

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302812**

**HAL F. DENT**

**CLAIMANT**

**CONESTOGA WOOD SPECIALTIES**

**RESPONDENT EMPLOYER**

**TRAVELERS**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 23, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

**ORDER AND OPINION**

The above claim came on for a hearing in Little Rock, Arkansas on December 7, 2005. A prehearing conference was held and a prehearing order was filed on November 14, 2005. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on June 14, 2002.
2. The compensation rate is the maximum.

The claimant contends he sustained a compensable specific incident injury and is entitled to medical benefits, temporary total disability benefits from June 15, 2002, to a date to be determined and attorney's fees.

Respondents contend the claimant did not sustain a compensable specific incident or gradual onset injury. Respondents further assert the notice defense, contending notice was not provided until March 2003. Respondents have controverted the claim in its entirety.

### **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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 witnesses and to observe their 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. There was an employer-employee relationship on June 14, 2002.
2. The compensation rate is the maximum.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment.

## DISCUSSION

The claimant, 46 years old, began his employment with the respondent employer in February 1988 in the shaping department, shaping panels that go into doors. The claimant worked in the framing department for a time and in 2000, he went to work in the door department. The claimant described his activities:

A [Witness] That process is getting through the finish part of the door where they take the doors that's been built from assembly and then through a sander. You have to put the outside lip design on it, and you have to bend over and put them on the machine and make sure they're square. You're steadily just --

Q [Mr. Stanley] It's just a constant type of lifting?

A (Nodding head)

Q How many of those did you have to do in an hour, roughly? Just a rough estimate?

A I'd say 500. (T., p. 10, lines 20-25; p. 11, lines 1-4.)

The claimant also worked in shipping, inspection and was a floater, filling in for different departments. The claimant first saw his family doctor in mid-2000, Dr. George McCrary, for back pain and he went on his own. According to the claimant, he told his supervisor, Mr. Misenheimer, in the mid-1990s, that he was experiencing back pain but no appointment was made. According to the claimant, he took off work sporadically between 2000 and 2002, to see Dr. McCrary and Dr. William Ackerman for epidurals, a bone scan and nerve tests.

According to the claimant, between 2001 and 2002, his back pain worsened with the pain in his low back and right hip with muscle spasms. The claimant testified that the lifting and twisting and bending on his job caused his pain to increase. On June 14,

2002, the claimant was feeding material through the sander, which required lifting planks 3 to 4 feet to the conveyor belt, and the pain became so bad, he was no longer able to perform his job. The claimant reported his problems to his supervisor, Ms. Johnson. According to the claimant, he was taken to the personnel office and advised to take a drug test. The claimant was subsequently terminated from his employment and has not worked since.

Under cross examination, the claimant confirmed that he has 10 acres and he cleared land, to include cutting trees and clearing brush. The claimant also confirmed that his back problems began in the early 1990s; however, his first medical report is 2000 and he occasionally brought off-work notes from his doctor to the employer. The claimant confirmed that he did not tell his employer when he brought in the notes that he thought his problem was work related. The claimant had his medical filed on his group insurance and he did not complete any paperwork to file a workers' compensation claim.

Dawn Aycock, supervisor at respondent employer, testified that she was the claimant's supervisor in June 2002. Ms. Aycock testified she worked the same shift as the claimant and that he periodically complained about his back and stated he hurt his back putting up fence off the job. She testified the claimant did not state his problems were work related. Ms. Aycock testified that on June 13, 2002, there was an incident with the claimant where he did not know where he was or who he was and he was driven home that evening. When he returned to work on June 17, 2002, he was asked to take a drug test and when the results were received, the claimant was terminated, according to Ms. Aycock.

Gaylon Pearson, safety manager, who has worked for 20 years for the respondent employer, testified that he is involved in work injury claims but had not received a claim from the claimant until March 2003, when Travelers called. Mr. Pearson testified that he had provided an aspirin or Tylenol on occasion but the claimant never indicated he had sustained a work injury or needed to see a doctor.

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. Whether the claimant contends that he sustained an accidental injury caused by a specific incident pursuant to Ark. Code Ann. §11-9-102(4)(A)(i), or whether the claimant contends that he sustained a gradual onset injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(b), the preponderance of evidence indicates that a compensable injury was not established by medical evidence supported by objective findings, pursuant to Ark. Code Ann. §11-9-102(4)(D), nor that the injury arose out of and in the course of employment. A compensable injury must be established by medical evidence supported by objective findings. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). In the present case, the claimant did not make a written report of a work injury until March 2003, almost a year after he was terminated from his employment. While the claimant testified that he told his supervisor he hurt his back at work, the testimony of Dawn Aycock, the supervisor, differed. The safety manager also testified that no report of a work injury was made. I found the testimony of Ms. Aycock and Mr. Pearson more credible than the claimant's testimony.

The medical evidence presented reveals the claimant suffers from degenerative disc and joint disease of the lumbar spine, as opined by Dr. William Ackerman on

March 23, 2001. The June 25, 2002, MRI report reveals the claimant has degenerative disc disease at L4-L5 and L5-S1 with end-plate changes, loss of disc height, and disc disiccation. There was no contemporaneous medical report introduced into evidence that was consistent with the claimant's testimony that he sustained a specific incident injury on or about June 14, 2002, or even one that corroborated his testimony that his work caused his current back condition. Only one medical report on May 27, 2005, from Dr. Merrick mentions a work injury. This report was the claimant's family doctor and did not contemporaneously document an injury at work at the time of the alleged injury. I did not find the medical evidence to be compelling to indicate a work injury.

Even if the claimant contended in the alternative that he sustained a gradual onset injury, such an injury must likewise be shown to have arisen out of and in the course of employment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001). Therefore, my findings above precludes the claimant from proving any compensable injury, either gradual onset or specific incident.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**