the time of the within hearing.

#### ADJUDICATION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A.C.A. §11-9-102(4)(A)(I) (Repl. 2002), must be established:

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- (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; and
- (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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied.

A claimant is not required to establish the causal connection between a work related incident and an injury by either expert medical opinion or objective medical evidence. See Wal-Mart Stores, Inc.v. Van Wagner, 337 Ark. 443, 990 S.W. 2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pitman Const. Co., 234 Ark 104, 357 S.W. 2d 263 (1962).

In the case at bar, the claimant's credible testimony, his subsequent right side reporting to Dr. Smart, and the two MRIs, clearly establish the causal connection.

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Further, the MRIs supply objective findings of the right side disc protrusion.

The claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. Pearson v. Faulkner Radio Service, 220 Ark. 368, 247 S.W. 2d 964 (1952). The burden of proof the claimant must meet is preponderance of the evidence. Voss v. Ward's Pulpwood Yard, 248 Ark. 465, 425 S.W. 2d 629 (1970)

After viewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has proven, by a preponderance of the evidence, that he sustained an injury as the result of a specific incident, identified by time and place of occurrence On August 10, 2004, which arose out of and in the course of his employment, and which has been established by medical evidence supported by objective findings. Accordingly, I hereby make the following;

#### AWARD

Respondents are ordered to pay the claimant TTD benefits at the rate of \$203.00 per week beginning August 18, 2004, and continuing through December 2, 2004.

All benefits having accrued, respondents are responsible for all related medical expenses for the same period of time TTD benefits were awarded, as the claimant's healing period ended on December 3, 2004.

Respondents may claim an offset or credit equal to, dollar for dollar, the amount of benefits the claimant has previously received from a group accident and sickness policy pursuant to A.C.A. §11-9-411.

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Additionally, claimant's attorney, Mr. Matt Thomas, is awarded the maximum statutory attorney fees on the entire amount to be paid pursuant to A.C.A. §11-9-715.

This award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DALE DOUTHIT  
ADMINISTRATIVE LAW JUDGE

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