

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309845

JAMES JONES	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER	RESPONDENT
SISTERS OF MERCY HEALTH, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 29, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by NAIF KHOURY, Attorney, Fort Smith, Arkansas.

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 18, 2006, in Fort Smith, Arkansas. The claimant's deposition was taken on June 22, 2004, and was admitted as Claimant's Exhibit No. 1.

A pre-hearing order was entered in this case on January 31, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, both parties announced that they had agreed on the appropriate weekly compensation rates. A copy of this pre-hearing order, with that amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On or about July 30, 2003, the relationship of employee-

employer-carrier-third party administrator existed between the parties.

2. The appropriate weekly compensation benefits are \$198.00 for total disability and \$154.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained a compensable injury to his back as the result of a specific incident on or about July 30, 2003.
2. The claimant's entitlement to payment of medical expenses, temporary total disability from August 1, 2003 through October 16, 2004 and attorney's fees.

In regard to these issues, the claimant contends that he sustained a compensable injury to his back on or about July 30, 2003, and is entitled to appropriate benefits.

In regard to these issues, the respondents contend:

“Respondents contend that claimant did not sustain an injury within the course and scope of his employment.”

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained a “compensable injury” to his back, as the result of a specific employment related incident on or about July 30, 2003. The burden rests upon the claimant to prove all of the elements necessary to establish a “compensable injury”, as that

term is defined by the Act.

Ark. Code Ann. §11-9-102(4)(A) defines the various types of injuries that constitute “compensable injuries” under the Arkansas workers’ Compensation Act. One requirement that is common to all these categories of “compensable injuries”, is that the injury must “arise out of and occur in the course of the employment”. Thus, there must be a causal relationship between the injury that is alleged to be compensable and the employment. Under the claimant’s allegations, the definition provided by Ark. Code Ann. §11-9-102(4)(A)(i) would be controlling. Under the definition of a “compensable injury” that is given by this particular subsection, there must not only be a causal relationship between the claimant’s alleged back injury and his employment with the respondent, but this alleged injury must have been caused by a specific employment related incident or accident.

In the present case, the claimant’s own testimony is the only evidence he has presented to prove both the occurrence of a specific employment related incident or accident and the existence of a causal relationship between such an incident or accident and his subsequent back difficulties. The law clearly provides that the testimony of a party is never considered uncontradicted. However, this does not mean that such testimony can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant’s testimony would be legally competent to prove the occurrence of a specific employment related

incident or accident and to show the existence of a close temporal relationship between this event and the onset of his back difficulties. However, after consideration of all the evidence presented, it is my opinion that the claimant's testimony is not sufficiently credible to prove either the occurrence of a specific employment related incident or accident or to prove the existence of a causal relationship between such an incident or accident and his subsequent back difficulties.

First, the evidence shows that the claimant has had difficulties with his back for a considerable number of years. He has previously received extensive and prolonged medical services for complaints closely similar to, if not identical with, the complaints he now attributes to a specific employment related incident or accident while in the employ of the respondent. The medical evidence further reveals that the various defects which involve the claimant's spine or back and for which he was treated in 2003, are degenerative and progressive in nature and were in existence prior to the claimant's employment with this respondent. In fact, these spinal defects played a significant role in the claimant's eligibility for social security disability benefits both prior to and during his period of employment with this respondent. From the very nature of these defects, it is clearly plausible that the claimant could have experienced an onset or increase in symptomology at any time and without any specific trauma, work related or otherwise.

The claimant described, in some detail, the specific employment related incident or accident to which he now attributes his episode of back difficulties in 2003. However, his statements in regard to when this event actually occurred vary. In his deposition (Claimant's Exhibit No. 1), the claimant testified that this employment related incident or accident occurred on a Thursday evening during the last week in August. On his AR-C and pre-hearing questionnaire, the claimant gave July 30, 2003 for the date of the incident or accident, which is the date reflected in the pre-hearing order. July 30, 2003 would have been a Wednesday. In his testimony at the hearing, the claimant described the specific employment related incident or accident as occurring on a Thursday during the third week of August or as August 28, 2003.

The claimant's testimony concerning the events following the alleged employment related incident or accident is also somewhat confusing and is not particularly consistent with any of the dates reflected by his testimony or the date given on the AR-C. He testified that the incident or accident was witnessed by a co-employee named Kay. He further testified in his deposition and at the hearing, that he immediately advised his supervisor, Mary Thornhill, of the accident and his resulting back difficulties. In his deposition, the claimant testified that he subsequently reported his accident and injury to the "supervisor of security". Finally, he stated that he reported his injuries to Kathy Williams, after she returned from vacation.

He also testified that he was not offered medical treatment and consulted Dr. Scott Clark, a chiropractic physician on his own. He stated that he first saw Dr. Clark on the Monday following the employment related incident or accident. The records of Dr. Clark show that he first saw the claimant on Monday, August 11, 2003. This would indicate an accident date of August 7, 2003.

The initial records of Dr. Clark in no way indicate that the claimant reported his difficulties as being attributable to an employment related accident or his employment in general. It is also important to note that these records show that the claimant's complaints were not limited to only his low back, but also involved his mid-back and neck. These are essentially the same areas of complaints the claimant has experienced since his employment related accident and injury in 1991. There is also no indication in the initial records of Dr. Clark that he observed any bruising or other signs of trauma directly to the claimant's back, as would be reasonably expected from an accident of the type described by the claimant. In his report to the claimant's attorney dated September 18, 2003, Dr. Clark did state that the claimant mentioned that his symptoms of low back pain, neck pain, and mid back pain "began while the claimant was at work". However, he does not state that the claimant gave a history of any specific employment related incident or accident.

The evidence further shows that on August 13, 2003, the claimant made application with the respondent for family medical leave. In support of this application, he provided a medical

certification from Dr. Clark. This certification recited:

“Date condition commenced: Pain started to get more severe about a week ago.”

Again, Dr. Clark made no mention of any specific incident, particularly one that was employment related.

The Employer’s First Report of Injury, filed by the respondent, indicated that notice of the injury was first received by the respondent’s on October 14, 2003. This report also gave the reported date of the accident or injury as July 30, 2003. Clearly, this record is inconsistent with the claimant’s testimony concerning his actions immediately after the alleged incident and injury. Although neither party has seen fit to call, as witnesses, the claimant’s lead person or supervisor (Ms. Williams or Ms. Thornhill), to clarify this discrepancy, the burden rests upon the claimant.

_____The record reveals that the claimant has had two previous workers’ compensation injuries. He clearly has some knowledge of the actions necessary in the event of an employment related injury. At the time of his alleged injury he was working for one of the largest hospitals in this area. This facility maintains a well staffed emergency room. I find it incomprehensible that an individual with the education and intelligence of the claimant would fail to use these readily available services for the treatment of an injury sustained while working for this very hospital, particularly when he was on the premises (regardless of whether or not he had group insurance). I also find it somewhat incredulous that the claimant would apply for family medical leave

for a work related injury, rather than applying for workers' compensation benefits.

In summary, it is my opinion that the claimant has failed to prove the occurrence of a specific employment related incident or accident on either July 30, 2003, the latter part of August of 2003, or any other date during his period of employment with this respondent. I further find that the claimant has failed to prove by the greater weight of the credible evidence the occurrence of any physical injury to his back that arose out of and occurred in the course of his employment with this respondent, particularly one that is identifiable by time and place of occurrence. The claimant's failure to prove these statutory requirements compels me to find that he has failed to prove the occurrence of a "compensable injury" to his back at any time during his period of employment with this respondent, including July 30, 2003. Therefore, I have no alternative but to deny and dismiss this claim in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including July 30, 2003, the relationship of employee-self insured employer existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$198.00 for total disability benefits and \$154.00 for

permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a “compensable injury” to his back on July 30, 2003, or any other date with his employment with this respondent. Specifically, the claimant has failed to prove the occurrence of a physical injury to his back that arose out of and occurred in the course of his employment, that was caused by a specific incident, and that is identifiable by time and place of occurrence.
5. The respondents have denied the occurrence of any compensable injury to the claimant’s back and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge