

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509182

WILLIAM DORSEY	CLAIMANT
HILLS ELECTRIC, INC.	NO. 1 RESPONDENT
EMPLOYERS MUTUAL CASUALTY CO. INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED SEPTEMBER 7, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 18, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 13, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 16, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to his low back on August 16, 2005.

2. Related medical.

3. Temporary total disability from September 20, 2005, to April 24, 2005.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that the employee/employer relationship existed on or about August 16, 2005. On that date, claimant slipped and fell and injured his back. That the claim was initially admitted as compensable but was controverted on September 13, 2005. That the claimant has been off work since the date of the injury and is entitled to temporary total disability benefits from August 16, 2005, through a date yet to be determined. That the claimant has a prior back injury which required two surgeries that were not workers' comp related by Dr. Blankenship. That the claimant has a prior work related injury to his knee which did require knee surgery and permanent impairment. That the Second Injury Fund has liability. That the claim has been controverted in its entirety since September 13, 2005.

In regard to the foregoing issues Respondents No. 1 contend that the claimant did not sustain a compensable injury as that term is defined by Act 796. See response under subsection a.

In regard to the foregoing issues Respondent No. 2 will not enter contentions at this time.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and non medical records marked Claimant's Exhibit No. 2. The respondents submitted the deposition of the claimant's marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

Allyn Licause testified that she currently is working for Assembled Products Corporation in Rogers as a receptionist. Ms. Licause testified that she had previously worked for the respondent as a receptionist and explained that her duties involved general secretarial skills, answering the phone, taking memos and filing. This witness testified that she worked for the respondent for a couple of months but did become acquainted with the claimant in that she would see him come into the front office. Ms. Licause testified that she was working for the respondent on August 16, 2005, and remembers the claimant coming in and sitting strange. This witness testified that she asked the claimant if he was ok and he reported to her that he had gotten hurt. Ms. Licause testified that she asked the claimant if he got hurt at work or at play and that he told her that he was working when he got hurt. This witness testified that she did not assist him in filling out any forms because he went to the back to do that.

Ms. Licause testified, on cross examination, that she remembers the claimant coming in to talk to Shawn on the day that

he reported his injury. This witness testified that she has seen the claimant in the office a couple of times because the field workers' did not come into the office every day. This witness agreed that it is usually a special circumstance when one of the electricians like the claimant would come in. Ms. Licause testified that she does not know if the claimant talked to Greg that day but she does remember that he went back to talk to Shawn.

The claimant testified that he currently is employed with Lowe's in their electronics department. The claimant testified that he has been so employed since April 20, 2006. The claimant testified that he is forty-eight years old, graduated from high school and went on to four years of technical school. The claimant testified that he has a journeyman's licence, a welding certificate and has taken classes in industrial maintenance through the VoTech in Springdale.

The claimant testified that he began working for the respondent in June 2005 as a journeyman wireman. The claimant testified that on August 16, 2005, he was working on a crew at Bentonville High School running conduit throughout the classrooms and offices. The claimant testified that he had been bending conduit and putting in pipe. The claimant testified that he had finished working in a corridor area and turned to get more supplies when he stepped on a piece of pipe, slipped and fell. The claimant testified that he landed on his butt and back. The claimant testified that he remembers that this occurred after his lunch break and does not remember if there were other members of the crew

working in the same area when he fell. The claimant remembers that no one came to his aid and he remembers that no one laughed at his falling. The claimant testified that after his fall he felt sore on his tail, he had bopped his head back and his neck was a little stiff. The claimant testified that he did not report this to his supervisor, Mr. Campbell, but thinks that Mr. Campbell was on the job site. The claimant testified that he continued to work after his fall. The claimant testified that around 2:30 or 3:00 another employee came and told him that the supervisor wanted him to go to the shop. The claimant testified that he finished up in his area and then went over to the shop. The claimant testified that when he went into the shop he saw Allyn, the receptionist, and he reported to her that he had been told to come over and see Shawn. The claimant testified that he guessed that it was obvious that he was in a little bit of pain and he explained to her what had happened.

The claimant testified that when he went in to talk with Shawn he was told that his supervisor, Mr. Campbell, was not happy with his work. The claimant testified that initially he thought that Shawn was going to let him go but after having a conversation, Shawn assigned him to another job site with a different foreman. The claimant testified that he did not report to Shawn anything about his back injury. The claimant testified that either the following day or the day after that he filled out paperwork for his injury. The claimant testified that he had not sought any medical treatment prior to filling out his paperwork. The claimant

testified that the respondents sent him to the Occupational Clinic in Lowell.

The claimant testified that at the health clinic he reported pain and stiffness in his back as well as pain in his neck and shoulders. The claimant recalls that x-rays were taken, he went through an examination, anti-inflammatory prescriptions were given and he was put back to work on light duty. The claimant testified that he went back to work for the respondent on light duty working in the shop under the supervision of Shawn, Dan and the shop person Darren. The claimant testified that on his second visit to the Lowell clinic, he was put on a narcotic medication for pain and he was referred to Dr. Knox. The claimant testified that as a result of his narcotic pain prescription he was taken off work. The claimant testified that before he saw Dr. Knox he underwent an MRI. The claimant testified that when he saw Dr. Knox, Dr. Knox adjusted his medication which would allow him to return to work on light duty. The claimant testified that on his return visit to the doctor he was seen by Dr. Runnels.

The claimant testified as to two instances while he was on light duty which gave him the strong impression that the respondent was trying to get rid of him. The claimant testified that around September 15, 2005, the respondent stopped paying for his medical benefits and a few days thereafter he was terminated.

The claimant testified that he had a previous back operation by Dr. Blankenship in 1997 and a second operation in 1998. The claimant testified that it was his understanding that he underwent

a diskectomy. The claimant testified that following his second back surgery, he had at least 95 percent improvement. The claimant testified that he has also seen Dr. Coker in the past for treatment of his broken left ankle. The claimant testified that he has also seen Dr. Chris Arnold for knee problems which he has experienced since high school. The claimant testified that his work for Lowe's is going so so, noting that he thought this job would be a piece of cake but since he is on his feet eight hours a day, it is not as good as he had hoped it would be. The claimant testified that he is earning \$10.71 per hour.

On cross examination, the claimant testified that he has worked for three different supervisors while employed with the respondent. The claimant testified that prior to August 16, 2005, he had been called in to visit with Shawn about being moved from one job location to the other. The claimant testified that when he asked Shawn if there was a problem he was told that no they were just shuffling people around. The claimant agreed that in August 2005, he was hospitalized as a result of heat exhaustion. The claimant testified that he had been working over at the sports complex as well as building a swing set for his daughter. The claimant agreed that while in the hospital for the heat exhaustion he also made complaints of his back hurting. The claimant testified that he was off work for a few days as a result of his hospitalization and he returned to work for the respondent on August 15, 2005. The claimant testified that his first day back at work he was sluggish and assumed that Jim was unhappy with his

production that day. The claimant agreed that he slipped on the pipe around 2:00 in the afternoon and he had a conversation with Burt Weston around 2:30. The claimant testified that Mr. Weston came up and told him that Jim said the shop had called and wanted him to come to the shop and that he, Mr. Weston, was basically the messenger. The claimant testified that he reported to Mr. Weston that he had hurt himself saying that he had slipped and busted his butt and was sore. The claimant testified that he thinks that Mr. Weston asked him if he was all right but he could not remember specifically what he said. The claimant testified that after he had his conversation with Mr. Weston, he gathered up his tools and went to the shop. The claimant testified that when he got to the office he recalls having a conversation with Ms. Licause but does not recall having a conversation with Greg Goodwin. The claimant testified that when he had his conversation with Shawn at the shop he did not report to him that he had hurt his back. The claimant testified that he was terminated by the respondent for missing work. When asked if any doctor had taken him off work, the claimant responded, "No, Sir." The claimant agreed that following his two back surgeries in the late 1990s he continued to have periodic problems with his back. The claimant agreed that periodically he would take medications for his back problems. The claimant also agreed that it was a fair statement that the pain which he is currently experiencing is the same as it was prior to his August 16, 2005, event but it is more often. The claimant

testified that he has seen a chiropractor for his back prior to August 16, 2005.

On cross examination by the Second Injury Fund, the claimant testified that the work which he was doing with Lowe's is not as cushy as he had hoped it would be. The claimant testified that he is required to do lifting and climbing ladders as well as stand on his feet all day. The claimant testified that he works eight hours a day usually and that his largest check has been as much as forty-two hours. The claimant testified that he earned \$10.71 per hour and did not have a preemployment physical by Lowe's. The claimant testified that the work for the respondent required a lot more bending and lifting than his work at Lowe's. The claimant testified that even though he is working he is pursuing a social security disability claim. The claimant agreed that due to a football injury he has undergone knee surgery and is currently getting close to needing a total right knee replacement. The claimant testified that he has had three surgeries on his left ankle and that standing on his feet eight hours a day does bother him a little, making his ankle sore. The claimant agreed that following his August 16 event he underwent a cervical and lumbar MRI and agreed that his diagnosis has been that of a back strain.

James Campbell testified on behalf of Respondents No. 1 stating that he works for the respondent and was so employed on August 16, 2005. This witness testified that he was the claimant's foreman on the Bentonville High School project. Mr. Campbell testified that he recalls the claimant being off work for over a

week in the earlier part of August. Mr. Campbell testified that when the claimant returned to work on Monday, he observed him sitting on some drywall and not doing his work. Mr. Campbell testified that as a result of his observations of the claimant, he sent the claimant to the shop so that he could be disciplined or reassigned to another job. Mr. Campbell testified that he sent Burt to tell the claimant to go to the shop. Mr. Campbell testified that he did not have a conversation with the claimant on August 16, 2005, about being hurt.

Burt Westin testified that he was employed with the respondent as an electrician and a lead person. Mr. Westin testified that Mr. Jim Campbell was his supervisor and that the claimant was an employee on that job site. Mr. Westin testified that on August 15 he observed the claimant not working as he should. This witness testified that he and Mr. Campbell had a conversation concerning the claimant the following day, August 16, 2004. Mr. Westin testified that Mr. Campbell told him to go to the claimant and send him to the office. Mr. Westin testified that around 2:00 in the afternoon he went to the claimant and told him that he needed to go to the office the next morning. Mr. Westin was asked if the claimant reported that he was hurt that day and the witness responded, "No, Sir." Mr. Westin testified that he watched the claimant leave the job site and did not note anything unusual about him or that he was having any difficulty getting his tools into his truck. This witness testified that the only other conversation he has had with the claimant was a couple of days later when the

claimant came in to fill out an accident report. This witness testified that the claimant told him that he hurt himself when he slipped downstairs.

On cross examination, Mr. Westin testified that he did not have any idea why the claimant had been off work the week prior to his reported accident. This witness testified that any note from a doctor taking an employee off work would have been given to the supervisor, Mr. Campbell. Mr. Westin testified that he has been an employee of the respondent for twelve years.

On redirect examination, Mr. Westin testified that the respondent's policy on no show no call is that after three days you are terminated.

Shawn Williams testified that he had been employed by the respondent for seven years and his position currently with them is manager of the Arkansas division. Mr. Williams testified that Jim Campbell called and told him he had a problem with the claimant and that the claimant was suppose to report to talk with him the following morning. Mr. Williams testified that the claimant came to the office that afternoon and since Don Wiley was not present he spoke to the claimant about Mr. Campbell's complaints about his work ethic. This witness testified that he had cautioned the claimant one other time about his work ethics. Mr. Williams testified that initially his intend was to terminate the claimant but during the course of their conversation he changed his mind and assigned him to a different job site. Mr. Williams testified that there was no conversation with the claimant concerning him being

injured that day at work or that he hurt his back. This witness testified that he learned of the claimant's allegations a couple of days later when the claimant filled out his accident report. Mr. Williams agreed that the claimant was placed on light duty after he filled out his accident report. Mr. Williams testified that at some point the claimant was prescribed narcotic medications at which time he was taken off work for a little less than a week. This witness remembers that the claimant did return to work on light duty for a period of time before he was terminated on September 20, 2005. Mr. Williams testified that the claimant was terminated for violating the no show/no call policy.

On cross examination by the claimant's attorney, Mr. Williams agreed that it was his signature on the warning notice. Mr. Williams testified that if there is a mention of him reporting an injury on the warning notice it was put on after the fact. Mr. Williams testified that it is possible that there is not another reprimand notice in the claimant's personnel file because Mr. Dan Wiley may have just had a conversation with him about his work ethic.

On redirect examination, Mr. Williams testified that at the time he met with the claimant on August 16, 2005, the claimant did not report to him anything about a back injury but he does in the report mention the claimant reporting back pain. Mr. Williams explained that the report is dated August 17 and August 18, noting that the actual report was not filled out until after August 16.

This witness was asked if it was possible that he went back and added something to the report and the witness responded, "You bet."

The medical records set forth that the claimant was seen at the Arkansas Occupational Health Clinic by Max Beasley, a nurse practitioner, on August 18, 2005. Nurse Beasley writes that the claimant reports that he slipped on a piece of conduit and fell back onto his buttock and back on August 16, 2005, and has been in discomfort since that time. Upon examination, Nurse Beasley notes that the claimant has questionable spasm present in his lumbar spine and that the x-rays of his cervical spine reveal a straightening phenomena. It is noted that x-rays of the claimant's lumbar spine show some bone spurring and slight lipping along the lumbar spine. The claimant was assessed with having cervical strain and low back pain with radiculopathy. Nurse Beasley placed the claimant on light duty and prescribed medications. The claimant was again seen by Nurse Beasley on August 25, 2005, with his continued complaints of pain in his back radiating down into his right leg. Upon examination, it was noted that the claimant did not have any spasm in his cervical or lumbar spine area. Nurse Beasley recommended physical therapy, medications were prescribed and he was to continue on light duty. On August 31, 2005, the claimant returned to Nurse Beasley who interpreted the MRI of his cervical and lumbar spine. Nurse Beasley notes that there were degenerative changes as well as posterior osteophytes at C4/C5 level but no evidence of significant impingement. It is noted that the MRI showed that the claimant has had a previous lumbar surgery

and that there is scar tissue present along the right side at the L4-L5 level which does appear to be impinging on the neural elements. Nurse Beasley writes that the enhancement suggests that the scar tissue is the reason for the claimant's symptoms rather than recurrent disc herniation. The nurse notes that there are no other abnormalities noted. Nurse Beasley writes that the claimant reports that he has been very uncomfortable and cannot find a position of comfort. The nurse notes that the claimant reports that his medications do him little good and he is not able to tolerate working. Upon examination, Nurse Beasley notes that the claimant has some soreness and possibly some spasm in the lumbar area but none of the left. Nurse Beasley writes that based on the claimant's MRI and the claimant's report of his condition worsening, the claimant was referred to Dr. Luke Knox for evaluation. The claimant's medications were changed and he was taken off work as a result of his narcotic medications. Dr. Luke Knox writes on September 2, 2005, that he has seen the claimant for his complaints of back and neck pain and stiffness. Dr. Knox reviewed the claimant's MRI and agreed with the findings made by Dr. Rhineheart that there is a question of slight lateral recess stenosis and he suspects that there is a component of facet 7 at 4-5 level which is probably in keeping with his old surgeries done back in 1998. Dr. Knox administered the claimant an injection of Depo-Medrol and changed his medications. Dr. Luke Knox took the claimant off work from September 2, 2005, to September 6, 2005, at which time he should return to work at light duty. Dr. Kelly Danks

writes on September 20, 2005, that he has seen the claimant for his three different complaints. Dr. Danks mentions the claimant's prior back surgery in 1997 and 1998 which is noted to have been complicated by a dural tear noting that he did develop some epidural fibrous after this second operation. Dr. Danks notes that the claimant went back to work and did quite well until he slipped and fell. The doctor writes that the claimant was terminated from his job this day due to his continued back ache since his slip and fall event. Dr. Danks suggested that the claimant loose weight and do back exercises as well as prescribed medication to aid with his sleeping. Dr. Danks mentioned the claimant's other physical problems besides his back problems. On December 6, 2005, Dr. Vincent Runnels writes that he has seen the claimant for his back and knee pain. Dr. Runnels discusses the claimant's medications and notes that he has suggested that the claimant stop smoking. Upon examination, it is noted that the claimant has narrowing of the L4-5 which is residual from his old herniated disc disease. Dr. Runnels writes that it is his opinion that the claimant is still disabled from gainful employment and notes that the claimant's neck showed significant spondylosis at C5-6 and C6-7 with a degenerative slip at C4-5. Dr. Runnels put him on traction and set him up for an EMG and nerve conduction of the upper extremities. On February 21, 2006, the claimant was seen by Dr. Christopher Arnold for his right knee problems.

The bulk of the claimant's medical records pertain to his early low back operation in 1997 and then again in 1998. These

records also include treatment for a variety of other problems such as bronchitis, chest pain, problems with his knees and his neck and shoulders.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on August 16, 2005. I do believe that this claimant did have a fall event on this date which temporarily exacerbated some of his old back problems and caused him to be sore from the fall. Arkansas law requires that there be objective medical findings to establish a compensable injury. Other than the claimant's complaints of pain, in my opinion, there are no new objective findings of injury on which to base a compensable injury. The claimant's MRI did reveal old scar tissue resulting from his back surgery in 1997 and 1998. Based on Arkansas law as well as the facts of this case I find that no benefits shall be awarded in this matter.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On August 16, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.
4. The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that he sustained a compensable

low back injury on October 16, 2005, while working for the respondent. See discussion above. Also see Ark. Code Ann. §11-9-102(4)(D).

ORDER

The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that he sustained a compensable injury to his low back on August 16, 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE