

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F500340**

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| <b>TERRY B. SADLER, EMPLOYEE</b>               | <b>CLAIMANT</b>         |
| <b>R.M. COURSON, INC., EMPLOYER</b>            | <b>RESPONDENT NO. 1</b> |
| <b>AMERISURE MUTUAL INSURANCE CO., CARRIER</b> | <b>RESPONDENT NO. 1</b> |
| <b>SECOND INJURY FUND</b>                      | <b>RESPONDENT NO. 2</b> |

**OPINION FILED DECEMBER 7, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on September 8, 2006, at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. HARPER, Attorney at Law, Monticello, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102. All other issues are reserved

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties have agreed to the following stipulations: An employer-employee-carrier relationship on December 28, 2004 at which time the claimant sustained a back injury at a compensation rate of \$327.00/\$245.00. Medical expenses and temporary total disability benefits

(from December 29, 2004 to April 17, 2005) were paid before this claim was controverted.

The claimant was injured in a motor vehicle accident (MVA) on December 28, 2004. He contends he remains symptomatic and in need of continuing medical treatment.

The respondents contend there is no objective medical evidence to substantiate a compensable injury. The claimant was involved in an MVA on June 22, 2001 and an MRI scan of the back was conducted in March, 2003. A comparison of the 2003 MRI with the January 2005 MRI conducted after the second MVA shows no change. The respondents rely on Dr. Ron Williams' opinion of April 27, 2005.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript and a post-hearing brief submitted by the respondents which has been incorporated by reference.

The claimant was the only witness to testify at the hearing. The claimant, age 36 (D.O.B. April 18, 1970) has a high school education and some college courses. He has work experience in farming and construction. The claimant presently owns horses and attends horse show events. He is able to drive and deer hunt. Since 1998 he has been employed as a working foreman for the respondent-employer laying asphalt in highway construction. The claimant sustained injuries in two motor vehicle accidents on January 22, 2001 and December 28, 2004.

The claimant sustained a back injury on December 28, 2004 when a vehicle ran into the back of his truck at a construction site. The accident was witnessed by his supervisor and co-workers. The carrier paid for treatment until a second MRI scan was requested by his physician. The claimant then pursued medical treatment at his own expense.

The claimant had been injured in a previous work-related MVA on June 22, 2001, and this claim was accepted by the carrier.

In comparing the two injuries, the claimant testified that the first accident resulted in a neck injury requiring surgery and pulled back muscles but no leg numbness. The second accident caused low back pain and numbness in his right leg and the pain is much worse. After the first accident, the claimant missed about a year of work and received help in performing his job after he returned to work. After the second accident, he went back to work for a month or two but the pain worsened and he is presently unemployed.

On cross-examination, counsel emphasized that the claimant's right leg numbness didn't begin until July 1, 2005, almost seven months after the second accident in 2004. The claimant also reported numbness in his right leg during treatment with Dr. Williamson on March 11, 2003. The claimant also received treatment for his back prior to the second injury in 2003, in the form of medication, injections and physical therapy.

### **MEDICAL EVIDENCE**

After the first accident on June 22, 2001, the claimant was treated at the emergency room for complaints of neck and back pain. Based on x-rays, he was diagnosed with a strain and prescribed medication.

An MRI scan conducted July 16, 2001 revealed a disc herniation at C5-6 with an annular bulge at C4-5. The claimant complained of right shoulder and arm pain with numbness and tingling in his hand. However, a July 16, 2001 EMG/NCV study conducted by Dr. David Miles was interpreted as normal. In August, 2001 the claimant was sent to physical therapy based on Dr.

William Blankenship's recommendation.

On September 4, 2001, the claimant was evaluated by neurosurgeon, Dr. Ron Williams who performed cervical fusion surgery on September 13, 2001. More physical therapy was prescribed along with a work hardening program. On February 28, 2002 Dr. Williams assessed a 9% impairment rating to the body as a whole. A valid Functional Capacity Evaluation (FCE) conducted in March, 2002 indicated the claimant was able to perform work in the medium-heavy category. The physiologist did observe muscle spasms in the cervical and scapular area. Dr. Williams released the claimant to return to work on May 21, 2002.

The claimant returned to Dr. Williams in February 2003 with complaints of low back pain and numbness. An MRI scan was performed on March 26, 2003 and an annular tear at the L5-S1 level was discovered. More physical therapy was prescribed along with injections.

The claimant was involved in a second MVA on December 28, 2004 and sought treatment at the emergency room. On December 28, 2004 another lumbar x-ray was performed and the radiologist interpreted the test as normal. Dr. Rankin, a general practitioner, excused the claimant from work for two weeks. An MRI scan conducted January 13, 2005 was interpreted as showing a "tiny" herniation and posterior annular tear at L5-S1 with degeneration and multi-level mid-lumbar facet synovitis. Back spasm was noted in a report dated January 13, 2005 (see pages 77 and 84 of the respondents' exhibit packet).

The claimant returned to Dr. Ron Williams and his letters of February 8, 2005 and April 27, 2005 summarize the history of injuries and treatment. Dr. Williams commented, "A recent MRI is essentially unchanged from the previous one." Dr. Williams prescribed more injections and physical therapy. He did not feel the claimant was a surgical candidate and assessed 0% impairment.

A second FCE was performed on April 1, 2005 and the claimant was assessed a 50 pound weight limitation and work in the medium category. The claimant did not feel he was able to return to his job due to burning low back pain and his job requirement of lifting up to 100 pounds. Dr. Williams returned the claimant to work on April 18, 2005 with the restrictions recommended by the FCE.

The claimant returned to Dr. Rankin on June 22, 2005 complaining of continuous intermittent low back pain and right leg numbness. On July 20, 2005 the claimant saw Dr. Williams who recorded, "about three weeks ago he began having recurrent pain in the right leg that goes as far as the calf. He has not had any evaluation or treatment for that." The third MRI scan was performed on March 6, 2006. In a letter dated March 9, 2006, Dr. Williams diagnosed a ruptured disc on the right at L4-5 and recommended a myelogram and EMG/NCV study. The claimant would like to return to Dr. Williams to pursue these diagnostic tests and any recommended treatment.

Dr. Williams' Letter of 4-27-05:

The MRI done on January 13, 2005 was unchanged from the one done on March 26, 2003. There would be no disability rating referable to his injury on December 28, 2004.

Dr. Williams' Letter to Ken Harper dated 3-17-06:

Mr. Sadler indicated to me that he never had any difficulty with his back until he injured himself at work on December 28, 2004. If that is the case, then that injury should be considered the need for his current treatment and evaluation. I last saw him on March 9, 2006, at which time I indicated to him that he needed a lumbar myelogram and EMG and nerve conduction studies of the right leg. Your other questions would be best answered after these tests are done.

**FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving

the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

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or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements.

Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The respondents have denied this claim on the basis that there is no objective medical evidence to substantiate a December 28, 2004 injury and that the claimant’s condition remains unchanged since his June 22, 2001 compensable injury.

Objective findings are those findings which cannot come under the voluntary control of the patient. There is medical evidence of back spasm, a disc herniation, and increased work restrictions after the second accident. But the causal connection between the accident and these findings seems to be at issue. The claimant has the burden of proving a causal connection between the work-related

accident and the disabling injury, Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact to be decided by the Commission, Jeter v. B. R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The evidence of record shows the claimant suffered two work-related injuries. On June 22, 2001, the claimant was treated for neck and back pain. The neck injury required surgery and the claimant missed a year of work. The back injury was diagnosed as an annular tear at L5-S1 and treated conservatively.

On December 28, 2004 the claimant was involved in a second accident. A second MRI on January 13, 2005 showed no change in the claimant's condition.

The claimant returned to the doctor with a history of three weeks of pain and numbness and a third MRI scan on March 9, 2006 showed a disc herniation at L4-L5. This is a different level of the back than the previous injury on the second MRI scan.

Considering the gaps in time between the injuries and the onset of symptoms, as well as the different levels of the spine involved, I find the L4-L5 disc is a new injury. Without further explanation from a physician, it is unclear to me how an annular tear at L5-S1 could cause or progress to a disc herniation at L4-L5. Accordingly, I find the claimant has failed to establish a causal connection between the December 28, 2004 injury and the March 6, 2006 diagnosis of a disc herniation at L4-L5.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on December 28, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate

of \$327.00/\$245.00.

2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge