

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501435

DAVID CARLTON,  
EMPLOYEE

CLAIMANT

LITTLE JOHN TRUCKS,  
EMPLOYER

RESPONDENT #1

AMERICAN HOME ASSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT #1

SECOND INJURY FUND

RESPONDENT #2

DEATH & PERMANENT TOTAL DISABILITY TRUST FUND RESPONDENT #3

**OPINION FILED OCTOBER 6, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Russellville, Pope County, Arkansas.

The claimant was represented by HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents No. 1 were represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 waived appearance.

Respondent No. 3 waived appearance.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on July 12, 2006 in Russellville, Arkansas. A prehearing order was entered in this case on April 4, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

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

1. Employer-employee-carrier relationship between August 7, 2003 and November 1, 2004.
2. This claim has been controverted in its entirety.
3. The claimant's compensation rates are \$377/\$283.
4. No benefits have been paid.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the gradual low back injury of this claim is compensable.
2. Whether the claimant is entitled to temporary total disability benefits for any period of time.
3. Whether the claimant is entitled to permanent partial disability (reserved).
4. Whether the claimant is entitled to medical benefits and relief to which claimant may be entitled.
5. Whether the claimant is entitled to attorney fees.
6. Respondents will assert a notice defense under Ark. Code Ann. § 11-9-701 regarding any benefits claimed to be owed prior to February 10, 2005.

The record consists of the July 12, 2006 hearing transcript and the exhibits contained therein.

### **DISCUSSION**

#### **1. Evidentiary Objections**

On page 24 of the hearing transcript, the claimant's attorney objected as irrelevant to the respondents' attorney questioning the claimant regarding a prior felony conviction. The Commission is generally not bound by technical rules of evidence or procedure, but must conduct a hearing in a manner as will best ascertain the rights of the parties while adhering to the basic rules of fair play. St. Paul Ins. Co. v. Touzin, 267 Ark. 539, 592 S.W.2d 447 (1980). Accordingly, I am admitting into evidence Mr. Newell's questions regarding the felony conviction and the claimant's answers at issue on page 24 and 25 of the hearing transcript.

#### **2. Compensability Of Low Back Problems**

In Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001), the Arkansas Court of Appeals summarized the requirements for establishing a compensable gradual onset low back injury as follows:

When a claimant requests benefits for an injury characterized by gradual onset, Arkansas Code Annotated section 11-9-102(4)(A)(ii)(Supp. 1999)

controls, defining "compensable injury" as follows:

(4) (A) (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

. . . .

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A claimant seeking benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. [*Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001)]. Furthermore, objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

In the present case, Mr. Carlton was employed by Little John Trucks as a truck driver for the period between August 7, 2003 and November 1, 2004. After Mr. Carlton last worked at Little John Trucks on November 1, 2004, he began a course of medical treatment on November 3, 2004 for low back pain.

A February 19, 2005 MRI of Mr. Carlton's low back indicated an L4-5 right-sided extruded disk fragment causing severe impingement of the right L5 nerve root. Mr. Carlton underwent surgery for removal of the disk abnormality at L4-5 on February 28, 2005. Mr. Carlton asserts that he sustained a gradual onset low back injury caused by his job at Little John Trucks. Regarding the cause of the alleged injury, Mr. Carlton testified:

- Q. After you began working for Little John Trucks, did you start having some difficulties?
- A. Not immediately.
- Q. Okay. After a while, what was happening?
- A. I started having lower back pain.
- Q. Do you know - could you identify why you were getting this lower back pain?
- A. No.
- Q. There was not a specific incident?
- A. I couldn't tell that any one thing was doing it any more than just the whole job.
- Q. It was just the job itself?
- A. (Nodding)
- Q. For example, was it riding in the truck?
- A. There was more pain from that than anything, the truck bouncing.

Q. Was there anything different in Little John's trucks from the other trucks you had been driving that would cause you to have more difficulty?

A. No.

Q. I know a lot of trucks these days have these kind of floating seats that make it easier on your back. Did they have those?

A. Yes.

Q. But even that didn't prevent your back from giving you problems.

A. No.

Q. It wasn't a particular event like lifting something - were you required to lift anything?

A. No.

Q. It was just driving the truck?

A. Yes.

Q. Was there anything else that could have caused your back problems, something you did at home or something you did outside of your work environment?

A. I don't think so.

Q. So you believe that it was just from riding in the truck and the jarring of your back?

A. I believe that.

After reviewing the entire record, however, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable back

injury causally related to his employment at Little John Trucks. While Mr. Carlton attributed his back problems at the hearing to his job at Little John Trucks, I note that the record does not contain any expert medical opinion opining that Mr. Carlton's driving duties could or did in fact cause any degree of his low back abnormalities identified after November 1, 2004. I also note that the initial history taken on November 3, 2004 at Millard-Henry Clinic in Russellville states that Mr. Carlton was experiencing back pain which was worse over the past couple of months but that he had intermittent pain over the past five years. In fact, on September 4, 1997, Mr. Carlton underwent an MRI which indicated at that time a large right paracentral disk herniation at the L4-5 level of his spine.

Mr. Carlton also acknowledged in his testimony that he first had low back problems in the late 1980s or early 1990s. He also hurt his neck and back in a motor vehicle accident in late 1992. Mr. Carlton acknowledged in his testimony that in 1997, he experienced back pain with pain in his right leg. A July 20, 1999 clinic note from Russellville Family Clinic contains a history of "a 49 year old who comes in with low back pain, pain radiates down the right leg, its been a chronic pain."

The Full Commission has noted on several occasions that a claimant's belief that his condition is work related, no matter how sincere, is not a substitute for credible evidence. William Graham v. Jenkins Engineering, Inc., Full Workers' Compensation Commission, Opinion filed March 12, 2004 (F112391); Mike Gaba v. Southern Refrigerated, Full Workers' Compensation Commission, Opinion filed June 13, 2004 (F211407). In light of the medical evidence in the present case establishing the presence of a large right paracentral disk herniation at the L4-5 level of the claimant's spine on September 4, 1997, in light of the November 3, 2004 history indicating that at that time Mr. Carlton had been experiencing intermittent back pain for five years, and in light of medical reports documenting both low back pain and pain radiating down Mr. Carlton's right leg in reports dated March 31, 1997 and July 20, 1999, I find that Mr. Carlton has failed to establish by a preponderance of the credible evidence in the record that the low back problems for which he began to seek treatment on November 3, 2004 were causally related to his employment duties as a trucker for Little John Trucks between the period of August 7, 2003 and November 1, 2004.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer-employee-carrier relationship existed between August 7, 2003 and November 1, 2004.
2. This claim has been controverted in its entirety.
3. The claimant's compensation rates are \$377/\$283.
4. No benefits have been paid.
5. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable gradual onset back injury causally related to his employment duties for Little John Trucks between August 7, 2003 and November 1, 2004.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge