

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F505685**

<b>WILLIAM E. BARNETT, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DUMAS MOTOR CO., INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AIG CLAIM SERVICE, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 13, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 3, 2006, at Monticello, Drew County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on November 27, 2004. Some medical expenses have been paid by Medicare.

The claimant, age 77 (D.O.B. July 9, 1928), was hired by the respondent-employer on June 21, 2004 as a part-time truck driver earning \$9.00 per hour. His health history

includes heart surgery, vision problems, prostate cancer and a prior workers' compensation claim in 1980 for a back injury while working for Coca-Cola. The claimant began work for the respondent-employer in June, 2004. He sustained multiple injuries (both knees, left shoulder, head, neck, left elbow, clavicle) on Friday, November 27, 2004 when he fell from the steps of his truck. He received medical treatment at Drew County Memorial Hospital and came under the care of Drs. Rhinehart and Simon. The claimant reported the injury to his supervisor's wife on Sunday, two days after the accident. The claimant last worked on May 26, 2005. He seeks payment of medical expenses and his time off from work.

The respondents contend the claimant did not suffer a compensable injury. There is no objective medical evidence of a specific injury causally related to his employment. Alternatively, in the event of an Award, there is no medical evidence to substantiate entitlement to temporary total disability benefits.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript. Respondent's objection to a letter from Dr. Simon was sustained pursuant to Ark. Code Ann. §11-9-705(c) and appears in the transcript as a proffer.

The following witnesses testified at the hearing: the claimant and Loretta Williams, owner and office manager.

The claimant was injured on November 27, 2004 when he fell from his truck. He was treated and released from the emergency room (ER). He reported the incident to the manager, Ms. Williams, and she offered to complete the necessary paperwork to file a workers' compensation claim for a shoulder injury with the carrier. However, the claimant declined and filed his medical expenses with Medicare.

The claimant continued to work at his regular duties for the next five months. In June, 2005, the claimant left a message for Ms. Williams inquiring about workers' compensation because he needed treatment for his knees and Medicare refused to pay.

The claimant filed an AR-C on June 3, 2005, claiming injuries to his right knee and left shoulder from a slip and fall on November 27, 2004.

### **MEDICAL EVIDENCE**

Dr. Rhinehart's records are handwritten and very difficult to read, however, it appears the claimant initially reported symptoms on his left side. There is no indication the doctor has ever excused the claimant from work. The only diagnosis is arthritis which suggests age-related changes over time rather than a specific injury.

Immediately after the accident, Dr. Rhinehart ordered x-rays of the clavicle, left elbow, left wrist, and left knee. There was no evidence of fractures or soft tissue abnormalities. The x-ray report also indicates views were made of the right shoulder, however the results are not listed in the report and the MRI scan was confined to the left shoulder. An MRI scan of the left shoulder showed no evidence of a rotator cuff tear, but joint inflammation and swelling were noted.

The claimant returned to the doctor on December 13, 2004 for complaints of right-sided abdominal pain. X-rays were taken of the chest and abdomen. This treatment appears to be unrelated to the claim.

The claimant did not return to the doctor until June 1, 2005. He complained of right knee and left shoulder pain from a fall from his truck in December. According to the claimant, he fell flat on his back. The doctor diagnosed bursitis and prescribed medication.

The claimant returned to the doctor on June 9, 2005 reporting difficulty walking because of weakness and stiffness for the last 3-4 weeks. He also stated his right shoulder was still hurting.

On June 20, 2005, the claimant was prescribed physical therapy for arthritis of the cervical spine.

On July 1, 2005 Dr. Rhinehart issued a "Workmen's Compensation Physician Report" indicating the claimant complained of left shoulder and right knee pain. The diagnosis appears to be arthritis.

On July 25, 2005, the claimant complained of "hurting all over." A whole body bone scan was conducted on August 2, 2005 based on a history of back pain. Mild degenerative changes were noted in the left shoulder. The radiologist commented, "these findings are thought to be representative of active degenerative change." Degenerative changes were also described on a right rib, at L2-L3 of the spine, and in the knees, bilaterally.

The claimant stated that he now needs a total knee replacement but no medical evidence was submitted to support this contention.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. Under the Act, the claimant has the burden of proving the following requirements by a preponderance of the evidence of record:

1. An injury arising out of and in the course of employment
2. An injury causing internal or external harm to the body, requiring medical services or resulting in disability or death
3. An injury established by objective medical findings
4. (a) An injury caused by a specific event identifiable by time and place of occurrence
- or
5. (b) A gradual injury, caused by rapid and repetitive motion, which is the major cause of the disability or need for medical treatment.

The evidence of record shows the claimant fell from his truck on November 27, 2004 striking his left side. He sought medical treatment which revealed objective evidence (swelling) in his left shoulder. The claimant's medical expenses were paid by Medicare.

The claimant reported a left shoulder injury to his employer but declined an offer to file a report of injury. The claimant returned to work at regular duties and had no further medical treatment until six months later in June, 2005. The claimant is now requesting medical treatment for a total knee replacement bilaterally and because he hurts "all over". The only definitive diagnosis is arthritis, which suggests a gradual result of the aging process rather than a new specific injury.

The determination of whether the causal connection exists is a question of fact for the Commission to determine based on the evidence of record and the credibility of the witnesses. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998), Ellison

v. Therma-Tru, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

It is the claimant's burden to prove a causal connection between the work-related accident and the later disabling injury. Lybrand v. Arkansas Oak Flooring Co., 266 Ark. 946, 588 S.W.2d 449 (Ark. App. 1979). Objective medical evidence is not always necessary if there is a preponderance of non-medical evidence. Horticare Landscape Management v. McDonald, 80 Ark. App 45, 89 S.W.2d 375 (2002).

If the disability develops soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition," then the claimant has established a causal connection. However, if there is a span of time between the accident and the disability, a question of fact arises concerning the causal connection. Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.w.2d 263, 264 (1962).

After considering the claimant's decision not to file a report of injury with the carrier, his ability to work for several months after the fall and the diagnosis of arthritis, I find the claimant has failed to meet his burden of proving a causal connection between the accident and his present medical condition by a preponderance of the evidence of record.

Assuming arguendo, the claimant had prevailed, I would have limited the award to medical expenses for the left shoulder based on the medical records.

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed on November 27, 2004. Some medical expenses have been paid by Medicare.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical

bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge