BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510355

BOBBY BEVILLE	**CLAIMANT**
MAIL CONTRACTORS OF AMERICA, INC.	**RESPONDENT EMPLOYER**
ARGONAUT SOUTHWEST INSURANCE CO.	**RESPONDENT CARRIER**

ORDER AND OPINION FILED SEPTEMBER 25, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE KATHLEEN L. CALDWELL, Attorney at Law, Memphis, Tennessee.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on August 2, 2006, in Little Rock, Arkansas. A prehearing conference was held on April 18, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on August 4, 2005.

2. Compensation rates are $466/35.

The claimant contends he sustained a specific incident compensable injury on April 8, 2005 and is entitled to medical benefits, temporary total disability benefits from September 12, 2005 through December 26, 2005, a 15% body as a whole rating and attorney's fees.

Respondents contend the claimant did not sustain a compensable injury arising out of and in the course of his employment. The claim has been controverted in its entirety. Respondents request an offset for any group medical or disability benefits that might have been paid, if the claim is found to be compensable.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Permanent impairment rating.
5. Offset for any group medical or disability benefits.
6. Attorney's fees.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on August 4, 2005.
2. The claimant has failed to prove by a preponderance of the evidence that he

sustained a compensable injury arising out of and in the course of his employment with respondent.

DISCUSSION

The claimant, 34 years old, was a truck driver for the respondent employer, starting in June 2005. The claimant has had a CDL license for the past eight years. According to the claimant, on August 4, 2005, he was hauling a load of furniture and he had three stops, Oklahoma City, Tulsa and Sherwood, Arkansas. The claimant testified that he called his dispatcher, Danny Coates, and advised him there were no lumpers (a person paid to unload) at any of the stops. According to the claimant, Mr. Coates asked him to unload and get paid by the hour. The claimant testified that he unloaded in Oklahoma City, Tulsa and Sherwood and it was at Sherwood when he was half through unloading that he felt something in his back. The claimant testified he felt pain and it felt like a pulled muscle.

According to the claimant, he spoke with Dwayne Huckaba (his supervisor) on the telephone while in Sherwood and advised him he had pulled something in his back. The claimant testified the drive back to West Memphis was painful and there was no one at the terminal when he arrived. According to the claimant, he returned to work the next day and was involved in shuttling in Memphis. The claimant testified that he spoke with Dwayne Huckaba about his back and Dwayne advised him to let him know if his back got worse. The claimant testified that he sought treatment with a chiropractor in August 2005 for back pain but continued to work until September 12, 2005.

The claimant was questioned about whether he advised the chiropractor that his injury was work related and the claimant testified that he told the doctor he had not filled

out work injury paperwork at work, so he could not claim a work injury. According to the claimant, he went to the emergency room on September 14, 2005, when his sister found him laying in the floor at home unable to move. The claimant was x-rayed and given medication. According to the claimant, he was referred to Dr. Jerry Engelberg who performed an out patient procedure and he was released to return to work on December 26, 2005 and continues to work for the same employer doing the same job.

Under cross examination, the claimant verified that over the course of the day of August 4, 2005, he began to feel pain in his back. He clarified that he felt pain when he was halfway unloaded at Sherwood, Arkansas. The claimant verified that when he initially went to the chiropractor, he completed forms and he checked “No” on the box that asks if his condition was due to an accident. The claimant also verified that on September 14, when he went to the emergency room, he had a sudden onset of pain and that the “No” answer is circled for a work-related injury. The claimant also verified the report indicated that “he denied any injury.” The claimant reviewed Dr. Randall Huling’s September 15, 2005, report and acknowledged that there was no indication that his symptoms were work related; however, the claimant testified that he told all the doctors he has seen that his problems were work related. He testified that he could not explain why their reports did not indicate such. The claimant also verified that he stated in his deposition that he informed Danny Coates on August 4, 2005, that he had pulled a muscle in his back.

Under cross examination, the claimant verified that at each stop, Oklahoma City, Tulsa and Sherwood, he was there about one hour and a half, although his log books do not reflect that. The claimant testified that he made some changes on his log books.

The claimant also verified that he completed the Form AR-N on September 21, 2005, and that is the date he put on the form when he notified management of the injury.

Sarah Jack, terminal assistant for the respondent, testified that she takes care of paperwork, to include workers' compensation forms. Ms. Jack testified that the claimant complained prior to August 4, 2005, about his hip hurting and stating he should quit driving with his wallet in his pocket. Ms. Jack testified the claimant came to her office in September 2005, and asked for some paperwork but said his problems were not workers' comp.

Daniel Coates, dispatcher for the respondent, testified that the DOT log records are signed by the driver and that is a certified copy of his day's driving. Mr. Coates verified that the break room at the headquarters has the required workers' compensation postings and all employees go through an orientation regarding reporting injuries. Mr. Coates testified that the claimant occasionally limped before August 4, 2005, and the claimant stated his sciatic nerve sometimes bothered him. Mr. Coates testified that he spoke with the claimant several times on August 4, 2005, because of no lumpers being available but the claimant never reported a back injury. According to Mr. Coates, the claimant called in over the weekend following August 4, 2005, to get his dispatch schedule for Monday, August 6, 2005, and no back injury was ever reported. Mr. Coates testified that the claimant continued to work until September 12, 2005, and he came in following a trip to Louisiana and was complaining about pain and said he was going to the doctor. Mr. Coates unequivocally testified that the claimant stated his condition was not a work-related injury, that he was not trying to get workers' comp but he just wanted to get his pain taken care of. The claimant's group health insurance had

taken effect and the claimant was wanting the group numbers and Mr. Coates testified that he sent him to Dewayne Huckaba for that information. Mr. Coates testified that the first time he learned the claimant was saying his condition was work related was September 21, 2005, after the claimant had seen a couple of doctors.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claimant testified that he injured his back unloading product on August 4, 2005; however, Daniel Coates and Sarah Jack, employees of the respondent employer, both testified that the claimant initially had stated his condition was not work related. The claimant continued working until September 12, 2005, and did not file paperwork alleging a work injury until September 21, 2005. The medical evidence from

the initial chiropractor on September 1, 2005, indicates the claimant's condition was not due to an accident. Further, the September 14, 2005, emergency room report indicates the claimant's complaints are not due to a work-related injury. In fact, the only mention in the medical evidence is a note from Dr. Jerry Engelberg on February 3, 2006, that states: "He says that this is now a Workman's [sic] Comp issue, and he wanted to know about his impairment rating." (Resp. Exh. "M", p. 9.)

The burden is on the claimant to show a causal connection between his or her injury and employment. *C.J. Horner Co. v. Stringfellow*, 286 Ark. 342, 691 S.W.2d 861 (1985). Where the claimant's case for causation rests mainly on his own testimony, the issue is that of credibility and one that is left to the discretion of the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996). I give greater weight to the testimony of Sarah Jack and Daniel Coates regarding the claimant's reporting his condition as non work related. I did not find the claimant's testimony to be credible. Two employees provided a totally different account of the claimant's back problems and the contemporaneous medical evidence specifically indicated the claimant's condition was not an accident or work injury. While the claimant did receive some medical treatment and continues to be gainfully employed with the respondent employer, I am unable to find that his need for treatment was causally related to a work injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment with respondent. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

____

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE