

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F600751

JAMES CURRY, EMPLOYEE

CLAIMANT

**BRADLEY COUNTY FARMERS ASSOCIATION, INC.,
EMPLOYER**

RESPONDENT

**AMERICAN HOME ASSURANCE CO.
c/o AIG CLAIM SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

_____ OPINION FILED DECEMBER 13, 2006

Hearing before Administrative Law Judge Barbara Webb on September 14, 2006, in Monticello, Drew County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on September 14, 2006. A prehearing telephone conference was held on this claim on July 27, 2006. A Pre-hearing Order was entered in this case on July 27, 2006. The Pre-Hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Pre-Hearing Order was made Commission Exhibit No. 1 to the hearing record. The following stipulations were submitted by the parties and are hereby accepted:

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The employer/employee/carrier relationship existed in December, 2005.

3. The claimant's average weekly wage at the time of the alleged injury was \$325.00, which would entitle him to a compensation rate of \$217.00 for temporary total disability benefits and \$163.00 for permanent partial disability benefits.

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Compensability of claimant's alleged December, 2005 injury.
2. Claimant's entitlement to medical benefits and temporary total disability benefits.

The record consists of a one-volume transcript of the September 14, 2006 hearing, consisting of the testimony of James Curry, Rita Lasiter, and Joe Dale Reynolds and contains all documentary evidence, including Commission's Exhibit No. 1 (Prehearing Order); Respondents' Exhibit No. 1 (Medical records) and Respondents' Exhibit No. 2 (Non-medical records).

DISCUSSION

The claimant contends he sustained a compensable injury to his back while unloading a truck in December, 2005, and is entitled to medical benefits and temporary total disability benefits.

The respondents contend that the claimant did not suffer a compensable injury on December 20, 2005. Respondents contend that the claimant was not performing any employment-related services on December 27, 2005, and thus did not suffer a compensable injury on that date either. Respondents contend that the claimant's current need for medical treatment and any related indemnity benefits

are associated with conditions unrelated to any work-related injury. Further, respondents contend the claimant returned to work for respondent employer on April 3, 2006, and that his entitlement to temporary indemnity benefits subsequent to that time cease in the event compensability is found. Further respondents contend that claimant failed to give notice of the alleged injury until January 16, 2006. Respondents further assert a credit for all medical bills written off by Jefferson Regional Medical Center pursuant to A.C.A. § 11-9-411 if compensability is found.

A. WITNESS TESTIMONY

The claimant is 38 years old (bd. 10-31-68) and completed the twelfth grade. He is currently employed in the tire shop by Bradley County Farmers Association. His job duties currently include changing tires, fixing flats, changing oil and batteries. He previously worked on the dock loading feed. Prior to his employment with Bradley County Farmers Association, he worked as a lumber puller and grader for Weyerhaeuser for two years. He also worked as a logger and skidder driver for Charles Ward Logging for about nine years.

The claimant testified that he was injured on December 20, 2005, while employed by Bradley County Farmers Association. He described the incident, as follows:

Me and John Grider were unloading a truck of hico . . . Hico, it's peat moss. . . Me and John Grider were in the truck. We had to bring it from inside the truck to the back, and some guys were on the ground taking it off. My left buttock felt kinda froggish, and I told him I needed to take a little break. . . So we finished

unloading the truck, and Joe Dale - I was sick. I had pneumonia, but I didn't know it at the time. He asked me if I needed to go home. So I left and went to my doctor. That's when they treated me for pneumonia. That was on the 20th. When I returned home from the doctor, I had a coughing spell; and I was coughing, something popped, and I couldn't stand back up straight. . . .

Claimant testified that he returned to Dr. Wharton on the 27th and was given a prescription for steroids. He returned to the doctor a week later and was given shots in his back. He was referred for an MRI. Following the MRI, he was sent to the emergency room and scheduled for a lower lumbar diskectomy surgery by Dr. Simpson the next morning. He remained off work for two months and returned to light duty work when he was released by Dr. Simpson. He testified that he had never had any back problems. He recovered from the pneumonia within a week and was not hospitalized due to the pneumonia. He explained that he did not feel the pain in his back until he coughed and attributed the froggish feeling in his buttock to the pneumonia. He testified that he told a co-worker that his butt cheek was hurting and told his supervisor that he was going to the doctor to check out his cold. He said ex-wife, Jena Curry, called the next day and spoke with Mr. Reynolds and reported that he couldn't stand up. On cross-examination, he admitted he had seen Doctor Foscue in July of 2005 for pain in his left leg and back. He was prescribed Skelaxin and Celebrex. He was also treated at the Bradley County Medical Center in May of 2005 for pain in the middle of his back. He agreed that he had reported having the froggish feeling in his leg prior to the 20th. He did report back problems to Dr. Wharton on the 20th. He explained that later that evening he

was in his kitchen at home and leaned forward to cough when his back popped and he couldn't stand up. When he left work, he was able to stand up on his own. He was released by Dr. Wharton after seeing him for pneumonia to return to work on the 23rd. He agreed that neither he nor his wife reported to the company that something happened at work. His compensation claim was received on February 13, 2006, after his back surgery in January. He returned to regular duty work on April 3, 2006. He immediately felt better after the surgery and currently has no back pain. He explained that he had his surgery at Jefferson Memorial Hospital and approximately \$8,000.00 of medical bills were written off. He did not have health insurance or any way to pay for health care at the time of the coughing incident. Curry testified that he was under a court order to pay back child support.

Rita Lasiter testified on behalf of the respondents. Lasiter is the Assistant Manager of the Bradley County Farmers Association. She explained that she supervised Curry at times and that he would have reported any injuries to her. She testified that notices were posted which informed the employees on how to report a work-related injury. She testified that on December 20, 2005, she was sitting in the back of the warehouse when Curry was complaining that he could hardly breathe and the manager told him to go to the doctor. He did not make any complaints of back or leg pain and did not display any signs of limping, wincing, or holding his back at that time. Curry came to the office after he saw the doctor and gave her the notice that he had been taken off work for three days for the pneumonia. She testified that Curry had worked at Bradley County for a year and

a half prior to the 20th and she was not aware of any other health conditions other than a sciatic nerve problem in the summer when he had missed a few days of work.

Joe Dale Reynolds, General Manager of the Bradley County Farmers Association, was also called to testify for the respondents. He explained that he supervised Curry and worked with him every day. He was aware that Curry had a prior leg problem with a visible limp in July of 2005. He explained that Curry had been sick for about a week in December of 2005 but had continued to work every day. On the 20th, it was a cold day and he came in to the heater in the warehouse along with some co-workers. Curry started coughing and Reynolds told him to go to the doctor. He did not mention a back or leg injury. He was not aware of the coughing incident until he heard Curry's testimony. He received a phone call from Curry's wife prior to the claimant's surgery. She asked him to turn it in on workers' comp. He told her that it was not related to work since he left work due to pneumonia. She responded "It was worth a try." He learned about the peat moss incident the day of the hearing. He reported the claim on January 17, 2006, the same date he received her call. He explained that he was aware that the claimant had leg problems because Curry had come into the store with a work release slip and was obviously in pain. At that time, Curry told him that a sciatic nerve had been irritated. He testified that Curry was back at work and was a good worker. He never observed him in pain except the day he came in on the 16th and told them he needed an MRI due to a suspected irritated nerve. Curry contacted him late that

afternoon and told him that Curry intended to have surgery on the 17th. It was after the surgery that he was told by Curry's wife that he was going to submit a workers' compensation claim.

B. MEDICAL EVIDENCE

The medical records in this case reveal that claimant sought medical treatment for pain in his chest and back on May 10, 2005, and pain in his left leg with numbness ongoing for three months on July 12, 2005. He was given samples of Skelaxin and Celebrex. He was ordered to use hot packs, no heavy lifting, and return if problems developed or worsened.

On December 20, 2005, Curry was treated by Dr. Wharton and diagnosed with pneumonia based on complaints of chest pain and coughing. He was treated conservatively with prescription medication. He returned for treatment on December 27, 2005, with complaints of pain in his left leg. Curry's history reflects

Hurt left leg. Says he was coughing recently and felt a pop in his lower back. Now his pain extending down from his lower back down into his left calf. Says this is extremely tender. Has had this happen to him in the past and this did slowly improve over time. Now he complains of some weakness to his left leg and has difficulty straightening to stand. The pain is quite severe at times. Has Tylenol for this, which did not seem to help. PMH also includes a current bout of pneumonia.

He was diagnosed with left-sided sciatica. Clinic notes reflect that he underwent an MRI on January 12, 2006, and returned for a post-op evaluation from surgery on the L5-S1 disk on the left side on March 17, 2006. He was released to return to work on April 3, 2006.

Records reflect that claimant first notified his supervisor of his claim that his back problems were work-related on January 16, 2006, and filed his workers' compensation claim dated February 11, 2006, on February 13, 2006.

C. COMPENSABILITY

Claimant contends that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, Ark. Code Ann. § 11-9-101 et seq. Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury":

(i) an accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

The employee must prove by a preponderance of the evidence that he sustained a compensable injury. In addition, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

In the instant case, it is not disputed that the claimant left work on December 20, 2005, with complaints which later led to a diagnosis of pneumonia. It is equally clear from the medical evidence that objective medical evidence established the claimant's need for surgical treatment to his back. The primary dispute is whether claimant has established a causal connection between his back injury and his employment. Claimant contends that his back problem occurred when he was lifting

heavy loads of peat moss while unloading a truck. He explained that he was not aware of the problem until he sought medical treatment after a coughing spell at his home due to pneumonia.

While medical evidence is not required to show a causal connection, claimant must show proof of a causal relationship by a preponderance of the evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

In the instant case, the claimant left work to seek medical attention due to chest pains. He was diagnosed with pneumonia. He admits that he did not feel pain in his lower back until later the same night at home when he coughed and felt a pop in his back. He sought treatment from Dr. Wharton and Dr. Simpson. Each report reflects the complaints of the claimant and assessment of claimant's medical condition at each visit. There is simply no mention of complaints of a lower back injury as a result of lifting at work in any of the related medical notes or reports. In addition, he did not report the lifting incident to his supervisor until the day he was scheduled for an MRI almost one month later which resulted in immediate back surgery. Moreover, the evidence reflects that claimant had no health coverage or

means to pay for his needed medical treatment. Perhaps the most troubling and yet enlightening testimony is that offered by Reynolds related to his conversation with Curry's wife regarding submission of the claim. Her response that "it is worth a try" as opposed to the description of an on-the-job lifting incident now recalled by Curry makes the credibility of Curry's testimony suspect, at best. It is even more compelling to find that Curry's claim is not credible in light of the fact that none of the medical records reflect a history of an injury on the job and no witnesses testified that such an incident had been reported by Curry. It is more reasonable to conclude that claimant's need for medical treatment is related to his pneumonia and coughing incident of December 20, 2005, which occurred at home after claimant had left work.

After review and consideration of the testimony and medical records, I find that the preponderance of the evidence fails to show that claimant's need for medical treatment to his back was causally related to the alleged work related incident of December 20, 2005, or the performance by claimant of employment services.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed at all relevant times, including December 20, 2005.

3. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his lower back and leg on December 20, 2005.

ORDER

For the reasons discussed herein, this claim is respectfully denied.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge