

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F505124**

**JEREMY HAMILTON, EMPLOYEE** CLAIMANT

**LENNOX INDUSTRIES, EMPLOYER** RESPONDENT

**ACE AMERICAN INSURANCE COMPANY,  
INSURANCE CARRIER** RESPONDENT

**OPINION FILED APRIL 12, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on December 29, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

**STATEMENT OF THE CASE**

\_\_\_\_\_The parties stipulated to an employer-employee-carrier relationship on May 17, 2005 and a compensation rate of \$357.00.

The claimant contends he sustained a compensable injury on May 17, 2005 when he was attempting to lift a blower housing. He seeks temporary total disability benefits from May 17, 2005, to a date yet to be determined, medical benefits and attorney's fees.

The respondents contend the claimant did not sustain an injury arising out of and in the course of his employment. Specifically, the respondents assert that his back complaints are due to non-work related activities.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript. The claimant's objection to the recorded statement taken by the carrier was sustained as this document was not part of the respondents' prehearing questionnaire filing. Harrington Construction Company v. David Williams, 45 Ark. App. 126, 872 S.W.2d 426 (1994). The claimant's objection to correspondence listing the date of injury was overruled. The letter of representation from Attorney Wren was accepted by the Commission as a claim filing in lieu of a Form AR-C. Little v. Smith, 223 Ark. 601, 267 S.W.2d 511 (1954). Cook v. Southwestern Bell, 21 Ark. App. 29, 727 S.W.2d 862 (1987).

The Commission's administrative forms are divided into two categories. Those with a numerical designation cannot be submitted into evidence pursuant to Ark. Code Ann. §11-9-529(c). The numerical forms encourage employers to report accidents to the Commission without being penalized by the information in those

forms if the claim is later controverted. However, the forms with an alphabetical designation can be used as evidence. These include the AR-C and AR-N in which the claimant gives their history of the injury.

The following witnesses testified at the hearing: the claimant; co-worker, Tim Miller; supervisor, Terry Kagebein, assistant supervisor, Shawna Carter; and health nurse, Tim Brown. The claimant seemed to have trouble understanding the attorney's questions, requesting several times that the questions be repeated. The claimant gave inconsistent answers to questions throughout his testimony and offered an unsatisfactory explanation for these discrepancies, (Compare Tr. p. 9, 12-13, 17-33, 37-38, and 72).

The claimant, age 26 (D.O.B. October 3, 1979) has a tenth grade education. He began work for the respondent-employer in 1999. In his job as a line worker, he builds blower housings for air conditioners. His duties require standing, lifting (up to 100 lbs.) and bending. His last day of work was May 17, 2005 and he drew short-term disability benefits from May 17 to November 16, 2005 at \$212.00 weekly (Tr. p. 68). He remains under a physician's care and has not returned to work. However, he has been able to hunt and fish (Tr. p. 11, 15-16, 27-28, 34-35).

The claimant's health history includes a back injury in 1998 while working for R & W Manufacturing. He received conservative treatment and a 5% anatomical impairment rating. The claimant gave inconsistent answers about his recovery from this injury (Compare Tr. p. 18 with p. 28).

The claimant testified that he began having back pain in May, 2005 which he attributed to lifting at work. He took over-the-counter medications and asked his supervisors for a back brace. On May 17, 2005 between 10:30-11:30 p.m., near the end of his shift, the claimant experienced back pain and left leg pain after lifting a housing. He reported the incident to co-worker Tim Miller, who assisted him in finishing his work, and to supervisor, Terry Kagebein.

The next morning his pain was worse, so he called the plant nurse, Tim Brown. Mr. Brown arranged an appointment with the company physicians, Drs. Daniel and Hord, general practitioners. The claimant was prescribed medication and after an MRI scan, he was referred to orthopaedic surgeon, Dr. Fox, at UAMS. Surgery was performed in September, 2005.

The carrier controverted the claim. The claimant requested a hearing on May 3 but did not retain counsel until June 7, 2005. A letter of representation was filed on June 8, 2005, listing the date of injury as May 3, 2005. A prehearing questionnaire was filed on October 3, 2005 listing the date of injury as May 3, 2005. At the prehearing conference with Judge Rogers, the claimant changed his contentions to show May 17, 2005 as the date of injury and this change is reflected in the Judge's prehearing order filed December 5, 2005.

Co-worker, Tim Miller, testified he saw the claimant wearing a back brace at work but he was unsure about the time frame. Mr. Miller confirmed that he helped finish the claimant's work while the claimant went to see the plant nurse one night

around their lunch break (7:00-7:30 p.m.). The claimant stated “my back is killing me” and he never returned to work after that night.

Supervisor, Terry Kagebein testified the claimant told him his back was hurting in early May. Mr. Kagebein specifically asked the claimant if he had injured his back at work, but the claimant told him he was having problems from a prior injury. The claimant declined medical attention and asked for a back brace. A week or two later, the claimant said he hurt his back picking up a housing and he was sent to the plant nurse, Tim Brown, sometime in mid-May.

Plant nurse, Tim Brown, testified the claimant called him on May 18th requesting medical treatment for a lifting injury on May 3rd or 4<sup>th</sup> while lifting a housing. The claimant was sent to the company physician and came back on May 19<sup>th</sup> to fill out the accident report form, AR-N. The form, which is not signed or dated, lists an injury date of May 3, or May 4, 2006.

### **MEDICAL EVIDENCE**

For reasons unknown, the respondents have included medical records from 1993 and 2004 which are irrelevant to this case. Accordingly, those records will not be summarized in this opinion. Respondents are again reminded that unnecessary documents increase the cost of the transcript and slow down the review of the file.

The claimant initially injured his back in 1999 when he was nineteen years old. The reports are handwritten and difficult to read, but it appears he complained of low back and left leg pain with no history of trauma in a report dated June 28, 1999. A

follow-up report dated July 31, 1999 indicates the back pain began at work when an object struck his back. An MRI scan conducted August 5, 1999 revealed a herniated disc at L4-5 and L5-S1 with a desiccated disc at L3-4. The claimant was treated conservatively with medication and released by Dr. Reginald Rutherford on November 16, 1999 with a 5% rating to the body as a whole.

An MRI scan conducted May 19, 2005 after the incident at Lennox, revealed multilevel degenerative disc disease with a large disc extrusion at L5-S1. For such a young man, the claimant has extensive damage to his spine. The MRI report also mentions a Schmorl's node, a synovial cyst, desiccation facet arthropathy and a disc bulge at L3-4, an annular tear at L4-5 with stenosis caused by arthropathy and a small disc extrusion.

An "Encounter Form" dated May 25, 2005, lists the history of injury as, "LBP (low back pain) after lifting 20 ton blower housing on May 3, 2005."

Dr. Hord's Report of 5-18-05:

25 y/o worker's comp patient from Lennox who was lifting about 2 week ago and said that he hurt his back. He dealt with it for about 2 weeks and apparently never told anybody about it. Yesterday when he was leaving work, he started having twinges in his back again and having pain down his left leg and into his left foot. He complains of his left foot being numb and tingling feeling. He has sharp shooting sensation going down the back of his left leg. This morning, he was getting out of bed and really had a difficult time doing so because of the pain in his leg. He's never really had anything like this before.

A report dated June 1, 2005 reiterated information concerning the injury on May 3, 2005 and shows the claimant developed left leg pain over the last five days. The claimant was treated with medication and referred to a surgeon, however the claim was controverted.

The claimant re-injured his back while fishing at the river with relatives.

Dr. Daniels' Report of 6-27-05:

Mr. Hamilton was just getting better and hoping to go back to work tomorrow when he had to pick up his 40 lb. nephew who cut his foot yesterday at the sand bar. Now he again has positive straight leg raising on the right.

Because the workers' compensation carrier denied his claim and the claimant had no personal health insurance, Dr. Daniel referred him to UAMS where he came under the care of Dr. Fox.

Dr. Fox's Letter of 9-22-05:

Mr. Hamilton was working for Lennox Air Conditioning Company. He lifted a heavy object at work on May 17, 2005 and developed an onset of low back and left leg pain. An MRI scan done on May 19, 2005 was reviewed today. It demonstrated a very large protruded/ruptured disc, central and left in location at L5-S1.

Surgery was performed on September 26, 2005.

Dr. Fox's Letter of September 29, 2005:

He had an MRI scan of his back done here at UAMS previously a few years ago, and this revealed a protruded disc at L5-S1, half the size of the present disc protrusion.

## FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

\_\_\_\_\_ or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d

876 (1997).

The evidence of record shows that the claimant suffered from a preexisting back condition with radicular leg pain which was treated conservatively. Ultimately the claimant required surgery for the same symptoms and at the same disc level. The claimant was a poor historian and gave conflicting statements regarding the onset of symptoms and history of injury. There is some evidence from a co-worker that the claimant injured his back at work. However, there is also evidence that the claimant injured himself fishing, getting out of bed, and walking out of the plant. When the claimant complained of symptoms at work, his supervisor specifically asked him if he had been hurt on the job and the claimant denied any injury.

Mindful of the Court's ruling that a claimant is not required to identify the precise time and exact date of the injury, Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W.3d 487 (2001), I find that the claimant has not met his burden of proving a specific injury by time and place of occurrence by a preponderance of the evidence of record.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on May 17, 2005 at a compensation rate of \$357.00.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced

physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge