

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F506056

JASON L. REYNOLDS, EMPLOYEE

CLAIMANT

FIREBALL EXPRESS, INC.,
UNINSURED, EMPLOYER

RESPONDENT

OPINION FILED MAY 24, 2006

Hearing held before HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 28, 2006, at El Dorado, Union County, Arkansas.

Claimant was represented by HON. F. MATTISON THOMAS, III, Attorney at Law, of El Dorado, Arkansas.

Respondent was represented by HON. NORWOOD PHILLIPS, Attorney at Law, of El Dorado, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-referenced claim on February 28, 2006, in El Dorado, Arkansas to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on November 16, 2005, and a Prehearing Order was entered on November 18, 2005.

At the hearing the parties announced that the stipulations, issues, and respective contentions were properly set out in the Prehearing Order, subject to any modifications made on the record at the full hearing. A copy of the Prehearing Order was introduced into

evidence, without objection, as "Commission Exhibit 1", and made a part of the record.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction over this claim; that the employer-employee relationship existed at all relevant times, including May 6, 2005, and that the claimant's applicable TTD rate is \$55.00 per week.

By agreement of the parties, the main issue to be presented for determination concerned compensability. If compensability is overcome, a determination of claimant's entitlement to associated medical benefits, indemnity benefits, attorney fees and a change of physician must be addressed.

The claimant contended at the full hearing that he sustained a specific incident back injury on or about May 6, 2005, while performing essential duties of his job for his employer, Fireball Express. Claimant contended that due to his back injury, he is owed TTD benefits, PPD benefits, medical benefits, attorney fees and a change of physician.

At the full hearing, respondents contended this claim is not compensable. Respondents further contended that if the claim is adjudicated compensable, then the issue will be whether or not the claimant is entitled to additional benefits. That it was initially believed by the respondents that the claim was compensable and the medical expenses and TTD benefits were paid, but later investigation showed the claim was not compensable.

The claimant testified on his own behalf. Sarah Adcox, Christopher Aguilar, and Brian Johnson were called as witnesses by the respondents. The record is composed of the transcript of the February 28, 2006, hearing and numerous medical records.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The parties' stipulations recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and during the course of his employment with the respondents on May 6, 2005.
- 4) The respondent-employer admitted under oath his failure to secure Workers' Compensation Coverage at the time of the alleged incident for its employees. Therefore, the record in this matter shall be immediately forwarded to the Arkansas Workers' Compensation Commission Compliance Division for further investigation and proceedings.

DISCUSSION

_____The claimant, age 26, began working for the respondent-employer in April of 2005. The respondent-employer is in the convenient store business, and the claimant's duties included running the cash register, general cleaning, and stocking. After working for the respondent for about a month, the claimant testified he injured his back on May 6, 2005, while lifting Cokes. The claimant testified as follows regarding the alleged incident of May 6, 2005:

Q. Tell me about the day that you got injured.

A. It was night shift and I was closing. I was by myself. I was stocking the cooler and it's fairly limited - a very small space back there. I was sitting down and moving Cokes around, filling shelves. I heard and felt a loud pop and I really couldn't move for a while.

Q. Did you fall down, have to sit down? What did you - - - -

A. I was already sitting down. I couldn't stand up for a while so I stayed there. The store was still open but the doors were locked. I eventually managed to get up and I tried to do the remaining chores that I had but I really couldn't so I just left them, locked the store up, and went back to my dorm. (*T. pg.*

16, lns 3-18)

According to the medical records introduced at the hearing, the claimant first sought medical treatment on May 10, 2005, with Dr. Patrick Antoon. (*JX-1, pg. 1*) The

claimant testified Dr. Antoon "did a physical exam, prescribed pain killers, muscle relaxers, steroids, physical therapy and MRI." (T. pg. 18, lns 5-7) The claimant testified he continued to see Dr. Antoon over a period of time, but discontinued his physical therapy. (T. pg. 12, lns 12-18) The claimant testified as follows regarding why he stopped his physical therapy:

Q. And you discontinued the physical therapy at some point?

A. Well, in a sense. He would prescribe physical therapy and then I'd stop because he didn't renew it, and then he'd renew it again. Towards the end it felt good, you know, when I was there, but as soon as I stopped, you know, it had no immediate or long term impact on me positively and so I didn't see the point in wasting my employer's money on something that wasn't working so I stopped going at that point. (T. pg. 18, lns 16-25)

The claimant testified that he began having to wait too long in Dr. Antoon's waiting room and eventually stopped going to him. The claimant testified he then wanted to go to his family doctor in Magnolia, Dr. Pullig, but didn't because he couldn't get his medical records from Dr. Antoon.

The claimant testified that since the alleged injury of May 6, 2005, he continues to have no feeling in his left thigh, and that recently he has started losing feeling in his right thigh.

The claimant testified that currently his problems are in his mid to lower back, and that prior to his alleged injuries on May 6, 2005, he had never experienced similar symptoms.

The claimant contends he sustained a compensable back injury during his employment with the respondent on May 6, 2005. For the claimant to establish a compensable injury as a result of a specific incident which is identified by time and place of occurrence, the following requirement of A.C.A. §11-9-102(4)(A)(i) must be established:

- (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 existence and extent of the injury; and
- (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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the alleged injury, he fails to establish compensability of the claim, and compensation must be denied. C. Mikel v. Engineered Speciality Plastics, 56 Ark. App. 126, 938 S.W. 2d 876 (1997). The claimant has the burden of proving the job relatedness of an alleged injury without the aid of any kind of presumption in his favor. Farmers v. Little Knight Co., 220 Ark. 353, 247 S.W. 2d 111 (1952). The phrase "arising out of the employment" refers to the origin or cause of the accident, so the

employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S. W. 2d 879 (1985).

In the present case, there are varied accounts of the origin of the claimant's injury. The claimant testified he hurt his back "pop" when he was lifting Cokes while sitting down at his place of employment on May 6, 2005. Ms. Sarah Adcox testified the claimant advised her that he heard his back "pop" when he got out of bed. (T. pg. 32, lns 2-125 & pg. 33, ln 1).

When questioned about the alleged statements he made to Sarah Adcox concerning his back injury, the claimant could not remember:

Q. Did you call Sarah Adcox who works for the Fireball #1 on the morning of your - on the morning after your alleged injury?

(T. pg. 25, lns 23-25)

A. I don't remember. (T. pg. 26, ln 1)

When questioned further about his conversation with Sarah Adcox the morning after his alleged injury, the claimant seemed to start to remember a conversation; but had trouble recalling the specifics. When questioned about whether he told his store manager that he felt something "pop" while getting out of bed, the claimant again could not remember.

Q. Did you tell him that you couldn't get out of bed the next morning?

A. I'm sure I did.

Q. Did you tell him that while you were getting out of bed you felt something pop in your back?

A. I do not remember that. (T. pg. 27, lns 13-18)

The claimant seemed to be hazy on his recollection about his statements to Sarah Adcox. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural, 72 Ark. App. 209, 38 S.W. 3d640 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. The claimant's account of how his injury occurred was no more credible than Sandra Adcox's testimony concerning the claimant's admissions to her about how he hurt his back. The claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment. Based on the credible evidence, the claimant has failed to meet his burden. Further, the claimant's vague testimony and recollection regarding his alleged admissions to Sarah Adcox, cause this examiner to question the claimant's credibility with respect to the origin of his back injury. Again, the claimant even had trouble remembering if he told his manager that he hurt his back while getting out of bed:

Q. Did you tell him that while you were getting out of bed you felt something pop in your back?

A. I do not remember that. (T. pg. 27, lns 16-18)

Regardless of whether one believes the claimant hurt his back at work, or the next morning while getting out of bed, the conversation the claimant had with Sarah

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Adcox would have been the closest in time to either event than any statements the claimant subsequently made to Dr. Antoon, or to the owner of Fireball Express.

Due to the contradictions outlined herein, and the credible evidence contained in the record, I find the claimant has failed to prove by a preponderance of the evidence that his back injuries arose out of and in the course of his employment with the respondent employer. Accordingly, this claim is hereby respectfully denied and dismissed.

As outlined in the Findings of Fact and Conclusion of Law recited herein, the record compels this ALJ to forward the entire record of this claim to the Compliance Division of the Arkansas Workers' Compensation Commission for further investigation to determine if the employer has complied with A.C.A. §11-9-401.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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