

CLAIM NO. F512187

FRANK RICHARDSON	CLAIMANT
TYSON, INC.	RESPONDENT
TYNET CORPORATION INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 17, 2006

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 18, 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 January 9, 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 May 15, 2005, the relationship of employee-employer-carrier existed between the parties.

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

1. Compensability of the claimant's neck, head, upper back, right shoulder and right ankle injuries.

2. Related medical.

In regard to the foregoing issues the claimant contends that he was injured on May 15, 2005. His head, neck, right shoulder and back were injured when a Hobart lift broke and fell, hitting him and knocking him to the floor.

In regard to the foregoing issues the respondents contend that the claimant did not report a work related injury of May 15, 2005, until several months after the injury. The respondents paid for an initial physician's visit and some physical therapy at Lowell Occupational Health. That the claimant was never taken off work, therefore, no temporary total disability benefits are owed. That the claimant was terminated on November 3, 2005, for cause and if the claim is ultimately found compensable, light duty was available at all pertinent time and would have been available to the claimant but for his termination. That due to the claimant's inconsistent statements, the claim was controverted. The respondents reserve the right to supplement the contentions upon the completion of pre-trial discovery.

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 information marked Claimant's Exhibit No. 1 and non medical marked Claimant's Exhibit No. 2. The respondents submitted medical documentation marked Respondents' Exhibit No. 1, non medical marked Respondents' Exhibit No. 2 and

the deposition of the claimant marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he was hired by the respondent in December 2004 to work in maintenance. The claimant testified that on May 15, 2005, he was performing preventative maintenance on a Hobart lift and as he was raising it up, the limit switch did not work, and it sheared some pins and threw a u-frame hitting him in the head and shoulder as well as pinning him to the ground on his left side by his right ankle. The claimant testified that this particular machine is used to raise four hundred pound tubs of meat approximately eight feet into the air. The claimant testified that there was no tub of meat on the lift when it fell and hit him. The claimant testified that the carriage that lifts the tub up is what broke and hit him. The claimant testified that the parts that hit him weighed approximately two to three hundred pounds and knocked him to the ground on his left side and he hit his left elbow on the ground. The claimant testified that he was pinned down by his right ankle and he started yelling at which time a co-worker, Jerry Chatham, came over to help him.

The claimant testified that Mr. Chatham took him to the break room, sat him down and then Mr. Chatham went to get Terry Norvill and David Chestnut. The claimant testified that Terry Norvill is a supervisor and that David Chestnut is the shift lead person. The claimant testified that these gentlemen asked him if he was ok and he reported to them that if he could just sit around for a little

bit to see how he was feeling. The claimant testified that no paperwork was filled out. The claimant testified that he sat around for about an hour and a half and then he and Jerry Chatham went to dinner. The claimant testified that Mr. Chatham drove because his arm was stiff and hurting pretty bad and he could not drive. The claimant testified that when he returned from his meal he did not go back to work but asked Mr. Chatham if it would be ok if he went home and rested up because he had a couple of days to be off. The claimant testified that at the time he left the respondent's plant he was feeling sore and nauseated so he called his brother, Kenny Richardson, to pick him up.

The claimant testified that he had never filed for a workers' compensation claim before. The claimant stated that the person he would have reported the injury to was Terry Norvill. The claimant testified that he did not express a desire to fill out any workers' compensation papers on the day of his injury. The claimant testified that after his two days off he returned to work but was unable to do his normal duties. The claimant testified that basically he would just move around from the smoking area to the break room to the shop area and just stand around on the floor. The claimant testified that his supervisor, Terry Norvill, was aware of what he was doing.

The claimant testified that he first went to a doctor around the first of June. The claimant testified that he saw Dr. David Beeman. The claimant testified that at the time he saw Dr. Beeman he was having neck, back, ankle and shoulder pain noting that his

rotator cuff on his shoulder was hurting really bad and he could hardly use his arm. The claimant testified that the work he was doing at this time for the respondent primarily was just helping other people and instructing them as to what to do. The claimant testified that he did not want to fill out workers' compensation papers because he was forty-three years old and really did not want to have a workers' compensation claim on his record. The claimant testified that when he saw Dr. Beeman x-rays were made and medications were prescribed for him. The claimant stated that Dr. Beeman referred him to Dr. Gallaher, a neurologist. The claimant testified that at the time he was seen by Dr. Gallaher he was having numbness in his left fingers, hand and arm. The claimant testified that Dr. Gallaher referred him to Dr. Chandler but he was not allowed to see Dr. Chandler because he could not get any medical leave.

The claimant testified that in the last part of August, he was called in by Frankie Henry, Dennis Moore and Brent Holeman and was asked about his on the job injury and wanted to know why a workers' compensation claim had not been filed. The claimant testified that at that time he admitted that he had had a work related injury. The claimant stated that he reported to the supervisors that Terry Norvill did not want him filling out paperwork because they had not filled it out initially. The claimant testified that the respondents sent him to Dr. Moffitt who in turn set him up for physical therapy sessions. The claimant testified that he did have an MRI of his neck and thoracic vertebrae. The claimant testified

that from the date of his injury on May 15, 2005, to present his symptoms have all gotten worse. The claimant testified that currently he is not as flexible, cannot walk more than two hundred yards and is in pain. The claimant testified that walking causes him to limp very bad and he cannot bend over to pick anything up. The claimant testified that his pain is in the middle part to the top part of his back and when he walks he has pain in his ankle as well as in his back. The claimant testified that he last worked for the respondent on July 22, 2005. The claimant testified that he stopped work because the pain had become unbearable and he just did not want to go to the respondent's plant and sit around on the clock.

The claimant testified that he has never been convicted of a crime, never been arrested on a drug charge, does not use illegal drugs and was not using drugs on May 14 or 15 when his accident happened.

On cross examination, the claimant testified that he was not in the path of the carriage when it came down and hit him but that parts sheared off of the carriage came down and hit him. The claimant testified that at the time the carriage hit him he was next to the power box on the machine. The claimant testified that at the time of his accident it was on the weekend and many of the lines were not running. The claimant testified that most of the work in the plant dealt with maintenance of the different pieces of equipment. The claimant agreed that Jerry Chatham helped him to the break room but he does not remember any particular conversation

with Mr. Chatham. The claimant denied any conversation dealing with his inability to pass a drug screen. The claimant testified that when Terry Norvill arrived he offered to take him to the emergency room but he declined. The claimant again denied making any statement to Terry Norvill that he did not want to see a doctor because he could not pass a drug screen. The claimant agreed that when he saw Dr. Beeman on June 27, 2005, he reported that about six weeks ago a two hundred-pound pipe landed on his head and he felt a crunch in his neck. The claimant agreed that he did not relate this to work. The claimant testified that at the time he was being treated by Dr. Beeman, the doctor was giving him steroids and pain killers for his shoulder and neck pain. The claimant testified that at the time he was seen by Dr. Beeman and up through the time he had the MRI of his left arm and hand, he continued to complain about pain in his shoulder and ankle. The claimant testified that he does not know why Dr. Gallaher noted that on June 5 the claimant was hit on the right side of the head and shoulder by a pipe. The claimant testified that besides his other complaints he also complained to Dr. Gallaher about his shoulder and ankle pain. The claimant agreed that he saw Dr. Gary Moffitt on August 26, 2005. The claimant testified that he recalled signing an accident reporting policy for the respondent. The claimant read from the respondent's employment policy that all work related injuries or illnesses no matter how small are to be reported to the nurse. The claimant testified that he first reported his work related injury to the nurse sometime in August 2005 that he was injured on May 15,

2005. The claimant agreed that the statement which he signed on or about August 19, 2005, indicates that the time he had been off work before August 19, 2005, was not due to a work related injury. The claimant agreed that he had reported to the respondent on August 19, 2005, that he did not have a work related injury that he had degenerative disc disease. The claimant testified that sometime in August 2005 the respondents called him in and told him that they had witnesses as to a work related injury and they needed him to fill out forms. The claimant disagreed that on a document filled out for the respondent, that he had indicated that an A-frame had hit him in the chest. The claimant testified that the A-frame from the Hobart lift had hit him and he did not know where the A-frame had come from. The claimant testified that after he was shown statements that his injuries were work related as set forth by co-employees, he then reported a work related incident. The claimant testified that it was time to quit the lying.

On redirect examination, the claimant testified that the reason he did not push Terry Norvill to fill out an accident report was because he did not think his injuries would be as serious. The claimant testified that if he had reported to Terry Norvill on the day of his accident that he could not pass a drug test he would have been fired immediately. The claimant testified that he reported to Dr. Gallaher that he was having burning between his shoulder blades as well as having neck pain. The claimant testified that he reported his injury to his supervisor and that

Jerry Chatham saw him on the floor after he had been hit by the Hobart lift.

Frankie Henry testified on behalf of the respondents stating that she had been working for the respondent for the past fifteen years as a human resource manager. Ms. Henry testified that she first learned of the claimant's alleged work related injury through his brother, Gary Richardson. This witness noted that the claimant had applied for a leave of absence and that his brother mentioned that the leave should be on workers' comp. Ms. Henry testified that she had this conversation with the claimant's brother on August 4, 2005. Ms. Henry testified that after she learned that the claimant's request for leave was possibly a workers' compensation claim, she went to the plant manager and the assistant plant manager and reported what she had learned from the claimant's brother. Later on that day, Ms. Henry testified that the claimant came in to complete the paperwork for his request for leave of absence. This witness testified that she went over the paperwork with the claimant and asked him if his injuries were work related and he reported that they were not. Ms. Henry testified that she had the claimant initial on the form the space that says not work related. Ms. Henry testified that she later talked with Terry Norvill, the claimant's supervisor, while investigating the facts of a work related injury. Ms. Henry testified that the claimant was put on a three-month leave of absence and that when this time was about to run out she sent him a certified letter making him aware of his status. Ms. Henry testified that the claimant never

responded and that after a period of time he was sent a termination letter stating his termination was due to failure to return after medical leave.

On cross examination, Ms. Henry testified that she considered it quite odd for the claimant's brother to come in and tell her that the claimant had sustained a work related injury but did not report it because he could not pass the drug test. Ms. Henry further testified that she considered it to be very unusual that even after being questioned the claimant would not admit that he had sustained a work related injury.

Cheri Church testified that she had been working for the respondent since July 2005 as the plant nurse. Ms. Church testified that she was a registered nurse and she was acquainted with the claimant. Ms. Church testified that all of the respondent's employees are instructed to report injuries to the plant nurse. This witness testified that the claimant reported his alleged injury on August 26, 2005. Ms. Church testified that the claimant reported that he was injured back in May when he was struck in the head and shoulders. This witness testified that the claimant reported that he was still having pain and he was taken to see Dr. Moffitt. Ms. Church was questioned about the claimant's statement of injury, remembering that Evelyn Herman completed the form as the claimant explained what had happened. Ms. Church testified that she does recall that the claimant stated that he was working on a Hobart lift when the chain broke and the carriage hit

him in the head and shoulders. Ms. Church testified that it was her understanding that the A-frame was part of the carriage.

Terry Norvill testified that he last worked for the respondent sometime in August 2005. Mr. Norvill read into the record a statement which he wrote on August 17, 2005, concerning the claimant's work related injury. Mr. Norvill then read into the record a second statement which he wrote in more detail about the claimant's injury. Mr. Norvill wrote that the claimant had asked not to be sent to the doctor but to give him a little time to see how he would be. This witness read that in his statement that later on he saw the claimant who was limping and complaining about his neck and shoulder hurting and again he indicated that he needed to be taken to the doctor or to the plant nurse to be checked out. Mr. Norvill wrote in his statement that the claimant did not want to go and when he was asked why the claimant reported that he could not pass the drug test at this time. Mr. Norvill wrote in his statement that he told the claimant that it was company policy that he was going to have to call the plant nurse and report what had happened but the claimant talked him out of it because he needed his job. Mr. Norvill testified that he does not know if Jerry Chatham or David Chestnut were around when he was talking with the claimant but he is pretty sure that they were not. Mr. Norvill testified that he was in hopes that his and the claimant's conversation would be kept just between the two of them. This witness testified that he had clearly violated company policy and that it cost him his job. Mr. Norvill testified that after the

claimant's accident he came to his house either in June or July and drank a beer with him. This witness testified that he asked the claimant why he was doing drugs and the claimant responded that he had trouble sleeping that his neck and back had been bothering him for years and after their conversation the claimant left to go over to Jerry Chatham's house. Mr. Norvill was asked why he did not inform anyone about the claimant's drug use and Mr. Norvill responded, "Stupidity on my part. I thought Frank would probably do what he said he was going to do. And I just kind of misjudged him."

On cross examination, Mr. Norvill testified that the first time he worked for the respondent he worked approximately ten years, took a two-year sabbatical and then went back and worked for another seven years. Mr. Norvill testified that the claimant was the only person that he ever failed to report for drug use. This witness was asked why he would do such a thing and Mr. Norvill responded, "I like Frank, always did. He is a good maintenance man, worked good for me." Mr. Norvill was then asked if he did not feel any loyalty to the respondent to report someone who he thought was doing drugs and this witness responded, "I was just trying to help a guy out." Mr. Norvill was asked if he was upset with the respondent because they fired him over this matter and Mr. Norvill responded, "I have no one to blame but myself." Mr. Norvill was questioned extensively about the Hobart lift and, in both his direct testimony and this cross examination, he indicated that if the chain broke the lift would fall straight down because it was

within tracks. The claimant's lawyer asked Mr. Norvill what the claimant's appearance was when he first saw him in the break room and Mr. Norvill stated, "He seemed like he was dazed."

David Chestnut testified that he had been working for the respondent almost six years and he was the second shift maintenance lead. Mr. Chestnut testified that he was acquainted with the claimant and had worked with him for about a year. Mr. Chestnut testified that he can recall May 15, 2005, and indicated that he did not see the claimant get hurt. Mr. Chestnut testified that he was asked to repair the Hobart lift after the claimant's accident and had changed both of the switches, repaired the chain and the bolts that had broken. Mr. Chestnut testified that on September 1, 2005, he had written a statement that he had heard the claimant tell Terry Norvill that he could not pass a drug test after he had an accident with the Hobart lift. Mr. Chestnut was asked if he overheard the claimant say anything to Terry Norvill and this witness responded, "No." This witness was then asked why he wrote this statement and he stated, "Probably because I was mad."

Jerry Chatham testified that he worked for the respondent in general maintenance and had been there almost five years. Mr. Chatham testified that on May 15, 2005, he was working in the same area with the claimant. Mr. Chatham testified that he was working about fifty feet away from the claimant on another machine when he heard a crash. Mr. Chatham testified that he looked out of his machine and saw the claimant staggering around holding his head. This witness testified that he went to the claimant and the

claimant asked if his head was bleeding and that he told him no. Mr. Chatham testified that he helped the claimant to the break room and on the way to the break room the claimant told him that he could not pass a piss test. Mr. Chatham testified that in the break room Terry Norvill came in and said they were going to call the plant nurse but the claimant asked him not to. Mr. Chatham testified that he was standing in the break room when he heard the claimant tell Terry Norvill that he could not pass a drug test and refused to get medical attention. Mr. Chatham as well as the other witnesses who work in maintenance indicated that if they had tried to work the left and it did not work the first time they would not be standing anywhere close to the lift.

The claimant's brother, Gary Richardson, testified on behalf of the respondents. Mr. Richardson testified that he is a maintenance supervisor on the second shift. This witness testified that before working for the respondent, he and his brother had driven a truck together for eleven years. Mr. Richardson testified that he knew that his brother was using crank when they were driving trucks together. Mr. Richardson testified that he has not seen his brother do any drugs in the last few years. This witness testified that in August 2004 when he had to repossess a truck from the claimant he found crank behind the truck seat. Mr. Richardson testified that when he found out that his brother's accident had not been reported, he asked the claimant why it was not reported and that the claimant told him that he could not have passed the test.

On rebuttal the claimant testified that on cross examination that he had lied in his deposition about being hit by an A-frame.

The medical records set forth that the claimant was seen by Dr. David Beeman on June 27, 2005, with complaints of his left hand going numb and his fourth finger seems to be coming down from his neck. Dr. Beeman writes that the claimant reports that about six weeks ago a two hundred-pound pipe landed on his head and he felt a crunch in his neck. After examination and review of the claimant's x-rays of his cervical spine which were normal, the claimant was assessed with neck pain with left radiculopathy and medications were prescribed. The claimant was then seen by Dr. Beeman on July 5, 2005, for his same complaints of numbness in his left fourth and fifth fingers. It is noted that the claimant denies any back pain and denies fever, chills, chest pain or rash. After examination, Dr. Beeman ordered an MRI of the claimant's cervical spine. The claimant underwent an MRI of his cervical spine on July 8, 2005, which revealed mild degenerative disc disease involving the cervical spine with mild disc bulge and posterior osteophytic ridging identified at C5-6, which results in only mild narrowing of the AP diameter of the spinal channel and mild narrowing of the neural foramina bilaterally. Dr. Regan Gallaher writes on August 1, 2005, that he has seen the claimant who reports that on June 5, 2005, he was hit in the right side of his head and shoulder with a pipe which threw him to the left and he landed on his left arm. The doctor notes that the claimant reports that two or three days after this event he started having numbness and tingling in the

forth and fifth digitals of his left hand and neck pain. The doctor notes that the claimant is currently complaining of neck pain and numbness as well as tingling in the left second and third digits of his left arm. Dr. Gallaher notes that the claimant's MRI is essentially unremarkable and, after examination, was assessed with having probable neck pain from his injury in June and prescribed physical therapy as well as Ibuprofen and muscle relaxers. Dr. Gallaher also recommended that the claimant be seen by one of the neurologists for a consult along with an EMG evaluation of his left ulnar. Dr. Gary Moffitt writes on August 26, 2005, that he has seen the claimant who reports that in May a lift fell and hit him in the head and shoulder and knocked him to the floor. Dr. Moffitt notes that the claimant reports that he has been having pain in his upper back on the right side and is having numbness along the forth and fifth fingers of his left hand. After examination and review of the claimant's MRI, Dr. Moffitt opines that the claimant is thought to have a contusion of his head and shoulder and that the pain in his right side is muscular in nature. The doctor notes that the claimant does sound like he has a radiculopathy or ulnar nerve issue on the left side which he did not think was related to his May incident. Dr. Moffitt recommended nerve conduction studies and physical therapy.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a work related injury in light of Arkansas law. The claimant has made so many false statements concerning his

alleged injury it would be difficult to pick out which one might be closest to the truth. However, the one consistent thread throughout this opinion seems to be that on the day of his injury, and there is no doubt that he was injured in some way while he was working for the respondent, that he did not want to report a work related injury nor receive medical treatment at the time of his injury due to not being able to pass a drug test. Three of the respondents' witnesses, one including the claimant's brother, have all testified that the claimant reported that he could not have passed the drug test on the day of his accident. The testimony concerning how the claimant's accident occurred is a little hard to visualize, however, the other maintenance personnel who testified have stated that if the claimant saw standing in the proper position at the time that the lift fell, he most likely would not have been hit or would not have been hit. These same witnesses also testified that if they had been working on the lift and it had not functioned properly, they would not have been standing in a position which would have put them at risk. Therefore, based on the claimant's lack of credibility, the very strong indication that he was under the influence of some type of illegal substance at the time of his accident as well as the indication that he was in an improper position while working on the machine at the time of his accident, all of these factors require that this claim be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On May 15, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in accordance with Arkansas law while working for the respondent on May 15, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on May 15, 2005. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE