

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508814

WILLIE B. JONES, EMPLOYEE

CLAIMANT

R C LANDSCAPING, EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED AUGUST 23, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 26, 2006, at Marion, Crittenden County, Arkansas.

Claimant represented by the HONORABLE MARC I. BARETZ, Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE KENNETH OLSEN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On March 14, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The parties also stipulated to an average weekly wage of \$244.88.

The testimony of Willie B. Jones, the claimant, and Randy Carroll, couple with medical

reports and other documents comprise the record in this claim.

DISCUSSION

Willie B. Jones, the claimant, with a date of birth of November 8, 1946, testified that he got to the fifth grade in school. Claimant added that while he is unable to read, he can write, “just a little bit”. The testimony of the claimant reflects that he had been employed by respondent-employer off and on since the start up of the business in the 1980s. Respondent-employer is a landscaping contractor.

The testimony in the record reflects that the job duties performed by the claimant in his employment with respondent-employer entailed medium to heavy manual labor. In describing the kind of job duties that the claimant performed, Randy Carroll, the owner of respondent-employer, testified that in addition to operating equipment claimant could do anything he was asked. (T. 8). The claimant was able bodied and physically able to perform his assigned job duties. There is no evidence in the record to reflect that the claimant was physically restricted or impaired relative to his back prior to June 6, 2005.

The credible testimony in the record further reflects that respondent-employer routinely conducted drug screen testing on its employees. Claimant denies that he is a drug user or that he has ever been arrested for drugs. Claimant has never refused to take a drug test during his employment with respondent-employer. Indeed, the evidence in the record is to the contrary, in that the claimant has taken a drug screen test whenever requested. There is no evidence to reflect that the claimant ever failed a drug screen test. Regarding the use of illegal drugs claimant is emphatic in his response, “I don’t mess with drugs”. (T. 43).

In describing the events of June 6, 2005, which serves as the basis for the present claim,

the testimony of the claimant reflects that he sustained the injury to his back while assisting in the loading of equipment on a trailer. In describing the accident, claimant testified:

Well, that day Logan, I was behind him [Mr. Carroll].

So I was back - - so Logan, and every time he would start up that ramp there to be loaded on the trailer - -

Right. Heavy Logan. So he will start spinning. He couldn't make it.

So, then he hollered and told me, said to get behind him and give him a shove.

* * *

I was driving one [mower] and Logan was driving the other one.

* * *

Okay. So when I went back and the second time to give him a shove, I kind of bumped him and, well, he went on up. And when I got on up there where he stop, I started the same thing, started spinning.

I rolled back down and I get me another one - - go. So I - -

* * *

But what happened, when I rolled back the second time - -

- - and when I - - when I hit it, well he went on. And when I got there to the little ole - - little ole crossing outfit there, just like that right there (indicating), and when I hit it, my mower went up in the air, the front end went up in the air just like that. Well, it had kind of off balance and, you know, I'm trying to control it, but it's steadily going up, up in there.

Steadily raising up in the air with me.

So, after it got so far up in the air, Randy, he ran up there to try to - - to help me, you know. And when the mower came - - when the mower came down, it caught him on - - on this side right here (indicating) on the left side.

Right. It caught him, but his - - and so that threw the mower was on me. And if it hadn't been for his son, I wouldn't be here today.

Because his son - - he son ran up there, because his son heard the hollering, his son ran up there and grabbed that mower. Big as that mower is, that's the first time I ever seen a young man, he just picked up that mower right off that trailer just like that and went up there.

And I mean, if it weren't for that, I would be dead. You know, if his son hadn't did that, it would have killed me immediately, right off. (T. 43-46).

Claimant testified that immediately following the accident he knew that he was hurt. Claimant maintains that he could not move at all:

I couldn't get up, I couldn't move. I couldn't get up. I couldn't even turn myself.

Yeah. Yeah. That - - that mower was on me. If his son hadn't have - - hadn't have hurried up and gotten it off of me, like I said, a minute or two I would have been dead.

It would have killed me instantly, like that. (T. 46-47).

Claimant was transported by ambulance to the emergency room of Crittenden Memorial Hospital. Claimant denies that he was administered medicine at the accident scene by the paramedics. Claimant elaborated:

They didn't give me no medicine. See, at the time, they was - - they was trying to talk to me, trying to get some sense into me, you know.

But I was gagging, I started gagging for breath, you know. (T. 47).

Claimant denies completing paperwork once he arrived at the emergency room of Crittenden Memorial Hospital. Claimant added that he could not fill out paperwork in any case due to his inability to read. The testimony of the claimant reflects that he was in severe pain and that he relayed same to medical personnel. Claimant recalled Mr. Carroll being present at the

emergency room. Claimant further maintains that he told Mr. Carroll that he would take a drug test. Claimant credibly testified that he has “never refused a drug test in my life”.(T. 50). At the time of the hearing the claimant was 59 years old and had never been arrested for drugs.

Claimant testified that he did not think that he was alright once he was discharged from the emergency room of Crittenden Memorial Hospital following the accident:

No. I was i so much pain, I was in so much pain, I didn't know what it - - I thought I was dying. All back here, it was - - it was killing me. So when Randy got - - when Randy carried me to the house, I finally got in there and laid down. When I laid down, my landlord didn't even know I was back there until the rest of them got off from work, then they came by the house. And so she had pulled up. She said, well - - she called me BB. She said, “where BB at?” Said, “BB got hurt.” Say, “I guess he's back there in the room, ain't he?”

She say, “I don't know. Let me go back there and see.”

But I was back there. I was lay8ing back there in so much pain until I don't know, it was going through my head, you know, I was just suffering.

So, she came by, she got to talking, she said, “You know what?” I said, “What?”

She said, “Now, if you - - if you pull through the night with this, in the morning I'm going to take you to the clinic.”

So she got up that morning, got - - well, matter of fact, she fixed me a little breakfast first. I ate a little breakfast. So she came down, she helped - - she held her arm just like this right here and she told me grab a hold to her arm, she, you know, stood me up. So I got up and pjt my clothes on. I got my clothes and everything on.

So she said, “You about ready?” I said, “Yes.”

So she showed me out there, I got in her car, and she carried me to the clinic. (T. 50-51).

Claimant was taken to White River Clinic. and returned on several occasions for medical treatment relative to June 6, 2005, accident. The testimony in the record reflects that the claimant was also seen Cross County Hospital in Wynne for complaints growing out of the June 6, 2005, accident. Claimant maintains that he was referred back and forward between the two

medical providers, White River Clinic and Cross County Hospital.

Claimant was ultimately seen by a Jonesboro neurosurgeon relative to his complaints growing out of the June 6, 2005, accident. Regarding the afore, claimant testified:

So I went back this time. And when I went back, I think they gave me some papers or some x-rays and stuff. But otherwise the doctor at the White Water River Clinic, she say, you take these here, the x-ray, to the back specialist in Jonesboro. I said, okay. So Judy Mae, she carried me to Jonesboro.

All right. When I go to Jonesboro, I was there to the doctor, you know, called me in . So I wen in there. The doctor said, "What I'm going to do, I'm going to send you about two blocks back here, you make a left and you go in there and you going to take some more x-rays." I said, "okay".

So I went in there, I took them x-rays, you know, whatever, come on back out. And so I had to take them on back down to the doctor, you know, where, the boy that was seeing me.

I went back there. He looked at it. He had them on - - up in a - - what you - - in the those big glass thing where you stick x-rays up there. (T. 52-53).

Claimant continued:

He said, "Now, Mr. Jones," that's what the doctor said, and the woman who was with me, she was in there, too. He say, "Now, you see here?" I say, "Yes."

Said, "You see these two bones here sticking out? Right here?" I say, "Yes. I see that."

He said, "Now, them two, that is broken." (T. 53).

Claimant denies that he was having any difficulty with his back prior to the June 6, 2005, accident noting that there were no physical limitations on his back with respect to lifting or performing his assigned job duties. Likewise claimant denies that the problems with his back are attributable to his activities subsequent to the June 6, 2005, accident.

Claimant acknowledge that following the accident he received "two or three checks" from respondent-employer. Claimant explained:

I would - - I called him, and because the woman told me that she didn't have no gas or nothing, I asked him would he lend me \$50. That's what I asked him. I said, "Would you lend me 50?"

He said, "Yeah."

So, I went - - he told me to come pick it up. I went to his house and picked it up. I got me and some more people carried me, went and picked the money up. (T. 54-55).

As a consequence of his contact with Mr. Carroll during which time he was borrowing money claimant maintains that his employer was aware of the fact that he was going back and forth to the doctor.

Claimant maintains that he reported the June 6, 2005, accident as the source of his injury to each of his medical providers. Claimant's testimony reflects that after he was unable to get his prescriptions filled and without a source of income he filed a claim for workers' compensation benefits. Claimant asserts that he has been unable to obtain medical treatment regarding his injury since he last received same in October 2005.

During cross-examination, claimant testified that the weight of the lawnmower that was pinning him in the June 6, 2005, accident was less than 3,500 pounds, but rather in the neighborhood of 2000 pounds. Regarding the actual number of co-workers that assisted in removing him from the pinned equipment, claimant testified:

Well, like I say, it had me pinned down, so - - and, you know, I just couldn't really just say. But I know I saw Chad, because he was right there almost by my head there when he grabbed that thing. And he just picked it up and threwed it. I know when I saw it again it was on the ground sitting there running. (T. 63).

Claimant's testimony reflects that due to the amount of pain he was experiencing from the accident, that the hospital he was fading in and out of consciousness when he arrived at the

hospital. Claimant acknowledged that he had a medicaid card with him at the time. Claimant maintains that the owner of respondent-employer, Randy Carroll, was aware that he was on medicaid:

Because when he - - when he come - - come to pick me up when I first started working for him, he knew I was on - - I was on medicaid.

Well, I mean, we used to talk about it because I used to - - I used to borrow money from his father. And - - and his father told him, you know, that - - that I was drawing a check, you know. So they did discuss that.

Yeah. We have talked about it. Minute - - well, matter of fact, a bunch of times we had talked about it. (T. 66-67).

During his deposition claimant maintained that it was Mr. Carroll's idea to put the medical treatment that the claimant received at the hospital on June 6, 2005, on the claimant's medicaid card. In testifying before the Commission in the workers' compensation hearing, claimant elaborated:

Here what they did. The nurse went in my - - went in my pocket just like this right here. And I start - - and I was in a lot of pain. And I show you (indicating) - - (T. 67).

Claimant maintains that Mr. Carroll was in discussion with hospital personnel, however as to the specifics of the conversation, claimant testified:

Well, I couldn't - - I couldn't - - I couldn't understand what he were saying. But I know they had the blue card, so I know roughly what was going on.

Yeah. Put this on the medicaid. Because the nurse had my medicaid card. Then she was sitting there writing it down on some paper. (T. 69).

At the time the claimant was transported to the hospital following the accident, he was

strapped on a board and a collar was placed on his neck. X-rays were performed during the claimant's emergency room admission. Claimant estimates that he was at the hospital for approximately an hour before his discharge.

Claimant acknowledged that in route home following his discharge from the emergency room he asked Mr. Carroll to send somebody to pick him up for work the next Monday, June 13, 2005. At the time, claimant testified it was his intention to return to work on Monday morning. Claimant testified that Mr. Carroll purchased his medicine on one occasion.

The testimony of the claimant reflects that it was due to the residuals of his injury that his landlady, Ms. Judy Mae Selsby, assisted him in getting to the clinic White River Clinic, which later referred him to Cross County Hospital. Claimant explained that he was in so much pain that Ms. Selsby carried him to the clinic. Claimant denied that he refused to tell Mr. Carroll the names of the doctors from which he was receiving medical treatment relative to the June 6, 2005, accident.

Claimant testified that he received a telephone call in October 2005, from Mr. Carroll regarding an out of town job that respondent-employer had in Atlanta, Georgia:

Here is what he told me. He said get - - go and try to get you a statement from the doctor that you able to go back to work. And I said, No. I said, they won't - - they refuse to give me a statement to go back. (T. 81).

At the time he receive the telephone call from Mr. Carroll claimant testified that he was not receiving any income nor was he receiving a check from respondent-employer. Regarding the checks that he did receive from respondent-employer, claimant maintains that the three checks he receive were each for one week.

Claimant concedes that between the time that he was taken home from the hospital by Mr. Carroll and the time he filed his workers' compensation claim, he never called and asked Mr. Carroll to file a claim on his behalf. In discussing the filing of the workers' compensation claim, claimant testified:

Well, really I didn't file it myself. The people that I was going for help, they the ones really called in. Called them.

At the - - at the welfare office, Social Security office, whatever. They said they suppose to have Workers' Comp. "Did you get hurt out on the job?" I say, "Yeah."

"Well, they supposed to have Workers' Comp on that job."

Who?

Oh, they - - they - - they didn't pay them, what, about - - after they found out the I had got hurt on that job, they cut everything, they dropped everything. (T. 83).

The testimony of the claimant reflects that when he received the October 2005, telephone call from respondent-employer regarding the Atlanta job he was not physically capable of working due to residuals of his injury. Claimant was under the care of Dr. Jeffery Kornblum, a Jonesboro neurosurgeon, during the October 2005, time period.

Claimant maintains that following the October 2005, visit to Dr. Kornblum he was directed to remain off work through the end of the year. Regarding any surgical recommendation by Dr. Kornblum, claimant testified:

Here is - - here is what he said. He said when - - after I went there, he said, "When this first happened, when this accident first happened to you, instead of them sending you home, they should have been carrying you up to the operating room where they could go into your back." (T. 84).

Claimant was seen by Dr. Kornblum on October 25, 2005. Claimant also maintains that went to

Dr. Kornblum's of two or three different time however was unable to be seen because he did not have any money or insurance. Claimant's testimony reflects that he was provided a written document by Dr. Komblum with direction to provide it to respondent-employer to see if the employer would pay for the cost of his medical treatment. (T. 86).

The testimony of the claimant reflects that since the end of 2005 he has not attempted to find work because he has not been physically capable of doing any work. Claimant maintains that for a week or two prior to Christmas in 2005 he was not physically able to walk due to residuals of his injury. Claimant testified:

All - - look, from the time of that accident, I ain't been able to walk or do nothing since then. And you said, just like I said, last Friday, I eventually left - - made it up town and was walking back, I made it as far as the clinic, don't you know that. Now I went in the clinic and I told that lady that the doctor- - I said, see can you call somebody to come pick me up, I said, because I ain't able to walk back to the house. (T. 87).

Regarding his intentions to return to work, claimant testified regarding a discussion he had on the subject with one of the physicians at the White River Clinic:

I wen there to try to work up talking to her about it. She said, "Mr. Jones, if you think about going back to work, you get out there and try to do some work," she said, "the next time - - next time you will be - - you're coming here in a wheelchair. you won't walk no more." (T. 88).

Claimant has attempted to reinstate his social security disability benefits. Claimant initially begin receiving social security disability benefits in the 1980s when he fell from a porch and broke his jaw. Claimant's testimony reflects:

Well, I was drawing before I started working for Randy.

They - - they cut me off because I was only allowed to only

make so much. And so Randy turned in too much on me a couple times and they cut me off. So I have been off on this accident for about two years before I had drawn - - before I drew any check, you know, they cut me off completely. But they still let me keep my insurance. (T. 89).

Mr. Randy Carroll, owner of respondent-employer, was present at the time of the June 6, 2005, accident which serves as the basis for the present claim. In describing the accident, Mr. Carroll testified:

I had a - - I have a trailer that I always carry all the mowers on. And one of the employees that I had was on the first mower, had the back end of it - - this trailer that we was carrying it on, the back end of it hung on the gravel. And Mr. Jones was on the second mower going to load it. And I instructed him to take and push the mower up on the - - on the trailer to where the back end of it would clear, to where the tires would get traction.

And whenever he got up on the trailer and he was parked on the other end, then he attempted to come up on the mower - - the trailer his self. And then he started up the trailer and about halfway up, he halt - - stopped to take off again, and when he did, well, the mower just started coming back on him. And at that point I reached and got in behind the mower and I grabbed the front of it. And he just kept pushing the handles instead of letting go of them. He kept pushing the handles. It pinned me on the ground and it had him between the two ramps of the trailer. (T. 8-9).

Mr. Carroll maintains that the claimant was still in the seat of the mower, and did not cry out in pain at that point. The accident occurred between 7:20 and 7:30 a.m. on June 6, 2005.

Regarding the onset of the claimant's complaint of injury relative to the accident, Mr. Carroll testified:

After we - - after several of us had gotten the mower off of him and got him out from underneath the two - - between the two ramps - - he - - he was starting to try to get - - he wanted to get up off the ground, and just from my knowing that I need to, you know, make sure he's okay before we, you know, try to let him move around any, I made him lay on the ground until I could, you know, look him over, make sure he was all right.

At that point it didn't appear that he was hurt at all. And but I went ahead and I called an ambulance out just to - - just to make sure that he was okay.

And then when the ambulance people was there, then he was - - then he had started moaning and groaning and acted like he was in pain.(T. 10).

Mr. Carroll testified regarding his observation of the claimant immediately following the accident:

Of course, when it happened, I was involved in it. It - - you know, I was injured in the process myself. But after reviewing, seeing him between the two ramps of the trailer, I didn't really feel that there was - - he was hurt, you know, to - - to, you know, any significant degree. But the problem was is I was worried about how to get the mower off the top of him without it sure enough hurting him or falling down on top of him. (T. 24).

Mr. Carroll estimated the weight of the mower at approximately 3,500 pounds, which is steered with two sticks instead of a steering wheel. Mr. Carroll maintains that the claimant did not fall off of the mower in the accident:

He was still in the seat between the two ramps.

The ramps were - - you know, the ramps were higher up off the ground than the ground itself.

He was positioned between the two ramps.

And, I mean, the mower - - the mower weight itself was hardly any on him, because he was between the two seats.

He was sitting in the seats between the two ramps. (T. 12).

Mr. Carroll declined to describe the claimant's final resting position on the overturned mower as being an awkward physical position, although the claimant's head was "turned over to one side". (T. 12).

Mr. Carroll summoned an ambulance and the claimant was transported to Crittenden

Memorial Hospital in West Memphis. Mr. Carroll testified that he completed paperwork at the admission desk and provided the name, address and other information relative to respondent-employer. Mr. Carroll denies that he instructed hospital personnel to have the charges for the claimant's medical treatment billed to medicaid. Mr. Carroll maintains that the idea to bill medicaid for the claimant's June 6, 2005, injuries was that of the claimant and the girl at the front office at the hospital. (T. 94).

Mr. Carroll testified that the claimant did not return to work following the June 6, 2005, accident. While the claimant did not receive any workers' compensation indemnity benefits, Mr. Carroll's testimony reflects that he did pay the claimant:

I paid him for - - it was a total of eight weeks. Six of them I paid through my company and two - - two of the other two times I had cash on me whenever I met up with him and I just paid him cash. (T. 14).

Mr. Carroll testified that on those occasions that he observed the claimant walking around or talking following the June 6, 2005, emergency room visit, the claimant did not appear to be having problems with his back nor did he say anything about his back.

Mr. Carroll noted that he made several attempts to call the claimant, and, in fact, reached him on several occasions. Mr. Carroll's testimony reflects:

And my concern was is, you know, I wanted him to come back to work.

And so I would keep calling and I - - and I elected to pay him through the time that he was off work. And I was keep - - wanting him - - he kept telling me he was going to go to the doctor, he was going to go to the doctor, and I kept asking him for doctor's reports to let me know what was going on.

And I never got those. And after six weeks of it, you know, I just - - you know, I just figured, you know, I'm fighting a losing battle. (T. 14-15).

Mr. Carroll testified that he was unaware of the claimant's course of medical treatment until he stopped paying him:

At that point that's when he started telling me, you know, that he had went to a neurosurgeon and, you know, the neurosurgeon told him he had a fractured back. And I said, BB, you know, if you've got a fractured back - - Willie. I'm sorry. BB is his nickname.

* * *

And at that point, you know, he told me that the doctor - - I asked him, I said, well, why aren't you in the hospital, be - - Willie? If you've got a fractured back, that - - that would be serious.

And he would come by my house to, says he can't get to the doctor, when I would ask him for paperwork to go to the doctor. He would come to the house and he would borrow \$50 off of me to get some lady over there, I believe her name is Judy Mae - -

- - to - - charges hem \$50 to take him to the doctor.

I would call that afternoon. I either wouldn't get a response or he would say that he didn't go.

So, at that point, you know, I just gave up on trying to, you know, work with him. (T. 15-16).

Mr. Carroll testified that while the claimant can write "a little bit", he has problems with reading. During the course of his employment of the claimant, Mr. Carroll noted that the claimant has taken drug tests and passed them. Mr. Carroll's testimony reflects that normally a drug screening test is performed once a year. Regarding whether he had reason to believe the use of drugs played a part in the June 6, 2005, accident, Mr. Carroll testified:

Well, that's my main concern. Because whenever I filled the paperwork out at the hospital front desk, it was my all in my name, it was as Workman's Comp injury, and I told the lady at the front desk that my insurance company will probably be paying for it.

And whenever I did get to go back to see Mr. Jones, then I

instructed him after I had talked to the doctor and she had told me that she can't find anything wrong with him. And she came back in the room while I was present and was talking to him.

And she was trying to get him to show her where he was exactly hurting at.

So when she walked out of the room, I informed Mr. Jones at that point that he was going to have to take a drug test, because under the Workman's Comp law, when an employee gets injured on my job, that's one of the things that I have to do.

So the doctor - - at that point I had asked her did she take any x-rays and she said no. And I said, "Well, I would feel better if you did."

And so she took a round of x-rays and she either - - she showed me either four or five, and I don't - - I don't remember how many it was - - - - at that point.

And whenever she walked out in the hall and stuck them up on the board where they have the lighting. She - - she said, "Mr. Carroll," she said, "I can't find nothing. There is nothing. Nothing."

So, I went back in and I went and talked to BB - - Willie, I talked to Willie. And he told me at that point that he wasn't going to take a drug test because he was scared it would hurt his check. And that the girl at the - - the girl that was standing at the front desk was there with the paperwork, she already had him in the computer. And that she - - that I didn't have - - I didn't have to sign no papers. (T. 17-18).

Mr. Carroll concedes that the claimant appeared to be in pain while he was at the hospital, although the claimant was unable to actually pinpoint the location of the pain. (T. 19). Mr. Carroll paid for the cost of the claimant's medicine with which he was released from the hospital.

Mr. Carroll maintains that the June 6, 2005, accident was caused by the claimant's hesitation on the trailer. Mr. Carroll observed that the claimant had loaded the same mower on the same trailer over a thousand times in the past.

Mr. Carroll testified that it was his understanding that the claimant received some kind of subsidy check from the government, Social Security disability. Mr. Carroll maintains that the claimant relayed that the results of a drug test would adversely impact the afore check. Mr. Carroll testified that he was not aware that the claimant had medicaid.

Mr. Carroll testified that once the claimant arrived at the hospital on June 6, 2005, his pain behavior changed. Mr Carroll asserts that the claimant was conscious and coherent while awaiting the arrival of the ambulance and did not appear to be in a semi-conscious state or in any danger of losing consciousness. Upon his discharge from the emergency room of Crittenden Memorial Hospital, Mr. Carroll testified that the claimant did not appear to be in pain during the ride to claimant's residence in Parkin.

In explaining why he did not feel it necessary to bring up the question of workers' compensation insurance with the claimant following the June 6, 2005, emergency room visits, Mr. Carroll testified:

The reason why is because, one, he claimed it on his medicaid at the hospital as far as payment. He was supposed to come back to work. And so, therefore, I felt obligated that I would pay him while he was sick until he got better and then I would, you know, put him back to work after that point.

So, you know, I kept thinking - - he kept telling me that he was coming back. He would say, "Oh, I'll be back neck week." I mean this happened three or four times, me calling him trying to find out when you're getting - - when you're going to be ready to come back. (T. 31).

Mr. Carroll testified that respondent-employer became a full time venture in 1998. For a period of two years prior to the afore, the company was part-time as he worked full time at a different job. Mr. Carroll maintains that while he has know the claimant since 1982-83, the claimant did not become a paid employee of respondent-employer until 2000. Mr. Carroll further testified that the entire time that the claimant has been employed by respondent-employer he has know him to be the recipient of some type of Social Security disability check.

Mr. Carroll acknowledged that he has never in the past filed a workers' compensation claim on behalf of one of his employees. Respondent-employer's employees reported for work at

7:00 a.m. Mr. Carroll maintains that approximately four (4) months following the accident he was contacted by the claimant regarding an out-of-state job that respondent was doing in Georgia:

No, sir. He contacted me.

Some of the other employees that worked for me lives in the same residence that he does. The lady where he lives at charges them all a flat rate every month to stay at that house. And they were going on this same job with me, and when he found out, well, we was fixing to leave, he had contacted me to see if he could go out of town with me.

I asked him was he okay and could he get me a doctor's excuse that would allow him to come back to work.

* * *

He said that he would have - - he would have to go all the way back to Jonesboro to get a doctor's release and he needed money to pay this lady to take him to the doctor. And I gave him cash money to carry him to a doctor to get a release where he could come back to work. (T. 94-95).

Mr. Carroll denies that the claimant first worked for him during the time respondent-employer was operated on a part-time basis in 1996. According to Mr. Carroll the claimant first appeared on the payroll records of respondent-employer in 2000/2001. At the time of the June 6, 2005, accident claimant earned either \$7.50 or \$8.00 per hour. Regarding the payment of the claimant's regular wages following the accident, Mr. Carroll maintains that he has documents evidencing five payments in addition to two (2) payments of cash. With respect to the circumstance surrounding the payment of cash to the claimant, Mr. Carroll testified:

He would either come to my house, and my wife is my bookkeeper so sometimes she would make time out on a Thursday night, and if she couldn't get a hold of me that day, she wouldn't make his check out and he would catch me at home or catch me at the shop and I would give him - - I would - - if I had money in my pocket I would give it to him or I

would go to the house and write the check out for him. (T. 96-97).

While Mr. Carroll maintains that the decision to file the claimant's medical treatment growing out of the June 6, 2005, accident was the product of the claimant and an admission clerk at Crittenden Memorial Hospital, he acknowledges that he took no action to assure that the cost was properly documented as a workers' compensation claim thereafter. Mr. Carroll asserts that he disclosed initially to the hospital personnel that the claimant was his employee and that the injury would be filed with his workers' compensation carrier. Mr. Carroll has no explanation for the information on the hospital records reflecting the claimant to be disabled and no employer.

Mr. Carroll acknowledged that his father had a farming business and that both he and the claimant helped out on occasions doing yard work. The testimony in the record reflects that one of the earlier jobs of respondent-employer was in 1996/97 on Hollywood Street in Memphis, the Hollywood dump site and that the claimant worked on the site for respondent.

The medical in the record reflects that claimant was seen at the emergency room of Crittenden Memorial Hospital on June 6, 2005, and was admitted at 07:36 a.m. The emergency room report reflects that claimant was transported via EMS. The claimant's chief complaint was low back pain. The emergency room records also reflect that the trauma suffered by the claimant occurred at "work". The lawnmower roll-over is listed as the cause of the claimant's injury. (CX. #1, p. 6-7). The emergency room records further reflect that claimant complained of low back pain, bilateral hip pain, left shoulder pain. The records also reflect that prior to arriving at the emergency room a neck and back brace had been applied while transporting the claimant. During claimant's June 6, 2005, emergency room admission he was provided medication [Toradol and Lortab], x-rays were obtained, and he was provided a prescription for Darvocet

and directed to remain off work for at least two (2) days. Claimant was also directed to follow up with his family physician for additional treatment relative to his injuries. (CX. #1, p. 6-13). X-rays of the claimant's lumbar spine obtained during the June 6, 2005, emergency room visit did disclose the presence of objective findings. (CX. #1, p. 12).

On June 13, 2005, claimant was seen at the White River Rural Health, Inc. clinic, in Parkin, for complaints attributable to the June 6, 2005, accident. In addition to reciting the June 6, 2005, riding lawnmower accident, the June 13, 2005, progress note listed the weight of the lawnmower at approximately 1500 pounds. Claimant had continuing complaints of neck, back and chest pain. The Darvocet N was noted by the claimant as not helping with his pain. Following his examination on June 13, 2005, claimant was prescribed Lortab and Flexeril. Claimant was directed to return to the clinic. (CX. #1, p. 14).

Claimant was again seen at the White River Rural Health, Inc., clinic in Parkin on June 15, 2005, due to complaints of pain growing out of the June 6, 2005, accident. The Progress note reflects the results of the radiologist report from the emergency room, which disclosed fractures in the ribs. Additional CT c-spine films were ordered. (CX. #1, p. 15-16).

Claimant underwent the radiology studies at Cross Ridge Community Hospital in Wynne, Arkansas. The June 16, 2005, CT of the lumbosacral spine relative to the claimant reflects, in pertinent part:

CT images of the lumbosacral spine were obtained as the patient also now complains of low back pain and x-rays of the lumbosacral spine reveal compression of L1.

CT imaging of the lumbar spine was obtained from L1 up to the L5-S1 level.

There is evidence of mild compression of L1 vertebra associated with slight vacuum disc phenomena at the L 1-2 level and also small fracture of the spinous process of L1 vertebra noted as well.

The findings are thought to be acute in nature.

IMPRESSION: Burst compression fracture of L1 of a mild degree with anterior wedging. This is also associated with mild vacuum disc phenomena at the L1-2 space and possibly a tiny avulsion chip fracture of the superior anterior osteophyte at L2 and also the spinous process of L1 vertebra. Dr. Sarkar was notified of these results on completion of the exam. (CX. #1, p.17).

The CT of the claimant's cervical spine performed on June 16, 2005, at Cross Ridge Community

Hospital reflects:

CT evaluation of the cervical spine was obtained from the skull base to the thoracic inlet.

There is evidence of fractures of spinous process of C4, C5, and C6. Fractures do not involve the anterior elements and are noted at the base of the spinous processes at these three levels.

The C7 vertebra appears to be intact.

IMPRESSION: Fractures of the spinous processes of C4, C5, and C5 vertebrae. A report was called in to this affect to Dr. Sarkar by the on-call radiologist following completion of the CT scan. (CX. #1, p. 18).

On June 20, 2005, claimant was referred to a neurologist by his treating physician relative to the radiology findings. (CX. #1, p. 20).

On June 24, 2005, claimant was evaluated by Dr. Jeffery A. Kornblum, a Jonesboro neurosurgeon, pursuant to the above recommendation. (CX. #1, p. 25). In addition to reciting the history of the claimant's June 6, 2005, work-related accident and his complaints of pain thereafter, the June 24, 2005, report of Dr. Kornblum reflects, in pertinent part:

IMPRESSION: Mr. Jones has significant complaints of back pain,

very consistent with his injury and the presence of the fractures. I have reviewed the pictures and the problem with him and his wife.

RECOMMENDATIONS: I have advised that he start wearing a TLSO and I have told him to expect to be wearing that for about two months while the spine heals. I have reviewed the cervical fractures with him and as he is now almost three weeks since the injury with little neck complaint, no specific additional therapy to be recommended. I have advised him to avoid any lifting over 10 pounds and not to be picking anything up off the floor at this time. I have given him an off work slip. I have advised that he should be wearing the brace 25/7. I will see him in one month in follow up with follow up x-rays to be obtained at that time.(CX. #1, p.23).

The record reflects a June 24, 2005, off work slip authored on behalf of the claimant by Dr. Kornblum directing the claimant to remain off work for eight (8) weeks. (CX. #1, p. 24).

On July 13, 2005, claimant was again seen at the White River Rural Health, Inc., clinic relative to complaints growing out of the June 6, 2005, work-related accident. A review of the July 13, 2005, Progress Note clearly reflects that the claimant was incapacitated and in need of physical assistance, however his landlady, who was assisting the claimant in making medical appointment was not in a position to take on the entire task. (CX. #1, p. 27).

On July 21, 2005, claimant was again seen by Dr. Kornblum. The progress note relative to the July 21, 2005, visit of the claimant reflects, in pertinent part:

Mr. Jones is seen in follow up on July 21, 2005. He has obtained the TLSO as requested. He just got this a little over a week ago. He states he does feel better in the brace. He does still have some pain that extends towards his left hip though he notes he is feeling better. He is without any significant neck complaint. He has had x-ray as requested. He shows spinous process fractures of C4 and C6. There is some narrowing of the C4 vertebrae though I cannot be certain whether this is an acute or chronic change. In his lumbar spine he shows compression fractures of L1 and L2. He is ambulating well, he is without complaints of leg symptoms.

Impression: Mr. Jones appears to be doing well since his work injury

with subsequent fractures. I have asked him to maintain the use of the brace and avoid bending and lifting and no lifting over 10-15 pounds. He is aware that he will be out of work for a couple of months. I have asked to see him in about six weeks with follow up x-ray at that time. (CX. #1, p. 30).

The result of the x-ray studies obtained in connection with the claimant July 21, 2005, visit to Dr. Kornblum are contained in the record and demonstrate objective findings of the claimant's injuries growing out of the June 6, 2005, work-related accident. (CX. #1, p. 31-34).

Claimant was seen by Dr. Kornblum on October 25, 2005, in follow-up to his June 6, 2005, work-related accident. The report relative to the October 25, 2005, visit, reflects, in pertinent part:

Mr. Jones is seen in follow up on October 25, 2005. It has been several months since he was last seen, several appointments have been rescheduled. He notes that when he is lifting he has some back pain, he is not in a brace at this time. On exam, he is ambulating well. Straight leg raising is negative. Strength is 5/5. He has had follow up x-ray, the degree of collapse appears to be essentially the same, there has been no progression in is compression deformities. Spinous process fractures in the cervical spine again noted.

Impression: Mr. Jones is status post injuries as previously outlined with regard to compression fractures at L1 and L2 and clay shoveler fractures in the cervical spine. I have advised that he avoid any lifting over 30 pounds until the end of the year, as well as not to be shoveling through the end of the year. I have advised him in general of considering less laborus activities with regard to seeking out employment. If the need arises he may be referred for re evaluation. (CX.#1, p. 37).

The record reflect the off work certificate authored by Dr. Kornblum relative to the claimant on October 25, 2005. (CX. #1, p. 44).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical records and other documentary evidence,

application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 6, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On June 6, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$163.00/\$154.00, for temporary total/permanent partial disability.
4. On June 6, 2005, the claimant sustained injuries to his lumbar and cervical spine arising out of and in the course of his employment with respondent.
5. The claimant was temporarily totally disabled for the period beginning June 7, 2005, and continuing through the end of his healing period, a date to be determined.
6. The respondents shall pay all reasonable hospital and medical expenses arising out of the claimant's compensable injuries of June 6, 2005.
7. The respondents have controverted this claim in its entirety.

CONCLUSION

There is not a dispute regarding the existence of the employment relationship between the claimant and respondent-employer on June 6, 2005. Further the credible evidence in the record reflects that on June 6, 2005, claimant was involved in a work-related accident involving a riding lawnmower while discharging employment duties. Claimant asserts that as a result of the June 6, 2005, work-related accident he sustained injuries which required medical treatment and continued to require same. Further, claimant maintains that he has been rendered incapacitated from engaging in gainful employment, that he remains within his healing period, and that he is

entitled to appropriate temporary total disability and medical benefits as a result of the June 6, 2005, work-related accident. Respondents deny that the claimant sustained a compensable injury while in its employ. Further, respondents asserts that the claimant's injury, if any, was occasioned by the use of illegal drugs.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A) (i).

At the outset, based on my observations of the witnesses, consistency of the testimony with the medical and documentary evidence, I find the claimant to be the more credible of the witnesses to present testimony before the Commission during the hearing. There is no evidence in the record to reflect that the claimant suffered any physical limitations or restrictions in the discharge of his employment duties with the respondent-employer prior to June 6, 2005. Claimant fully discharged his assigned job duties in his employment with respondent prior to June 6, 2005. The evidence in the record further reflects that the claimant, as was the other employees of respondents, was subject to random drugs test during the course of his employment

with same. There is no evidence in the record to reflect that the claimant ever failed a random drug test. Further, contrary to the aspersion asserted by respondent-employer, there is no evidence in the record to reflect that the June 6, 2005, accident was anything but an “accident”, when the claimant attempted to navigate the lawnmower up the ramps after assisting another co-worker up the ramp. The credible evidence reflects that the accident occurred shortly after 7:00 a.m., there was a ridge across the ramps, and the prior lawnmower rider had experienced similar difficulty going up the ramp.

Emergency medical personnel were summoned and the claimant was transported to the emergency room of Crittenden Memorial Hospital with braces securing both his lumbar and cervical spine. There is no documentary evidence in the record to reflect that the respondent-employer requested that a drug screen test be administered to the claimant during the June 6, 2005, emergency room visit. Correspondingly, there is no documented evidence in the record to reflect that the claimant declined to submit to a drug screen test during the June 6, 2005, emergency room visit.

Respondent-employer asserts that upon presenting to the emergency room of Crittenden Memorial Hospital during the claimant’s June 6, 2005, emergency room visit following the accident he provided hospital admission personnel with the identify of his company, and relayed that the claimant’s injury “would probably” be paid by the workers’ compensation insurance carrier of respondent-employer. A review of the medical records of the claimant’s June 6, 2005, emergency room visit clearly reflects that the claimant was complaining of severe pain and not in a position to provide identifying admission information to medical personnel. There are no medical records in the evidence reflecting medical treatment being rendered to the claimant at

Crittenden Memorial Hospital prior to June 6, 2005.

The admission records relative to the claimant regarding the June 6, 2005, emergency room visit does not reflect the identity of the respondent-employer as the guarantor for the claimant's medical treatment. Respondent-employer's assertion that the change in the admission paperwork was the product of the claimant and an admission clerk of the hospital is not persuasive. Indeed, by respondent-employer's own admission he was aware that the claimant's need for medical treatment during the June 6, 2005, visit was the result of the work-related accident.

The medical in the record reflects objective findings of injury relative to the claimant cervical and lumbar spine as reflect in the various radiological finding. Further, the medical treatment rendered to the claimant under the care of the physicians at the White River Rural Health, Inc., clinic in Parkin the claimant's residence, as well as referrals therefrom, to include Cross Ridge Community Hospital, and Neurosurgical Associates of Northeast Arkansas, was reasonable and necessary in connection with the injury received by the claimant.

Claimant was taken off work by the attending emergency room physician at Crittenden Memorial Hospital at the time of his discharge on June 6, 2005. Claimant was provide pain medication, and anti-inflammatory medication in the treatment of his injury during the June 6, 2005, emergency room visit. During subsequent visits to medical providers, claimant underwent additional diagnostic studies and was directed to remain off work. The evidence preponderates that respondent-employer was award that the claimant was receiving medical treatment relative to his injuries growing out of the June 6, 2005, accident. Claimant did not again discharge employment duties for respondent or any other employer subsequent to the June 6, 2005,

accident. Claimant acknowledge that he received two (2) checks, one each week from respondent-employer, subsequent to the June 6, 2005, accident when he was unable to work and within his healing period.

The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become stable and if nothing in the way of treatment will improved that condition, the healing period has ended. Conversely, if further treatment will improve the condition and if the underlying conditions causing the disability have not become stable, then the injured employee remains within the healing period. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). In the instant claim, the claimant has been denied access to further medical treatment to address the residuals of his compensable June 6, 2005, cervical and lumbar spine injuries.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wage. *Arkansas State Hwy. and Transp. Dep't. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). The evidence preponderates that the claimant remains within his healing period and totally incapacitated from engaging in gainful employment, and is correspondingly entitled to the payment of temporary total disability benefits commencing June 7, 2005, and continuing through the end of his healing period, or until such time as he is released to return to work, a date to be determined. Respondents have controverted this claim in its entirety, to include the payment of medical and temporary total disability benefits.

As an aside, the record reflects that a pre-hearing conference was conducted in this claim

on March 14, 2006, at a time when the claimant was unrepresented, however respondents were represented by attorney. During the March 14, 2006, pre-hearing the May 26, 2006, hearing was scheduled for 10:00 a.m. in Marion, Crittenden County, Arkansas. A Pre-hearing Order and hearing notice of the same date, March 14, 2006, was forwarded to the parties. Claimant subsequently secured the services of an attorney to represent him in his claim. There was no change in the hearing date. On May 23, 2006, respondents requested a continuance of the scheduled hearing due to the fact that witnesses were out of state on a job and would not be available until after June 12, 2006. The continuance was denied. There was no showing that respondent-employer was unaware of the scheduled May 26, 2006, hearing or that they had not received the March 14, 2006, Pre-hearing Order and hearing notice. The evidence further disclosed that the “out of state” job being performed by the crew of respondent-employer was in Nashville, Tennessee, a distance of approximately 200 miles from Memphis, which is approximately 30 miles from the hearing site in Marion, Arkansas. Both the request and response thereto have been bluebacked as an exhibit to this record.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$163.00, for the period commencing June 7, 2005, and continuing through the end of the claimant’s healing period, a date yet to be determined, as a result of the June 6 2005, compensable injury in the employment of respondents. Respondents may claim credit for sums properly documented that have been paid to the claimant during the afore period. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable, necessary and related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable injury of June 6, 2005, to include medical related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge