

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511622

JOHNNY B. BIRDSONG, EMPLOYEE	CLAIMANT
TENNECO AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 15, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on October 13, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John C. Bartfelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Mark A. Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 13, 2006, 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 September 13, 2006, and a Prehearing Order was filed on said date. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record, without objection.

At the prehearing conference, as well as the hearing, it was stipulated that the employee/employer/carrier relationship existed among the parties at all relevant times, including August 17, 2005; that the claimant earned sufficient wages to entitle

him to compensation rates of \$370.00 per week for temporary total disability and \$278.00 per week for permanent partial disability; that respondents paid various medical and indemnity benefits prior to controverting the claim in its entirety.

At the prehearing conference, the claimant contended, in summary, that he sustained a compensable back injury as the result of a specific incident identifiable in time and place of occurrence on August 17, 2005; that respondents initially paid benefits through on or about March, 2006, at which time it improperly terminated all benefits; that he was entitled to temporary total disability from the date of the injury and continuing through the present, maintaining that his healing period had not ended, less credit for any temporary disability previously paid; that respondents should be held responsible for all outstanding medical treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to all benefits previously paid and/or awarded.

The respondents controverted the claim, maintaining that there was no medical evidence supported by objective findings related to the incident of August 17, 2005. Alternatively, respondents contended that the claimant reached the end of his healing period no later than April 4, 2006, and was not entitled to further temporary total disability benefits beyond that date. Respondents also maintained that all reasonably necessary medical care related to the incident of August 17, 2005, had been paid and that medical care beyond that previously paid was not reasonably necessary or related to the incident on August 17, 2005.

At the prehearing conference, the parties agreed that the primary issue to be presented for determination concerned compensability. If answered affirmatively, claimant's entitlement to associated benefits was to be determined. However, at the hearing, the parties jointly requested that the hearing be limited to the issue of compensability while reserving all additional issues. Accordingly, the sole issue to be presented for determination is whether the claimant sustained a compensable injury on August 17, 2005.

The claimant was the only witness to testify. The record is composed solely of the transcript of the October 13, 2006, hearing containing a joint medical exhibit consisting of fifty (50) pages, together with a supplemental respondent medical exhibit consisting of three (3) pages.

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 claimant and to observe his 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and contained in the Prehearing Order filed September 13, 2006, are hereby accepted as fact.

3. The claimant has proven, by a preponderance of the evidence, that he sustained a back injury arising out of and during the course of his employment with Tenneco Automotive, Inc., which resulted from a specific incident identifiable in time and place of occurrence on August 17, 2005, and which is confirmed by medical evidence supported by objective findings.
4. The claimant has proven, by a preponderance of the credible evidence, that his need for treatment and disability beginning August 17, 2005, are directly and causally related to a work-related injury.
5. By agreement of both parties, all additional issues have been specifically reserved.

DISCUSSION

_____The relevant facts in this case are basically undisputed. The claimant, Johnny B. Birdsong, is forty-seven (47) years old. He has a high school education. The claimant has been employed by Tenneco Automotive, a/k/a Monroe Automotive, for seventeen (17) years. The claimant spent fifteen (15) years in the shipping department. The last two (2) years, the claimant has been employed as a "mill helper." The claimant's description of the accident is set out below:

QTell us how your injury occurred on August 17th of last year.

A Okay, I work on a mill. It's called Walker mill.

Q Walker mill?

A Yeah, they had got that from the Walker Plant, and, you know, that's another Monroe plant.

Q Okay.

A Okay. And they sent me down to help this guy named Steve to change over the Yoda mill, which I was not familiar with.

Q Okay.

A And I assumed, you know, it changed over the same way we did the Walker mill.

Q And when you say changed over, tell us what that means because I don't know.

A You have to take these stands loose, take these 100 pound rollers off and change them, you know, to change the diameter of the tube.

Q To change the diameter you have to take these rollers off?

A Right.

Q How many rollers are you having to remove?

A Oh, I'd say about 50.

Q And they weigh how much?

A Some weigh from 100 to 20.

Q All right. Go ahead and tell us how you were doing that and how you were injured.

A Okay. Well, I was working, like I said, with the Yoda mill. I hadn't never been down there, and I was putting on the size rollers. Well, you have to pull the stands apart and then slide the rollers off, and they got like a moon key that holds the rollers, you know, on the gears. All right, I put it back together. On the mill I work on it – which I didn't realize at the time. The mill I work on you just slide the stand back up there, bolt it up and it's ready. I stood this up there and it wouldn't go into place.

Q Now describe what a stand is to us.

A A stand is a piece of cast probably about yea tall, or a little better.

Q Cast metal?

A Yes, sir. It weighs probably 75 to 95 pounds.

Q And you were showing us, but we have to kind of describe it with words for the record. You said it was about how high?

A About two foot by one foot.

Q Okay.

A It weighs at least 75 pounds, and you are stooped over not quite table high. I shoved it up there, it jammed.

Q You shoved the stand into what?

A Into the – see, you've got like another stand on the opposite side holding the rollers and everything, putting it back together.

Q So did the two stands –

A Right, it –

Q – hold the rollers in?

A Right.

Q Okay.

A And when I shoved it up there, it jammed. So I jerked on it to pull it back off. That's when I got a burning sensation. We have to wear these belt things.

Q Were you wearing the belt at the time?

A Yes, sir, I was wearing the belt.

Q Okay.

A And I got a burning sensation.

Q And you're pointing to it, but for the record describe where you got the burning sensation.

A In my – I got a burning sensation in my lower back.

Q Would that be about the belt line?

A No, it's a little bit above the belt line. (Tr.9-11)

It is undisputed that the claimant promptly reported his injury to several supervisors, including Ronnie, last name unknown, Rex Morton, his immediate supervisor, Harold Diggs, the H.R. manager, and Hal Hyde. Although the record reflects that the claimant continued working following the reported incident, his condition grew progressively worse. The following morning, the claimant requested medical attention and was sent by the employer to the company physician, Dr. Stacey Noel. The claimant continued working while receiving as needed treatment from Dr. Noel, as well as Dr. Stallcup, in the same clinic. Dr. Noel subsequently referred the claimant to a number of other physicians, including Dr. Ron Schechter for additional diagnostic studies, Dr. Fereidoon Parsioon, a neurosurgeon, as well as other medical providers. The claimant stated that his condition grew progressively worse and that he was eventually taken off work beginning on or about January, 2006, at which time he received temporary total disability. The claimant also stated that he was subsequently referred by the company physicians to Dr. Ricca, a neurosurgeon in Jonesboro, Arkansas, but that the claims adjustor, Anna Bryant, instead changed his appointment and sent him to Dr. Stephen Eichert, D.O. with Mid-South Neurosurgery, Inc., in Jonesboro, Arkansas. Dr. Eichert examined the claimant one-time only on April 4, 2006. Dr. Eichert reviewed the

myelogram and post-myelogram CT performed on October 20, 2005. He opined that, by his review, the study was normal. Dr. Eichert further stated that he did not observe any objective neurological abnormalities. He determined that the claimant had reached maximum medical improvement and recommended a return to full-duty work as tolerated. (Resp. Ex. A, p.3)

Apparently, based upon Dr. Eichert's report, respondents controverted the claim in its entirety. The record reflects that the claimant worked at various times since August 17, 2005. In fact, the claimant worked at various times both before and after being evaluated by Dr. Eichert. The claimant stated that he was, at all times, pleased with the treatment provided by the company physician, Dr. Stallcup, as well as the referrals made by Dr. Stallcup and wished to remain under his treatment. However, as previously pointed out, the sole issue presented for determination concerned compensability.

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:

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 physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §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 the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Respondents contended that there is no medical evidence supported by objective findings related to the August 17, 2005, incident. I respectfully disagree with respondents' assertion.

Various medical providers have issued opinions confirming that diagnostic studies reveal that the claimant sustained a disc desiccation and disc bulge at L2-3. This is confirmed by Dr. Collier and Dr. Parsioon. (Jt. Ex. A, pp.5, 9) In addition, Dr. Schechter, who performed neurodiagnostic studies, reported that the study was suggestive of right L5 lumbar radiculopathy to a moderate degree. (Jt. Ex. A, pp.12, 16) Further, a lumbar myelogram was ordered by Dr. Noel which also confirmed a bulge at the L2-3 level. (Jt. Ex. A, p.19)

Suffice it to say, the conclusions of Dr. Eichert are inconsistent with, and overshadowed by, the overwhelming weight of medical opinion of record.

The sole issue to be presented for determination concerned compensability. I feel compelled to point out that although medical evidence supported by objective findings is necessary to establish compensability, as well as to prove entitlement to

permanent disability benefits, it is not required to support a continuing need for medical treatment. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997); *Greenbay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

It is well-settled that 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); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven, by a preponderance of the credible evidence, that he sustained a work-related injury arising out of and during the course of his employment with Tenneco Automotive, Inc., on August 17,

2005. As previously noted, all additional issues have been reserved at the request of both parties.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge

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