

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513125

DON JOHNSON	CLAIMANT
SWEETSER CONSTRUCTION, INC.	RESPONDENT
CNA INSURANCE CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 22, 2006

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

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 4, 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 February 3, 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 October 13, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$390.00 for temporary total disability based on an average weekly wage of \$585.00.

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

1. Compensability of the claimant's low back injury.
2. Related medical.
3. Temporary total disability from November 8, 2005, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that on October 13, 2005, he was climbing down from a front-end loader. Once he got down he was going to move a track hoe that was in the way. When he stepped off the front-end loader he slipped on a rock twisted his body and fell to the ground injuring his right shoulder and back. The claimant continues to need medical treatment which has been denied. As a result the claimant's pain got so bad he could no longer perform his job and he was forced to resign on November 8, 2005, based on his pain and inability to do his job.

In regard to the foregoing issues the respondents contend that the claimant's back and shoulder problems are not work related.

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 evidence marked Claimant's Exhibit No. 1. All this evidence was admitted without objection.

DISCUSSION

The claimant testified that he had been in the heavy equipment operating business for approximately thirty-seven years. The claimant testified that he began working for the respondent on June

16, 2005, and that his activities involved digging sewer lines and laying forty-two inch for sewer and water lines. The claimant testified that the digging that he did was done with a track hoe. The claimant testified that on October 13, 2005, he was getting down off the front end loader to move the track hoe because it was parked in the way, he had his hands on the rails and as he was going down his left foot slipped on a rock when he stepped down. The claimant remembers that he fell on his right side and that he landed on his back. The claimant testified that he lay there for a few minutes and then he got up and remembers that he was hurting. The claimant testified that he finished out his work day but at the end of the day, he reported his accident to Raymond. The claimant testified that when he made his report to Raymond he did not ask to be seen by a doctor and did not fill out a report.

The claimant testified that the first doctor he saw was his family doctor, Dr. Magnus. The claimant reported that the respondents sent him to Dr. Beasley. The claimant testified that he saw Dr. Beasley twice and had x-rays taken of his back and he was put on light duty of no lifting anything over twenty pounds and not to raise his arms over his head. The claimant testified that Dr. Beasley prescribed medications for him. The claimant testified that prior to this event he was taking no medications nor was he seeing any physician for any type of back problems. The claimant testified that occasionally he might take an aspirin for general aches and pains but that was the extent of his medications. The claimant testified that prior to October 13, 2005, he was not under

any type of limitations from any doctor as to what he should or should not do in his daily activities. The claimant remembers that after two visits with Dr. Beasley, the respondents refused to let him proceed with any type of medical treatment for his back. The claimant testified that he went on his own to the Northwest Arkansas Medical Center where he could receive free help. The claimant testified that he first saw Dr. Haller who ordered a CAT scan and blood work. The claimant testified that at the time he was seen by Dr. Haller, he had a lot of bruising and inflammation in his back and his legs would go numb. Again, the claimant testified that he was not having any of these type problems before October 13, 2005. The claimant testified that it was his understanding that he had degenerative joint disease but stated that he had never received any treatment for his degenerative problem prior to October 13, 2005. The claimant testified that he continued to work after October 13, 2005, until November 8, 2005. The claimant testified that his back pain had gotten so bad that he could not take it anymore nor could he maintain a constant train of thought because of his discomfort.

On cross examination, the claimant testified that he is still under the same restrictions as he was back in October and November 2005. The claimant agreed that his job mainly required sitting and operating the different pieces of heavy equipment. The claimant also agreed that his job did not involve any lifting but it did require a lot of standing and walking. The claimant testified that his supervisors encouraged him to work within his restrictions and

did not want him doing anything that might strain his back. The claimant indicated that at the time he quit working, no one had told him to quit, his doctor had not told him to quit nor had the respondents told him to quit. The claimant agreed that on his own he decided to quit working. The claimant testified that after he quit work and returned to see his doctor his restrictions were not increased. The claimant testified that he has had a tremor in his right arm and hand ever since he hurt his back. The claimant testified that he reported these tremors to Mr. Bailey as well as to his physical therapist but no treatment was recommended or administered. The claimant testified that as of December 6, 2005, he was not taking any medications for his back but that after he saw Dr. Haller, she put him on pain pills and anti-inflammatory pills. The claimant testified that currently he is having to use an inhaler at least three times a day because of his asthma. The claimant agreed that he has difficulty working outside because of his asthma and emphysema agreeing that pollen, climate, weather changes, dust and dirt cause him to have difficulty breathing. The claimant testified that currently he is taking Ibuprofen for his back to help him sleep at night but that he is not doing the exercises to strengthen his back.

On redirect examination, the claimant testified that the reason he decided to stop working was because he was in so much pain. The claimant explained that his train of thought was a problem due to his pain and he was afraid he was going to hurt someone because he was not thinking straight. The claimant

testified that getting on and off the equipment was difficult for him and he had to do this several times a day. The claimant testified that he had problems hooking up pipe, run the whackers and the lifting he could not do. The claimant testified that there were no do nothing jobs at the respondent's business and he was back doing his regular job.

The medical records set forth that the claimant was seen at the Arkansas Occupational Health Clinic on October 19, 2005, at the request of the respondent. Nurse Max Beasley writes that the claimant reports that he had a fall on October 14, 2005, resulting in low back pain as well as pain in his neck and his left rib area. Nurse Beasley notes that x-rays taken of the claimant's cervical spine, right shoulder and lumbar spine revealed no fractures or dislocations. These tests did reveal osteophytes and degenerative changes. After examination, the claimant was assessed with having low back, right shoulder and neck pain for which Nurse Beasley recommended medications and range of motion exercises for his shoulder, neck and lumbar spine. Nurse Beasley returned the claimant to work but to avoid prolonged sitting, standing or walking and to avoid bending or twisting at the waist with no lifting more than twenty pounds, noting further that he should be allowed to change positions as needed and is to work at waist height only with his right upper extremity. The claimant was again seen by Nurse Beasley on October 26, 2005, for his continued complaints of pain in his neck, low back and right shoulder. The claimant also reported pain radiating down both of his legs and

significant spasm. After examination, Dr. Beasley notes that the claimant has no objective findings on the exam that day but due to his subjective complaints, physical therapy was ordered three times a week for the next two weeks. Nurse Beasley also continued the claimant's medications as well as his restrictions. Nurse Beasley writes on November 9, 2005, that the claimant was seen with his continuing complaints of low back pain. Nurse Beasley notes that the claimant reports that his right shoulder and neck pain have essentially resolved and that he has not participated in physical therapy due to transportation problems and feeling as though his job was physical therapy enough. The claimant began physical therapy on November 15, 2005, and attended two sessions before the respondents denied his claim. On November 18, 2005, the physical therapist recommended that the claimant continue his home exercises but if his claim was found compensable to return for further treatment. Dr. C. R. Magness writes on November 10, 2005, that the claimant is under his medical care and in his professional judgement it was necessary that he miss work on 11-10-05, because of his illness.

Dr. Haller writes on December 6, 2005, that upon examination, the claimant has good range of motion in his neck but spasm in his right arm and there is a mass in the left sacroiliac area. Dr. Haller writes on December 6, 2005, that the claimant is being evaluated for nerve root compression in his cervical and lumbar areas and that he is unable to work due to his pain. Hydrocodone was prescribed by Dr. Haller. A CT of the claimant's cervical

spine revealed mild degenerative changes at C5-C6 and C6-C7 levels with no associated narrowing or channel stenosis. A CT scan of the claimant's lumbar spine made on December 19, 2005, revealed a collection of fluid in the subcutaneous soft tissue of the left lower back with no evidence of paraspinal musculature or osseous involvement. Dr. Haller writes on January 3, 2006, that the claimant is having lots of pain in his neck and low back with tingling and shaking in his arms as well as pain down the back of both of his legs and numbness in the front. The doctor notes that the claimant still have the knot on his back and he is depressed and not sleeping. Dr. Haller assesses the claimant with having chronic neck and back pain which is made worse after his fall in October and he has hypertension and depression at which time she advised him to apply for disability. On that same date, January 3, 2006, Dr. Haller writes that she has advised the claimant to seek disability noting that he has degenerative joint disease of the spine and has been unable to work after falling and injuring his back last October. The doctor notes that the claimant also suffers from COPD, high blood pressure and depression.

After a review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he exacerbated his pre-existing degenerative disc disease when he slipped and fell on October 13, 2005, while working for the respondent. The respondents, therefore, should pay for medical treatment for this claimant up through January 3, 2006. On January 3, 2006, Dr. Nancy Haller indicates strongly that the claimant should seek disability

benefits for his degenerative disc disease and other medical problems. The indication is that he has reached maximum medical improvement as to his back. The doctor notes that the claimant has chronic neck and back pain which was made worse by his fall on October 13, 2005. I find, therefore, that the claimant has returned to his pre fall status as to his neck and back and the respondents should not be responsible for any further medical treatment. I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from November 8, 2005, to a date to be determined. The claimant, by his own testimony, indicated that he quit work voluntarily and that the respondents had been working with him and encouraging him to work within his restrictions so he would not further injure himself. The only release from work by a physician is on November 10, 2005, and that was just for a one day period of time. Dr. Haller does indicate on a note dated December 6, 2005, that the claimant has been unable to work due to pain but the claimant himself has testified that he removed himself from work because of his pain and felt he continued to be unable to work because of his discomfort. Therefore, no temporary total disability will be awarded in this matter.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On October 13, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$390.00 for temporary total disability based on an average weekly wage of \$585.00.

4. The claimant has proven by a preponderance of the evidence that he temporarily aggravated his preexisting degenerative disc disease when he slipped and fell on October 13, 2005, while working for the respondent. See discussion above.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from November 8, 2005, to a date to be determined. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that he temporarily aggravated his preexisting degenerative disc disease when he slipped and fell on October 13, 2005, while working for the respondent.

The respondents should pay for medical treatment for his claimant's back treatment from November 13, 2005, through January 3, 2006.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE