

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308367

BILL ADAMS	CLAIMANT
INLAND PAPERBOARD	NO. 1 RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED JANUARY 5, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DAVID HARP, Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

Respondent No. 2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 27, 2005, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 5, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 23, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

4. There was a slip and fall incident on July 23, 2003.

5. The claimant reached maximum medical improvement on August 26, 2003.

6. The claimant had low back surgery in April of 1999.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to his low back, right shoulder and neck on July 23, 2003.

2. Related medical.

3. Permanent partial impairment of 3.25 percent to the body as a whole.

4. Second Injury Fund liability.

5. Claimant's entitlement to permanent and total disability or entitlement to wage loss.

6. Attorney's fees.

In regard to the foregoing issues the claimant contends that the respondents have controverted his entitlement to permanent impairment, any wage loss over and above this permanent impairment. The claimant will also contend that he is permanently and totally disabled as a result of his on the job injury, entitlement to controverted attorney's fee.

In regard to the foregoing issues Respondents No. 1 contend that the claimant did not sustain a compensable injury on July 23,

2003, as there are no objective and measurable findings to support a compensable injury. Alternatively, Respondents No. 1 contend that if the claimant sustained a compensable injury, it was a temporary aggravation of his preexisting condition. Alternatively, if claimant sustained a compensable injury resulting in additional permanent impairment, the Second Injury Fund has liability as his prior conditions have combined with the last injury to cause his current disability. Further, Respondents No. 1 are entitled to a credit for group disability and health insurance benefits paid.

In regard to the foregoing issues Respondent No. 2 contends that the claimant is not permanently and totally disabled and is not entitled to permanent partial disability benefits in excess of his anatomical impairment rating for pursuant to Ark. Code Ann. §11-9-522. The claimant cannot prove that he suffered any additional permanent impairment supported by objective medical findings as the result of the July 23, 2003, injury. The claimant cannot prove that the major cause of his current disability and permanent impairment is the July 23, 2003, injury. Alternatively, there is no combination of disabilities to invoke Second Injury Fund liability pursuant to Midstate Construction Co. v. Second Injury Fund, 295 Ark. 1, 746 S.W. 2d 539 (1988).

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. Respondents No. 1 submitted documentary evidence marked Respondents No. 1's Exhibit No. 1, a report from Dr.

Lenington marked Respondents No. 1's Exhibit No. 2 and information from the A.M.A. Guides, Forth Edition, marked Respondents No. 1's Exhibit No. 3. The parties submitted a joint medical record marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he was forty-seven years old and had a two-year associate's degree in quality technology at Westark Community College with a diploma. The claimant testified that he has also been in the military and for part of the time he was assigned to administrative duties and then the second half he was a clerk.

The claimant testified that he had been working for the respondent approximately seven years on July 23, 2003. The claimant testified that on that date he was working in quality assurance which involved him inspecting and testing, customer audits, quality audits as well as calibration of test equipment. The claimant testified that before he was assigned to this particular job he had worked as a general laborer on various machines and had even been a crew leader which involved actually running the machines and being in charge of one or two other employees depending on the machine they were working on. The claimant testified that on July 23, 2003, he was on his way to the corrugator when he tripped over some rolls of paper which were in the hallway. The claimant testified that the first thing he knew he was trying to catch himself and he fell hitting between his tail

bone and right hip. The claimant testified that he initially reported his accident to Linda Hobbs, the payroll clerk/human resource's person and she in turn paged Kenney McCain, the safety coordinator, and Bill Sicka. The claimant testified that Kenney started to take him to Dr. Carson's office but instead he was taken to the Sparks' Emergency Room.

The claimant testified that at the emergency room he remembers getting a shot of Phenergan and he thinks he received a shot of Demeral. The claimant testified that the ER doctor instructed him to see his primary care physician. The claimant testified that he saw Dr. Bishop and that he has also been seen by Dr. Cheyne, Dr. Johnson and Dr. Lenington. The claimant explained that he was in a lot of pain because he had had a spinal cord injury and back surgery previously. The claimant testified that Dr. Arthur Johnson had done a spinal fusion on him previously. The claimant testified that when he first fell he felt a little stiff but as time progressed and by the time he got to the doctor's office, he was more tense, drawn up and pain was in his lower back but also in his shoulders, neck and arm. The claimant testified that he has pain in the back of his neck which goes across the top of his right shoulder and radiates into the upper part of his right arm. The claimant testified that he has also continued to have problems with his low back. The claimant testified that his back problems involve tremendous amounts of stiffness and pressure. The claimant testified that he had this drawing or bending feeling after his first surgery but now it is different.

The claimant agreed that following his first surgery he was not 100 percent but he returned to work. The claimant testified that after his fall he has continued to have problems with his arm and neck as well as his right shoulder. The claimant explained that his neck is always stiff and that it has a dull deep pain that never goes away. The claimant testified that as to his back there is a little bit of difference in that he feels a little bit more of a pull or a draw than he did before. The claimant testified again that it is his neck and shoulder which always gives him problems.

The claimant agreed that he has had some problems with his neck prior to his fall but this pain or discomfort is different than it was after his fall. The claimant explained that the difference primarily is that he has discomfort in his shoulder and neck. The claimant testified that he has been seeing Dr. Lenington for pain management and that Dr. Lenington is still prescribing medications for him. The claimant testified that it is now a lot harder for him to sit or walk as he had before his fall.

The claimant testified that he had had a previous injury while working for whirlpool and had undergone back surgery in April 1999. The claimant testified that following this surgery he did not have restrictions and was able to return to work and do all the jobs required without help. The claimant testified that after his accident while working for the respondent, he has not undergone any surgery but does have limitations as to what he can do and was only able to return to work with assistance or accommodation from the respondent. The claimant has testified that the respondent

accommodated him and helped him for a couple of weeks when he returned to work. The claimant testified that once he no longer was accommodated or assisted with his job he was unable to do the work required of him. The claimant testified that following his 1999 surgery he did have some lingering stiffness in his lower back because of the spinal fusion and he could not walk great distances without having to stop and take a break. The claimant testified that he was able to do his work without help, noting that he just had to do things a little bit different. The claimant testified that between 1999 and the date of his fall, he continued to take Oxycontin, Soma and Promethazine. The claimant testified that the respondent was aware that he took these medications.

The claimant testified that currently his typical day involves watching his children when they are not in school and doing what he can around the house because his wife works. The claimant testified that he has to limit his standing and that he does no cooking or yard work. The claimant testified that he spends most of his day reading, studying, sitting and laying down. The claimant testified that there is never a day that he is pain free but he does have some days better than others. The claimant testified that he is not able to play golf or work with his cattle. The claimant testified that he has been approved for social security disability and began receiving benefits sometime in March of 2004. The claimant testified that he also receives long term disability benefits through the respondent. The claimant testified

that his wife and children receive social security checks through him.

On cross examination by Respondents No. 1, the claimant agreed that Dr. Johnson had performed a fusion on his back in 1999 which included instrumentation. The claimant agreed that he was off work for approximately eight months and when he returned to work in November 1999, he had restrictions. The claimant agreed that when he was released to return to work on November 18, 1999, he was instructed not to lift over fifteen pounds and that he could not kneel, bend, stoop, push or pull. The claimant testified that when he was released in 1999 he returned to work for the respondent. The claimant testified that the first two or three weeks that he was back at work he was helped with his work but after that he was not accommodated. The claimant agreed again that following his surgery and return to work in November 1999 he had substantial restrictions and that there were some parts of his job he could not do so he just did not do those jobs. The claimant also agreed that following his surgery he continued to be seen by Dr. Johnson for his medications and subsequently was seen by Dr. Lenington for his pain management. The claimant agreed that he has continued to see Dr. Lenington from his first visit on December 7, 1999, to the present. The claimant agreed that as a result of his back surgery he has a screw in his hip which is the donor site from which they harvested bone to do his fusion. The claimant agreed that there are times when it feels like there is an ice pick inside of him that is poking him in this area of his hip. The claimant testified

that following his fusion surgery, he reported to Dr. Johnson problems with his right arm indicating that it was tingling and felt numb. The claimant agreed that this problem has persisted to present. The claimant acknowledged that he had an MRI of his neck and cervical area in 2001 which revealed protruding discs throughout his cervical spine and neck. The claimant agreed that prior to July 2003 he has also had problems with numbness and tingling in both of his feet as well as been treated for depression. The claimant acknowledged that on the day of his accident on July 23, 2003, he was taking Oxycontin, Soma, Promethazine as well as an anti depressant and that these are the same drugs he is currently taking. The claimant agreed that subsequent to his back surgery he has had a bend in his posture. The claimant testified that he was aware that the MRI of his low back which was made after his 2003 fall is the same as the MRI which he had done in June 2001 on his low back.

On cross examination by Respondent No. 2, the Second Injury fund, the claimant agreed that he had served in the military from 1977 to 1981 and had been discharged with other than an honorable discharge due to a charge of possession of stolen property. The claimant agreed that he served five months in confinement as a result of this charge. The claimant testified that just shortly before his slip and fall accident in 2003 he had spent a lot of time working on the computer because they had been doing a rather large audit. The claimant explained that this administrative duty was not a permanent thing and that many times he had to go out into

the plant to calibrate the different machines and collect information for quality control. The claimant agreed that he has not undergone any surgery subsequent to his slip and fall event in 2003.

The medical records set forth that the claimant underwent a fusion of his lumbar spine from L4 through S1 using autologous iliac crest bone graft on May 10, 1999, performed by Dr. Arthur Johnson. Dr. Johnson followed up with the claimant subsequent to his surgery. Following this surgery, Dr. Johnson notes that the claimant continues to have significant amounts of pain in his lower back but no radiation of pain into his legs. Dr. Johnson treated this claimant's discomfort with medications and prescribed a corset. On July 16, 1999, Dr. Johnson released the claimant to return to work with restriction of no lifting greater than ten to twenty pounds and no repetitive bending or twisting and no significant pushing. Dr. Johnson continued to follow the claimant for his continuing complaints of low back pain with some radiation into his buttock area. Dr. Johnson prescribed medications for the claimant to address the pain issues. Dr. Johnson writes on June 5, 2001, that he has continued to treat the claimant for his complaints of low back pain, noting that the claimant is under the Pain Management Clinic care and is taking Oxycontin, Soma and Phenergan. It is also noted by Dr. Johnson on June 5, 2001, that the claimant has been complaining of numbness in his right forearm for several months, noting that it starts in the center of his back and goes to the right shoulder and arm. The claimant began

treatment by Dr. Jerry Lenington on December 7, 1999, for pain management due to his post laminectomy pain syndrome and bilateral radicular pain. Dr. Lenington notes at this time that the claimant is taking Oxycontin, Nortriptyline, Ibuprofen and Flexoril. The medical records set forth that the claimant continued to be treated by Dr. Lenington for pain management from 1999 up into 2003. Dr. Lenington's last note indicates that the claimant is currently taking Oxycontin and Bextra.

The medical records set forth that the claimant was seen at the Sparks Medical Center in their emergency room on July 23, 2003, noting that the claimant slipped on oil and fell and now has complaints in the sacral area right hip and also describes a tingling sensation in his right forearm. In the emergency room reports it is noted that the claimant has a past history of chronic back pain as well as back surgery. An MRI of the claimant's lumbar spine done on August 1, 2003, does reveal a post lower lumbar fusion with a Grade II spondylolisthesis of L5 on S1, noting that it is stable from the June 8, 2001, study. This test also sets forth that there is no acute lumbar disc herniation appreciated. Dr. Thomas Cheyne writes on August 5, 2004, that the claimant reports that for the past four years he has been bent over and unable to stand erect. It is also noted that the claimant reports that on July 24, 2003, he slipped and fell which increased his lower back and right hip pain. The claimant reports that his symptoms are basically what they were before the fall except for being intensified and he also complained of right shoulder pain.

After examination, Dr. Cheyne diagnosed the claimant with having acute lumbar strain and right shoulder strain for which he prescribed Celebrex and physical therapy. Dr. Cheyne returned the claimant to work with a five-pound weight limit. On follow up dated August 13, 2003, Dr. Cheyne notes that the claimant seems less uncomfortable and recommended that the claimant work to improve his posture. Dr. Cheyne recommended a brace to maintain extension of his back and continued his medications, hot showers and job restrictions. The claimant was seen by Dr. Arthur Johnson on August 26, 2003, for his complaints of back and neck pain. Dr. Johnson reviewed the claimant's MRI done on August 1, 2003, and also reviewed an MRI done on June 8, 2001, of the claimant's cervical spine, noting that this report shows mild right lateralizing at C3-4 protrusion, right paracentral C4-5 and C5-6 protrusion and mild C6-7 broad based central and right lateralizing protrusion, unremarkable. After examination and review of the claimant's symptoms and tests, Dr. Johnson notes that the claimant will no longer be able to work in the capacity that he has, noting that he no longer will be able to lift push, pull, bend, stoop and squat, noting that he will most likely continue to ambulate with a cane. The claimant underwent an MRI of his cervical spine on September 8, 2003, which revealed a small central, right paracentral disc protrusion at C6-7, mild additional disc bulges and unciniate spondylitic spurring as described above at C2-3, C3-4, C4-5 and C5-6 levels. The claimant also underwent an MRI of his right shoulder and neck which revealed no evidence of rotator cuff

tear. It is noted that there is a cyst at the humeral head about 1.5 cm in size. This test also set forth possible mild tendinopathy of the supraspinatus tendon and mild spurring at the AC joint. Dr. Cheyne writes on September 11, 2003, after reviewing the claimant's MRI of his cervical spine and right shoulder that there were no acute findings noted on either scan further noting that the findings on his cervical spine MRI were the same as those noted previously in his 2001 scan. Dr. Cheyne writes that he has nothing to offer him and does not believe that he is a surgical candidate but would recommend that he continue his Celebrex, hot showers and home exercises. Dr. Arthur Johnson writes on July 23, 2004, to clarify the claimant's impairment rating. Dr. Johnson notes that he gave the claimant, for his July 23, 2003, injury, a 14 percent impairment rating, 25 percent of which is due to his most recent injury. Dr. Johnson further notes that according to the chart, the claimant's rating should be 13 percent instead of 14 percent. Dr. Arthur Johnson writes again on February 10, 2004, concerning the claimant's impairment rating. Dr. Johnson again sets forth that the claimant has had continuing pain since his lumbar fusion and has been continually on medications since his surgery. Dr. Johnson notes that on July 4, 2003, when the claimant slipped and fell he intensified his symptoms at that point but he basically had the same type of symptoms that he did prior to his fall. Dr. Johnson writes that he suspects that the fall may have contributed approximately 25 percent to his current pain and that his prior disease has contributed 75 percent to his symptoms. Dr.

Johnson opines that the claimant will continue to have chronic pain and is unlikely to have any improvement in his condition. The doctor recommended permanent restrictions of no lifting greater than seven pounds, no frequent bending, kneeling or stooping and no pushing greater than fifteen pounds.

After a complete review of this case, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right shoulder and low back on July 23, 2003, while working for the respondent. It is not questioned that this claimant had a slip and fall and did exacerbate or aggravate temporarily his pre-existing back problems. Arkansas law requires objective medical findings of injury in order to establish a compensable injury and the claimant's various tests have been read to be no different than the tests which is underwent prior to his 2003 fall, therefore, this claimant's request for benefits for his low back and right shoulder will be denied. Since a compensable injury has not been found to have occurred on July 23, 2003, the claimant is also not entitled to medical treatment, an impairment rating or wage loss as a result of this fall.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On July 23, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

4. There was a slip and fall incident on July 23, 2003.

5. The claimant reached maximum medical improvement on August 26, 2003.

6. The claimant had low back surgery in April of 1999.

7. The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that he sustained a compensable injury while working for the respondent on July 23, 2003. See discussion above.

8. The claimant is not entitled to medical treatment for his right shoulder or low back as a result of his July 23, 2003, fall.

9. There is no finding of wage loss, Second Injury Fund liability or entitlement to an impairment rating in this matter.

ORDER

The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that he sustained a compensable injury to his low back and right shoulder on July 23, 2003. Therefore, this claimant's request for benefits is denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE