

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F600369

SIMON PEAVLER, Employee

CLAIMANT

SSK TRUCKING, Uninsured Employer

RESPONDENT

OPINION FILED DECEMBER 12, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondent failing to appear.

STATEMENT OF THE CASE

This case comes on for review following a hearing conducted on November 15, 2006.

A pre-hearing conference in this claim was conducted on October 12, 2006. Notice of the pre-hearing conference was sent to the respondent by certified mail. The notice was returned by the post office indicating that the respondent "refused" acceptance of the certified mail. This notice was admitted into evidence as Commission Exhibit Number 2. Following the pre-hearing conference a hearing was set for November 15, 2006 on the compensability of this claim as well as claimant's entitlement to various compensation benefits. Notice of the hearing was sent to respondent by certified mail and was returned by the post office as having been "refused" by the respondent. This document was admitted into evidence as Commission Exhibit Number 3.

Respondent did not appear at the hearing conducted on November 15, 2006. Claimant appeared at the hearing and represented himself contending that he suffered a compensable injury while employed by the respondent. He seeks payment of medical benefits and temporary total disability benefits.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Respondent has a requisite number of employees to be subject to the Arkansas Workers' Compensation Law.
3. The employee/employer relationship existed between the claimant and respondent on November 23, 2005.
4. Claimant earned an average weekly wage of \$498.35 which would entitle him to compensation at the rate of \$332.00 per week for temporary total disability benefits.
5. Claimant has met his burden of proving by a preponderance of the evidence that he suffered multiple compensable injuries as a result of a motor vehicle accident on November 23, 2005.
6. Respondent is liable for unpaid medical treatment in the amount of \$664.43.
7. Respondent remains liable for additional medical treatment which claimant may need in the future which is causally related to his compensable injury.
8. Claimant is entitled to five weeks of temporary total disability benefits at the rate of \$332.00 per week for a total award of \$1,660.00.
9. Respondent is liable for payment of the court reporter's fee in the amount of \$138.75.

#### FACTUAL BACKGROUND

The claimant worked for the respondent driving a dump truck, hauling red dirt.

Claimant testified that on November 23, 2005 he was going down an exit ramp off I-540 when the brakes on his truck failed. As claimant turned his truck in order to avoid a collision with another vehicle, his truck rolled over and slid about 20 feet on the driver's side. As a result of this incident claimant's head struck the window, his ribs struck the door, and he experienced soreness in various other parts of his body including his shoulder and back.

After the accident the claimant was taken to the emergency room at Washington Regional Medical Center where x-rays were taken, claimant was given an injection and prescribed medication. Claimant testified that over the course of the next several days his soreness gradually increased; specifically, pain in his neck and low back. As a result, claimant sought medical treatment from Dr. Walker, a chiropractic physician, at Ozark Spinal Associates. Claimant has been evaluated and treated by Dr. Walker on several occasions. In addition to Dr. Walker, claimant also testified that he has been evaluated by his family physician, Dr. Robinson, who prescribed muscle relaxers.

Claimant has filed this claim contending that he suffered a compensable injury while employed by the respondent. He seeks payment of unpaid medical treatment, future medical treatment, and temporary total disability benefits.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to various parts of his body as a result of a motor vehicle accident which occurred while he was working for the respondent as a truck driver on November 23, 2005. Claimant's claim is for an injury caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by respondent on November 23, 2005.

First, I find based upon the evidence presented that the Workers' Compensation Commission has jurisdiction of this claim and that respondent had the requisite number of employees to be subject to the Arkansas Workers' Compensation Law. Claimant testified that in addition to his employment as a truck driver, the respondent also employed several other individuals as truck drivers. Since respondent employed more than two individuals, it is subject to the Arkansas Workers' Compensation Law.

I find based upon claimant's testimony and the remaining evidence presented that claimant has met his burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment with respondent and that it was caused by a specific incident identifiable by time and place of occurrence. As previously noted, claimant testified that he suffered multiple injuries to his body as a result of a motor vehicle accident which occurred when his brakes failed on November 23, 2005. This accident resulted in claimant's truck turning over and sliding approximately 20 feet. Immediately after the accident claimant was taken by his supervisor to the emergency room at

Washington Regional Medical Center for medical treatment.

Based upon the claimant's testimony which I find to be credible as well as the remaining evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that this injury arose out of and in the course of his employment and that it was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has met his burden of proving by a preponderance of the evidence that the injury caused internal or external physical harm to his body which required medical services or resulted in disability and that claimant has offered medical evidence supported by objective findings establishing an injury. Here, the medical evidence from Washington Regional Medical Center indicates that claimant was diagnosed as suffering from a contusion and a concussion. A contusion is an objective finding. In addition, the medical notes from Dr. Walker indicate that muscle spasms were observed in the claimant's lumbar area. Muscle spasms are also considered an objective finding. As a result of claimant's injury he was prescribed medical treatment in the form of medication and he was also taken off work for a period of time. Based upon this evidence, I find that claimant has satisfied the remaining elements of compensability.

In summary, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury as a result of the motor vehicle accident which occurred while he was employed by respondent on November 23, 2005.

Claimant testified that he earned an average weekly wage of \$498.35 while working for respondent. Under the Arkansas Workers' Compensation law, this would entitle claimant to compensation benefits at the rate of \$332.00 per week for temporary total disability benefits. According to claimant's testimony, he was taken off work for five weeks as a result of his compensable injury. Multiplying five weeks times claimant's compensation rate of \$332.00 equals an award of \$1,660.00 for temporary total disability benefits.

In addition, respondent is also liable for payment of all unpaid medical treatment. According to claimant's testimony he has unpaid medical from Dr. Walker in the amount of \$664.43. Respondent is liable for payment of medical benefits in that amount and is also liable for payment of all future medical treatment provided in connection with claimant's compensable injury.

Finally, respondent is liable for payment of the court reporter fee in the amount of \$138.75.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Respondent is liable for payment of temporary total disability benefits in the amount of \$1,660.00 and unpaid medical in the amount of \$664.43. Respondent will also remain liable for any future medical treatment provided in connection with claimant's compensable injury. Finally, respondent is liable for payment of the court reporter fee in the amount of \$138.75.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE