

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407812

GROVER L. IRONS, EMPLOYEE	CLAIMANT
R.A. PICKENS & SON, EMPLOYER	RESPONDENT
AG-COMP SIF, CARRIER	RESPONDENT

OPINION FILED JANUARY 23, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on December 12, 2005 at Dumas, Desha County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE GUY A. WADE, 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 permanent partial disability benefits for an impairment rating.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on June 18, 2004, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$175.00/\$154.0, in the event this claim is found to be compensable. The claimant filed a claim with the Commission on July 29, 2004. A child support lien from Union County has been filed in this

case.

The claimant contends he injured his back on June 18, 2004 pulling a heavy chain at work. He seeks payment of medical expenses, temporary total disability benefits from June 19, 2004 to November 17, 2004, anatomical impairment of 10% to the body as a whole as assessed by Dr. Simpson and continuing medical treatment.

The respondents contend the claimant did not sustain an injury in the course and scope of his employment. Alternatively, the respondents contend the claimant did not report an injury to his employer and they would not be liable for benefits prior to filing his claim with the Commission on July 29, 2004. The respondents further contend the claimant's condition is preexisting and there was no new injury on June 18, 2004.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant; co-worker, Nate Jones; supervisor Bob Hudson and manager, Jimmy Borland. Both Mr. Jones and Mr. Hudson testified they were aware of the claimant's history of back problems from a prior job but the claimant never reported an on-the-job injury with the respondent-employer. Neither Mr. Jones nor Mr. Hudson recalled the June 18, 2004 incident described by the claimant of a wench truck getting stuck. Mr. Borland testified the claimant left their employ July 1, 2004. It was Mr. Borland's understanding that the claimant was seeing a doctor for an old back problem. The claimant was advised he needed to bring a doctor's release to return to work.

The claimant, age 33 (D.O.B. September 16, 1971) has a G.E.D. with training and certification as a welder and mechanic. His job history includes work for his brothers, Price

Systems, Asplundh Tree Service, AJ&K Oil Field (where he injured his hand) and Petrastone (where he injured his back). He drew unemployment benefits (\$185.00 per week from December 12, 2004 until March 28, 2005) from the respondent-employer. The claimant was off work for six months for injuries sustained in a fire in February, 2003. The claimant presently works for Mark Mooreland's Irrigation and Trackhoe Service in Dumas. He began work there on March 31, 2005 and earns \$350.00 per week.

The claimant was injured on Friday, June 18, 2004, around 2:30 p.m. pulling a heavy chain from under tools. His wench truck was stuck and he radioed Bob Hudson for assistance. He informed Mr. Hudson about the back injury but he was able to finish out the work day at the gin.

On Monday, the claimant reported to Mr. Hudson that his condition had worsened and he needed to see a doctor. Mr. Hudson told him he was too young to have a back injury. The claimant took his medical records to Jay Pickens and was assured the company would take care of his expenses.

The claimant went to his family physician and obtained an MRI scan. At this point, the claimant was advised that the case had been controverted. The claimant filed an AR-C with the Commission on July 29, 2004.

The claimant came under the care of Dr. Simpson who took him off work and prescribed diagnostic testing and medication. Dr. Simpson performed surgery on July 29 which helped the claimant's back pain but he remains symptomatic with a tingling sensation in his left foot and the feeling that he is sitting on a knot in his left hip. On November 17, 2004, Dr. Simpson released the claimant with a 10% rating to the body as a whole.

A repeat MRI scan was conducted on December 29 which showed a ruptured disc. Dr. Simpson did not feel that additional surgery was warranted. The claimant presently sees Dr. Kahn for prescription medications.

On cross-examination, respondents' counsel emphasized that the claimant had filed workers' compensation claims in the past and knew the procedure. In fact, the claimant was fired from Petrastone after refusing a drug test. The claimant's work history is sporadic and he missed work for several months after sustaining burns in a fire and a gunshot wound to his right shoulder. He drew unemployment (ESD) benefits before and after his job with the respondent-employer. The ESD records show no mention of a work-related injury. Likewise, there is no mention of a work-related injury in the claimant's medical records. The claimant was also treated at the State Hospital for five years for depression and paranoia.

MEDICAL EVIDENCE

Dr. P. B. Simpson, a surgeon, treated the claimant conservatively for low back pain in September 1994. The claimant also sustained a self-inflicted gunshot wound to the right shoulder in 1994.

Medical records indicate the claimant was treated for a work-related injury in 1996 when his left arm was caught in a conveyor belt while working for Mid-South Reclamation. The claimant was also treated for a stab wound in 1996.

The claimant sustained a great toe injury on the left foot in 1998.

In 1999, the claimant was transported by the Sheriff from the Recovery Center to the ER and then to Pinnacle Point where he was treated for mental illness (depression, homicidal and suicidal

ideations) and alcoholism.

The claimant was unemployed in 2003 when he was treated for burns (requiring skin grafts) and smoke inhalation after a fire at his mother's trailer home. The reports also show depression and substance abuse (tobacco, marijuana, crystal methamphetamine, alcohol), as well as visual hallucinations and paranoia. He specifically mentioned a desire to sue people. The claimant was diagnosed with schizoaffective disorder and polysubstance dependency.

The claimant was seen in the ER on June 28, 2004 complaining of low back pain from an injury on October 14, 2002. Another ER report dated July 15, 2004 shows the date of accident as July 15, 2004. Yet another ER report, dated July 29, 2004 lists the date of injury as June 18, 2004.

The claimant was seen by general practitioner, Dr. Hadi in June 2004 and was referred to Dr. Simpson on July 27, 2004. There is no mention of a recent work-related injury with the respondent-employer in the claimant's medical records until a few days before surgery.

Dr. Simpson performed surgery on July 29, 2004 for an herniated nucleus pulposus at L5-S1 disc on the left based on a positive MRI scan, myelogram, and CT scan. The claimant was excused from work from July 26, 2004 to October 29, 2004. In a report dated November 17, 2004, Dr. Simpson assessed a 10% rating to the body as a whole.

Initially, Dr. Simpson recorded a history of injury from October, 2002 with chronic symptoms. Later, the reports show a June 2004 injury with the respondent-employer.

June 28, 2004 MRI Scan:

HISTORY: Pt injured back at work on October 2nd. Left hip & left leg pain.

IMPRESSION: Left paracentral small focal disk herniation at L5-S1 disk level. Small left inner foraminal disk protrusion at L4-L5.

Dr. Simpson's Report of 7-12-04:

Mr. Irons states that about 2 yrs ago he was involved in a WC accident where he was pouring concrete forms for stones and had pain into his hips. He has not been able to work for the past 2 yrs because of that... He states that he has never had any other injury or anything, but at age 22 he had some pain in his back for about 2 wks and then he went back to work and did not have any other problem.

Dr. Simpson's report of 7-26-04:

Mr. Irons had a myelogram and a post myelogram CT. This shows he probably has something at L5-S1 on the L side. The problem with this gentleman is that he has two injuries. One is the injury that he had 2 yrs ago and we thought that that was the injury that he was claiming for a WC injury. But, he had just hurt himself and actually went to a physician at that time. They told him that they did not think he had a ruptured disk, and he went back and worked for that particular company for another 42 days before he was laid off. He then got a burning injury to his arm and he was off a while longer. He went to the present company he has been working for x 8 mos. This happened on 6/18/04. They had been putting a notary (sic) in for a re-lift. He had been guiding that in place, but the thing that really got him is that he had gone to get a chain and was carrying this heavy chain and bent over to hook this up and felt something in his back. This was 6/18/04.

According to his hx of his recent injury, I think there is probably greater than a 50% chance that this occurred secondary to the accident he described.

DOCUMENTARY EVIDENCE

Employment Security Department (ESD) records confirm the claimant was discharged from Petra Stone on December 12, 2002 because he refused to take a drug test.

The claimant completed a form, "Statement Concerning Able & Available for Work" on July 19, 2004. There is no mention of a work-related injury with the respondent-employer:

I had a back injury in Oct' 02 was off work 1 year/in Sept. of '03 I went to work for Pickens/when they found out I had a previous back

injury they put me on leave because if something happens they won't be responsible.

The claimant filed an AR-C on July 30, 2004 describing in detail an injury to his low back on June 18, 2004, with the respondent-employer.

On August 3, 2004, the claimant contacted ESD again and the following information is contained in a "Work Sheet":

Pickens would not allow me to work because of an old back injury at a previous job. Their insurance would not allow it. They (illegible) request a medical release from my doctor but they said they could not give it to me (the doctor did) because he never told me I could not work. I told my supervisor Bob Hudson that. He called my doctor and spoke to the doctor. They knew of this old injury when they put me to work.

An opinion filed by the Department of Human Services dated August 11, 2003, indicates the claimant filed for SSI or SSA Disability benefits in January 2002 and applied for Medicaid in 2003. Both applications were denied.

The claimant's Answers to Interrogatories reveal a sporadic work history before the claimant was hired by the respondent-employer in September 2003. He has an eighth grade education, G.E.D. and certificates in welding and mechanics. His work history includes jobs as an unskilled manual laborer in farming, factory production and construction. He has filed two workers' compensation claims in the past for left hand and back injuries. He has been arrested for harassment and domestic violence.

FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant has a history of back pain since 1994. In 2002, he re-injured his back and developed radicular left leg pain, which correlates with the 2004

diagnostic findings of an herniated nucleus pulposus on the left, resulting in surgery and disability. Medical records indicate the 2002 injury never resolved and he was unemployed for long periods of time before he went to work for the respondent-employer. He told his employer that his back hurt from an old injury and he was under a doctor's care, but he did not report a 2004 work-related injury until surgery was imminent.

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).

Given the claimant's history of mental instability, substance abuse and criminal activity, I cannot find that he is a reliable witness. His version of events cannot be corroborated by co-workers, supervisors, medical records or ESD records. Therefore, I find the claimant cannot meet his burden of proving he sustained an injury arising out of and in the course of his employment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on June 18, 2004 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$175.00/\$154.00.
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.

ELIZABETH W. HOGAN
Administrative Law Judge