

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F510683**

<b>COREY CARTER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DOBIECO, INC., d/b/a MAZZIO'S PIZZA, EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN HOME ASSURANCE, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 30, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 15, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above style claim to determine the claimant's entitlement to workers' compensation benefits.

On July 18, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Corey Carter, the claimant, and Cheri Procell Young, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Corey Carter, the claimant, with a date of birth of March 23, 1975, is a high school graduate with a half year of post secondary education. Claimant commenced his employment with respondent as a cook on January 4, 2005.

Claimant asserts that on September 17, 2005, he suffered an injuries as a result of a slip and fall within the course and scope of his employment. In describing the mechanics of the September 17, 2005, accident claimant testified that as he walked out of the cooler he slipped on some water on the floor near the sink and fell. Claimant maintains that he caught himself with his hand to keep from landing on his head.

The claimant testified that the he reported the injury to the assistant manager. Claimant maintains that he appreciated the fact that he had injured himself at the time of his fall. In describing his areas of complaint or pain, claimant testified:

In my back at first, I thought it was my groin, but it ended up being my back and my hand. (T. 11).

Claimant asserts that the injuries were to his right hand and back. Claimant testified that the was told by the assistant manager, Andrew Adams, that he would have to complete an accident report and that he would have to wait for Cheri Procell, the manager. As a consequence of the afore, claimant testified that he went home, however later received medical treatment.

Claimant testified that the accident occurred at approximately 2:30 p.m. on September 17, 2005. On the one hand claimant testified regarding the hours of his shift that the same was from 9:00 a.m. to 5:00 p.m., however on the date of the accident he maintains that he left work after the accident. Claimant explained:

No. I went home. I was supposed to get off at 2:00, but somebody was supposed to come in and I had to stay and wait for that person to come in. (T. 12).

Claimant testified that an accident report was not completed by respondents on the date of the occurrence. Claimant noted that he injury occurred on a Sunday, and that he first received medical treatment regarding his injuries on the following Tuesday when he was so instructed by respondent. Claimant maintains that Ms. Procell, the manager, told him he needed to see a doctor. After making several telephone calls he went to Dr. Pierce in Jonesboro and respondents approved the visit. Claimant asserts that he did not work after the accident because he was fired. Regarding the point in time he was fired, claimant testified:

Officially when I went to the doctor. I mean because I was still on the schedule when I got injured, and then when I tried to come back to work I was taken off the schedule. (T. 13).

Claimant testified that Dr. Pierce provided an off-work slip, a handwritten document, which he showed to Ms. Procell to read, however it got misplaced.. Claimant's testimony reflects that the when he returned to Dr. Pierce to get another one his claim had been controverted. Claimant asserts that because the doctor's office was not getting paid, he got into "a littler argument with them over that because they dismissed" him. Claimant testified regarding his encounter at the doctor's office:

Yes. They dismissed me because they didn't think they were going to get paid. And they didn't give me proof that the doctor had said you can take off for two weeks. (T. 14).

Claimant maintains that the off-work slip which was authored by Dr. Pierce also provided that he was to have a MRI scan. Claimant testified that he did in fact have the MRI scan at St. Barnards Regional Medical Center a few day after he saw Dr. Pierce. Claimant estimated that since he

received the results of the MRI on October 12, 2005, the actual test was performed on October 5, 2005.

Claimant explained that after the MRI scan results, he was released by Dr. Pierce. Claimant added that at that point his claim had been controverted and he was unable to get further medical treatment. The testimony of the claimant reflects that at the time of his release by Dr. Pierce he continued to complaints of pain in his right wrist and back., the hip area into the lower back and tingling down his leg into his foot.

Claimant testified that he next received medical treatment for the injuries growing out of the September 17, 2005, accident from Dr. Nance in Pocahontas and at Randolph County Medical, which consisted of x-rays, a wrist splint, medicine for his back pain, and an MRI of his back.. The claimant testified that the MRI of his back was only recently performed and he has not received the results. Claimant's testimony reflects that Dr. Nance was the last doctor that he saw for complaints growing out of the September 17, 2005, accident. Claimant also noted that he has outstanding medical bills in connection with his injury which amounts to a "few thousand dollars".

Claimant testified that he has tried to return to work since being terminate by respondents. Claimant explained that approximately a month and a half following the afore he went to welding school and got a job at ARI, where he remained for a month. Claimant described his job duties at ARI as light duty, spot welding. Claimant asserts that the complaints associated with his right wrist, growing out of the September 17, 2005, accident, became so severe that he could not squeeze and hold the welder. Claimant is right hand dominate. Claimant asserts that he continued to have problems with his right wrist:

I just can't pull anything. There's certain, I can't twist it in certain directions. But I mean I can swing a baseball bat. I can do almost, there's a lot of stuff I can still do. There's just a certain way that I can't move it. And if I move it that way, it's just, it's excruciating.

Very, very painful. I can pick up my kids, but I can't do push ups. I mean it's weird, but. (T. 19).

Claimant testified the he tried to work a couple of other places following his employment with ARI. Specifically, claimant's testimony reflects that he worked for two weeks as a laborer for R.S. Masonry, however was unable to continue due to residuals of his right wrist. Claimant also worked a couple of weeks with J&B Home Improvement, however was unable to continue due to residual complaints with his wrist and back. Claimant noted that he was unable to carry shingles on the J&B job because of his back complaint.

When questioned regarding any prior complaint with his right wrist before the September 17, 2005, accident, claimant testified:

There was a car accident that I got into, but there was no injury found to the wrist. And a recent MRI of the wrist clearly explains that it - - (T. 20).

The claimant testified that the car accident was in 2004, and one of the injuries growing out of the accident was to his right shoulder. Claimant also maintains that all of the injuries from the motor vehicle accident resolved. Regarding any prior back injury before September 17, 2005, claimant testified:

I had back surgery. Yes, sir. I did have back surgery in my upper back at T-5, and thoracic in 2003. (T. 21).

Claimant attributes low back complaints to the September 17, 2005, accident in the employment of respondents.

On cross-examination, claimant acknowledged filing a Form C for workers' compensation benefits, which was signed on October 5, 2005. Claimant concedes that the Form C did not list an injury to his back or hip. Claimant acknowledged that the day following the September 17, 2005, accident he told Ms. Procell that he had pulled his groin and wanted to see if he had a hernia. Claimant asserts that he also complained about his wrist.

With respect to the July 2004, motor vehicle accident, claimant maintains that while his right wrist was examined, the injury was to his shoulder. Claimant acknowledged that an MRI scan was performed with respect to his wrist, to include the whole arm, in connection with the motor vehicle accident. (T. 27). Claimant was diagnosed with severe bruising to the bone in his right wrist.

With respect to his prior lower back, claimant acknowledged that he had surgery in 2002, by Dr. Ricca and Dr. Tyrer for a herniated disc. While the claimant testified that he was given a 7% permanent partial impairment as a result of the injury and surgery, the medical records reflect a 15% permanent partial impairment. Claimant settled the claim for \$20,000.00.

Claimant denies that he had a back injury in February 2005 working for Huddle House. Claimant asserts that he "banged" his head while working at Huddle House. When confronted with the medical records associated with the February 2005, claim which showed a complaint of a back injury and an MRI scan in connection with same, claimant responded that the same was a pre-existing back injury noting that he had just had surgery in 2003. Claimant acknowledged that he fell in 2005, and that an MRI "might have" been ordered.

Claimant acknowledged that he wrote a letter in November 2005, offering to settle the September 2005 claim for a large sum or he might have surgery. Claimant also acknowledged

that the November 2005 time frame was also about the time he started working for ARI.

Claimant underwent a pre-employment physical which cleared him for his employment with ARI.

Claimant's testimony reflects that on May 25, 2006, he received medical treatment, and relayed a history of having fallen down a slope or into a ditch and hurt his right leg, right testicle, and lower back. Claimant asserts that he was doing some yard work at the time of the fall.

Claimant added regarding the May 2006 incident:

Right. See the fall resulted in sharp pain from my back injuries, which caused my leg to give out. (T. 31).

Regarding the September 17, 2005, accident, claimant concedes that he may have testified during his deposition that left work before 2:00 p.m. Claimant maintains that Andrew was working the day of the accident and was an eyewitness to it. Claimant testified on cross-examination that he did not work at all on Sunday, the next day. September 17, 2005, was a Saturday.

Ms. Cheri Procell Young, who is now employed by Heritage Corporation, was formerly employed as the general manager at Mazzio's Pizza where the claimant was employed on September 17, 2005. Ms. Young's testimony reflects regarding her recollection of the events surrounding the claimant's claim:

I came in on a Sunday. And a little girl that works Saturdays and Sundays for me fell. She fell and hurt herself so I, you know, I picked her up and I said do you need to go to the doctor? Did you hurt yourself? She said no. I made the accident report and Corey made the remark that well, I fell yesterday and hurt my, well he didn't say groin. But he - - and nobody asked me if I needed to go to the doctor. And I said well, I haven't haven't heard anything that you had fallen. And he kind of laughing as he said he hurt his nut sack was his exact words.

And I said well, do you need to go to the doctor, you know, I was kind laughing about it also. So I made a report. I called the number that I'm suppose to call to make an accident report, and this was on a Sunday. He said he had fallen th day before, and he was working that shift with me. I made a report. I took his information down. I called my boss and made the report with him and called the insurance company and made the report with them. I then called on a Monday. I was to wait until Monday, you know, as I said that he was laughing, he was working, he was fine -

So then I called on Monday and had it arranged so that he could pick whatever doctor he wanted to go to to see that doctor because I didn't know the area. I wasn't familiar with which doctor was best.

Being in Jonesboro, being in Paragould. Plus sometimes when, you know, as a female you wouldn't want to go to see a male doctor for certain situations. So I allowed him to pick the doctor so he could determine who he wanted to go to. He came back. I had the doctor call me. It was like a day or so later, called me back to get authorization for certain tests being run. And they said something about a wrist. And this was like in the afternoon. I said no. I had no recollection of any wrist being mentioned. That's way away from the area that was supposed to be hurt. So no, I'm not authorizing a wrist. You're supposed to be checking him for a hernia to make sure he didn't pull anything down there because he slipped. His words to me were he slipped and his legs went out like this (indicating). Kind of like Chinese splits. But I didn't see anything. He didn't, you know, no report was made. I just took him at his word that he had hurt himself. (T. 37-39),

The testimony of Ms. Young reflects that at the tie of her conversation with the claimant on Sunday, September 18, 2005, the claimant was performing his regular duties and made no mention of a back complaint as a product of the injury, nor were there complaints associated with his wrist or hand. Ms. Young maintains that the claimant's reporting was limited to groin area. Further, Ms. Young's testimony reflects that the claimant did not indicated that he fell to the floor, but rather he reported that he caught himself by the sink.

Ms. Young testified that it was standard procedure of respondent-employer that an accident report be completed whenever somebody reported an injury. The testimony of Ms.

Young further reflects that the assistant manager was authorized to complete the report if the manager was not there. In the instant claim, Ms. Young noted that there was no accident reported completed on September 17, 2005, relative to the claimant.

The testimony of Ms. Young reflects that prior to September 17, 2005, claimant asked for three weeks off so that he could work fair and earn money to catch up on his obligations and bills. Claimant noted that he was not making the money he needed to make at respondent-employer. Claimant's request was denied. Ms. Young testified that she informed the claimant that if he took off it would be deemed a termination, that his job would not be held open for him, and that if he left and returned if a position was available respondent would consider re-hiring him.

The testimony of Ms. Young reflects that the claimant did in fact leave the employment of respondent. Ms. Young's testimony reflects:

He come back about a month or so later. I might have been a little over a month, I'm not exactly sure of my dates. He was wearing shorts and flip flops and asked if we had a position available, he had gotten back and wanted a job.

I don't - - from wherever he went with the carnival.

No. I was busy. I really didn't address the carnival situation. But he was back. And I told him that I would have to talk to Lance before we could consider him for rehire. But at that moment, I had no openings. (T. 41).

Ms. Young testified that during the afore conversation with the claimant he did not indicated that he was having ongoing medical treatment or problems. Further, Ms. Young's testimony reflects that during the period that she saw the claimant after September 17, 2005, he did not appear to have any physical problems with his back.

Ms. Young testified that she had no recollection of seeing a note that the claimant asserted that was produced by his doctor. Ms. Young did recall the claimant coming in after he went to the doctor, however she denies that claimant ever asked for any time off. Ms. Young denies that the claimant was terminated because of his workers' compensation claim.

The time sheets of respondent-employer reflects the times that the claimant, the assistant manager Andrew Adams, and another employee of respondent were scheduled to work from September 13 through 19, 2005, as well as the actual times that they clocked in and out. (RX. #2). Ms. Young denies that Mr. Adams, the assistant manager, ever reported to her that the claimant had injured his back or anything. The testimony of Ms Young reflects that the claimant did disclosed that he had some previous back injuries and that there were certain things he could not do or did not want to do because of he had hurt his back in the past.

On cross-examination, Ms. Young testified regarding her conversation with the claimant concerning medical treatment:

I told you in person on Monday morning because that Sunday you're going to the doctor, if you were hurt. That Mazzio's would take care of that. I also made phone calls on Monday to make sure that whatever doctor you went to would be covered through our insurance company so that you could choose your doctor. (T. 47).

Ms. Young insist that Sunday was the only day that she heard anything about an accident involving the claimant, and the same was had from him while at work. Ms. Young denies that she made a telephone call to the claimant thirty (30) minutes after he got off his shift on Saturday, September 17, 2005. Ms. Young denies that she doctored the claimant's time sheet to reflect that he was working on Sunday, September 18, 2005.

The medical in the record reflects that the claimant was seen by Dr. Joseph Pierce at

Caraway Medical Center in Jonesboro on September 20, 2005. The September 20, 2005, chart note relative to the claimant's visit reflects that the claimant provided a history or chief complaint of:

Fell in water and did the splits and hit the back of his right hand and wrist/ fell at work/ works for Mazzio's Pizza in Paragould/ fell on Sun afternoon/ not seen in ER or by anyone/ sent here from work. (CX. #1, p. 3).

The September 20, 2005, chart note reflects that the claimant disclosed his prior back injury and surgery. The physical examination reflects with respect to the right upper extremity, "right hand and wrist has no obv deformity min swelling and no echymosis full rom with assistance but tend on manip and rotation". The chart note reflects the assessment of the claimant's complaints as "accidental fall, wrist pain, hand pain, wrist sprain, and groin strain", for which the claimant was provided prescriptions of Darvocet-N for pain and Flexeril. X-rays were obtained of the claimant's right hand and wrist. Dr. Pierce referred the claimant to St. Bernards Medical Regional Medical Center for an MRI scan of the right wrist, which was scheduled for October 6, 2005. The records do not reflect documentation that the claimant was directed to remain off work for a two-week period. (CX. #1, p. 1-7).

The October 12, 2005, MRI of the claimant's right wrist reflects, in pertinent part:

CONCLUSION: There is some abnormal signal consistent with edema and/or contusion in the capitate as well as apparently some edema in the soft tissues along the dorsal surface of the capitate. This is uncertain significance and may be related to injury to the extrinsic ligaments of the wrist. (CX. #1, p. 9).

Claimant was again seen by Dr. Pierce on October 12, 2005. The chart note of the visit reflects with respect to chief complaint, "needs stronger pain meds/states the pain in his right wrist is

worse/had an MRI don this morning/Darvocet is not helping/can't work with the splint he was given on first visit". (CX. #1, p. 10). Following his examination, claimant was prescribed a prescription for Lortab by Dr. Pierce. (CX. #1, p. 12). An October 17, 2005, visit by the claimant to Dr. Pierce reflects that the claimant wanted a referral to an orthopedic surgeon.

A phone note of October 18, 2005, from the Caraway Medical Center regarding the claimant reflects:

I called AIG for his workers comp claim to see why it was denied for him to see an orthopedic surgeon, they said that the injury he filed for his workers comp claim is not the same reason why he came and saw us. (The reason he file workers comp was groin injury, he has only seen us for a wrist injury.) . . .  
Kristi called and verified this info, and since it has been denied his existing balance will be transferred to the patient. (CX. #1, p. 16).

An October 24, 2005, letter from Dr. Pierce to the claimant reflects that as of October 24, 2005, Dr. Pierce would no longer serve as his physician. (CX. #1, p. 17). An October 20, 2005, entry in the chart note of Caraway Medical Center regarding the claimant reflects that the employer was called and informed that the was being released . (CX. #1, p. 18).

A February 24, 2006, correspondence of Ms. Cheri Procell, the general manager of respondent-employer, reflects:

This is a brief summary of the events concerning Corey Carter. On Sunday another employee fell in the kitchen and was asked if she needed to go to the Doctor's Office. Corey responded with I fell yesterday and no one asked me if I needed to go to the doctor. I hurt my testicles and need to see a doctor. I then set an appointment for Corey. I began an investigation into the incident, and there were no witnesses only Corey's statement. Corey had given his notice the week before stating he was going on a job for 2 weeks and would not be able to work until he returned from working with the carnival, he was told that he might not have a position available when he returned due to having to hire someone to fill his position while he was gone. Therefore he was not put back on the schedule.

(CX. #1, p. 24).

The medical records reflects that on May 5, 2006, the claimant was seen at the Corning Area Healthcare, Inc., with complaints of swelling to his right hand and wrist over the last month, that he had previous injury and also had back pain. As a result of the afore, an orthopedic referral was made to Dr. Joseph. (CX. #2).

The medical records further reflect that the claimant was seen at the emergency room of Randolph County Medical Center on May 25, 2006. The emergency room report reflects that claimant relayed complaints of right hip pain, groin, and testicular pain. The report also reflects that the afore symptoms started four days earlier when the claimant fell into a ditch. The May 25, 2006, emergency room report further reflects, “landed on right hip/ right leg gave way this am. increase pain since. On vacation. Doing other work”. (CX. #2).

The evidence in the record reflects that on November 4, 2005, the claimant underwent a pre-employment physical at Paragould Doctor’s Clinic relative to his employment by ARI. (RX. #1, p. 26-28). Claimant was subsequently employed by ARI.

The time sheets and work schedule of employee of respondent-employer covering the period September 13, 2005, through September 19, 2005, reflect that during the day shift, claimant worked from 10:00 to 4:00 on Saturday, September 17, 2005. The documents reflect that the claimant worked the same shift on Sunday, September 18, 2005. (CX. #2, p. 8).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On September 17, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On September 17, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$121.00, for temporary total disability.
4. On September 17, 2005, the claimant did not sustain an injury arising out of and in the course of his employment with respondents.

### **CONCLUSIONS**

The claimant asserts that while within the course and scope of his employment with respondent on Saturday, September 17, 2005, he suffered injuries to his right wrist, hand, hip and low back when he stepped in water on the floor, slipped and fell. As a result of the afore, claimant seeks corresponding medical and temporary total disability benefits. Respondents deny that the claimant suffered an injury while in the employment of same.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The claimant asserts a specific incident injury in the employment of respondent on September 17, 2005. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in

disability or death; medical evidence supported by objective findings, as defined by Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Milel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim, the claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained a compensable injury in the employment of respondents on September 17, 2005, or on any other occasion. Claimant asserts that the injury occurred on Saturday 17, 2005, and that he did not again discharge employment duties for respondents thereafter. Indeed, claimant maintains that after his claim was filed, the respondent terminated his employment.

The credible testimony of Ms. Cheri Procell Young, the general manager of respondent-employer during the pertinent time period, reflects that claimant worked on both Saturday, September 17, 2005, and Sunday, September 18, 2005. Claimant voluntarily terminated his employment with respondent-employer in order to pursue short-term higher payment employment. The claimant having given his notice of the afore accounts for his absence from the work schedule of respondent-employer subsequent to Sunday, September 18, 2005.

While respondent-employer authorized medical treatment for the claimant based on his reporting of having suffered a work-related injury to his groin area on September 17, 2005, there were not witnesses to corroborate the claimant's account. The claimant made his reporting of the afore to the general manager while the claimant was working on Sunday 18, 2005. When

reporting for medical treatment on Tuesday, September 20, 2005, at Caraway Medical Center, claimant registered complaints to his right wrist and hand in addition to the groin area. Further, the claimant reported that the injury or fall occurred on Sunday, which was September 18, 2005.

There is no documentary evidence to reflect that the claimant was provided an off-work slip by Dr. Pierce following the September 20, 2005, initial visit directing him to remain off work for two (2) weeks. There is documentary evidence corroborating the respondents' contention that once information was received that the claimant was seeking and obtaining treatment for injuries or complaints other than the reported groin complaint, the claim was controverted, and liability for such treatment denied.

The claimant's claim for workers' compensation benefits growing out of an alleged injury of September 17, 2005, is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**