

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F501955

**JIMMY L. BLOCKETT,
EMPLOYEE**

CLAIMANT

**ARELCO, INC.,
EMPLOYER**

RESPONDENT

**VIRGINIA SURETY CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JUNE 2, 2006,

Pursuant to a hearing conducted April 4, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. James W. Stanley, Jr., Attorney at Law, Little Rock, Arkansas, appearing for the claimant, and

Mr. Bill H. Walmsley, Attorney at Law, Batesville, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to consider compensability of an injury to the claimant's left shoulder.

The claimant testified that he had been employed as a service agent by the respondent employer in its car rental business since approximately 1999. He stated that his duties varied and included detail work cleaning cars, transporting rental vehicles to and from the airport, writing up mileage, putting gasoline into vehicles, and acting as manager when the manager was absent. He said that he had suffered a lot of injuries prior to February, 2004, including falling several times and bumping his head a lot.

He stated that on about the first of February, 2004, as he was opening a garage bay door, the mechanism malfunctioned causing the door to fall a short distance and strike his left shoulder. He stated that he told his supervisor, Mr. Valley, and, later, they told Mr. Norris, who was "over all of it." The claimant took aspirin and sat down for a period of time but finished the workday, although

working slowly. He stated that he did not then see a doctor and was not sent to a doctor by the respondents. He also stated that he understood the respondents would fill out paperwork and arrange for him to have medical care.

The claimant did not seek health care until after he injured his neck and back in a motor vehicle accident June 10, 2004. After that incident, he was treated by a chiropractor, Dr. Chris Culpepper, and stopped working for the respondent employer. He stated that he was disappointed in how they had treated him with regard to the injury at work. During this time, he received one check for short term disability benefits covering a period that ended in August, 2004, after he last saw Dr. Culpepper. Although he had worked his regular shift from the first of the year through June 9, 2004, the day before the motor vehicle accident, he did not make an attempt to return to work after the motor vehicle accident. He testified that he never made claims for small injuries, but did want the respondents to acknowledge that he had suffered a shoulder injury at work.

Accordingly, the claimant contended that he sustained a compensable shoulder injury on or about February 1, 2004, and should be awarded benefits, including reasonably necessary medical and related expenses, such as his treatment by Dr. Culpepper and temporary total disability benefits from June 10, 2004, until a date to be determined. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that:

1. The claimant did not sustain a compensable injury;
2. A compensable injury cannot be established by medical evidence, supported by objective findings;
3. Alternatively, any compensable injury was minor and transitory and no benefit is due the claimant;
4. The motor vehicle accident of June 10, 2004, is the cause of any disability or need for treatment the claimant may have experienced after that date;

5. Pursuant to Ark. Code Ann. §11-9-701, liability for benefits otherwise accruing is barred by the claimant's failure to give notice before February 22, 2005.

The record, which was closed at the end of the hearing, pursuant to Ark. Code Ann. §11-9-705(c) and the prehearing order, included documentary evidence and the testimony of the claimant at the hearing and by deposition.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant's average weekly wage was \$390.00; and the claim has been controverted in its entirety.

3. The preponderance of the evidence fails to show either that the claimant sustained a compensable injury, established by medical evidence, supported by objective findings, arising out of and in the course of his employment on or about February 1, 2004, or that any disability or need for treatment he may now experience is related to such an injury.

DISCUSSION

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

The claimant's burden includes establishing the existence of a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). Reports of the claimant's complaints or descriptions of pain, no matter how genuine, cannot be considered objective medical evidence.

The medical record, which goes back to April 3, 1974, shows various medical care from that time off and on until June, 2001. The record next shows that on June 10, 2004, the claimant received medical attention in the St. Vincent Infirmiry Medical Center Emergency Room following his motor vehicle accident. The emergency room medical record tends to show that the claimant was the driver, wearing lap and shoulder restraints, in a vehicle that was struck from the rear and that he did not think he was hurt, although he appeared dazed. This record, largely handwritten, does not indicate objective findings of injury to the claimant's shoulder as the result of his employment in February, 2004. Apparently, as a precaution, his physician ordered a CT scan of the brain, the report of which was normal. The claimant was discharged at that time.

As the claimant testified, he consulted Dr. Culpepper for additional treatment. The record shows that on June 14, 2004, Dr. Culpepper wrote that the claimant was under his care and was placed on disability from June 14 through June 23, 2004, because of neck and back injury. An additional portion of the medical record completed by Dr. Culpepper, apparently in order to assist the claimant in applying for short-term disability benefits, indicated that the claimant was disabled due to an injury that did not arise out of his employment. The note also indicated that the claimant's symptoms first appeared or the injury happened on June 10, 2004, due to a motor vehicle accident.

Under current law, since Act 796 of 1993, the claimant is required to establish the existence of a compensable injury by medical evidence, supported by objective findings. Here, the chiropractor has indicated that the claimant was disabled because of neck and back pain and the claimant has testified that he hurt his neck and back in the motor vehicle accident in June, 2004. On the application for short-term disability benefits, the chiropractor indicated that as a result of the motor vehicle accident the claimant had neck/shoulder sprain/strain, with muscle spasms and a decreased range of motion with pain. The record does not further describe the muscle spasms, so that it is unknown if they relate to the claimant's neck, shoulder, or even his back. Moreover, the record relates the muscle spasms to the motor vehicle accident and in no way suggests that the claimant's condition arose out of his employment. Indeed, the record states that it did not do so.

Thus, although it is possible that a compensable shoulder injury occurred in February, 2004, as described by the claimant, the preponderance of the evidence fails to establish the existence of such a shoulder injury, or that such an injury arose out of and in the course of the claimant's employment, unless the claimant is impermissibly afforded the benefit of the doubt or the benefit of speculation and conjecture on behalf of his claim.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully,
denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge