

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602275

TRAVIS SLAUGHTER	CLAIMANT
PLOYTECH MOLDING, INC.	RESPONDENT
GUARANTEE INSURANCE CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 8, 2006

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

Claimant represented by STEPHANI JUNGMEYER, Attorney, Fayetteville, Arkansas.

Respondents represented by JOHN DAVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 15, 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 June 27, 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 February 16, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate for temporary total disability in the amount of \$142.00.

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

1. Compensability of injury to claimant's low back.
2. Related medical.
3. Temporary total disability from March 28, 2006, through a date yet to be determined.
4. Attorney fee.

In regard to the foregoing issues the claimant contends that he was injured in the course and scope of his employment when he slipped and fell while working for respondent on February 16, 2006. He requests payment of outstanding medical bills related to his injury, temporary total disability benefits from March 28, 2006, through a date yet to be determined, and an attorney fee.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury in the course and scope of his employment on or about February 16, 2006. The claimant was provided with a medical evaluation which included an MRI and a CT scan.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that on February 16, 2006, he was working for the respondent. The claimant testified that he was working between two machines and as he turned to one of the

machines he stepped on a rubber mat which had hydraulic fluid underneath it, the mat slipped and he fell on his back. The claimant testified that he immediately felt numbness in his left leg and severe stabbing pain in his back. The claimant testified that he landed in the middle of his lower back. The claimant remembers that he was laying on the floor and he heard someone scream and then the next thing he new wes Jordan, his first shift supervisor, was standing over him. The claimant testified that Mr. Jordan initially told him not to move and eventually tried to get him to set up. The claimant testified that when they tried to get him to sit up he winced real bad because the pain shot through him and they laid him back down and he stayed there until the ambulance and the EMT personnel got there. The claimant testified that when the emergency room personnel got there they put a collar on him, put him on a backboard and loaded him into the ambulance. The claimant remembers that Earl Jackson, a co-worker, rode with him to the hospital. The claimant testified that at the hospital the personnel tried to put him through an MRI but it was so constricting he could not go through the test. The claimant remembers that he was given a CAT scan which from his understanding was inconclusive. The claimant testified that he was released from the hospital that day. The claimant testified that the respondent sent him to see Dr. Blankers on February 20, 2006. The claimant testified that Dr. Blankers examined him, recommended physical therapy and prescribed muscle relaxers and pain pills. The claimant testified that at that time he was experiencing numbness

in his left leg and severe pain in his lower back. The claimant testified that the physical therapy did not help and that the physical therapist gave him some home exercises which he is still doing. The claimant agreed that he reported to Dr. Blankers that he had never had left leg numbness prior to his fall. The claimant agreed that after several visits to Dr. Blankers his symptoms were still persisting and a referral to a neurologist was recommended. The claimant testified that his request to be seen by a neurologist was denied by the workers' compensation insurance carrier and it is currently his desire to be evaluated and possibly treated by a neurologist for his ongoing symptoms of back pain and leg numbness. The claimant testified that he has not been allowed to return to Dr. Blankers and that he is unable to afford to go to the doctor on his own. The claimant testified that his symptoms are pretty much the same as they were when he last saw Dr. Blankers in March 2006. The claimant agreed that he received temporary total disability from the date of his injury up to March 28, 2006. The claimant testified that he has not returned to work and has not worked anywhere since his accident. The claimant testified that he saw Dr. Blankers on February 20, 2006, at which time the doctor took him off work until his next appointment on February 27, 2006. The claimant agreed that on February 27, 2006, Dr. Blankers again took him off work until his next appointment on March 13, 2006. The claimant read from a doctor's note which is in evidence that the respondent had corresponded with Dr. Blankers inquiring if the claimant could return to work on light duty. It was agreed that

this inquiry is dated February 28, 2006. The claimant further read from the doctor's report that, "If patient desires to go back on light duty, I am ok with it." The claimant testified that around 12:30 on February 28, 2006, Bob, the plant manager, called him and reported that he had good news and that he could come back to work but bad news in that they were not going to authorize an MRI. The claimant testified that he was informed that he was to be back to work the next day which was just one full day after the doctor had released him from work until March 13. The claimant testified that he was confused at this point because just the day before the doctor had told him to stay off work. The claimant testified that this made him angry and he went to Dr. Blankers' office to try and get a clarification. The claimant agreed that he was upset because he had just received a phone call from his employer telling him he could return to work the next day and he was under the understanding that he did not have to return to work until March 13, 2006. The claimant explained that his concern about returning to work was because he was still in pain and had numbness in his left leg. The claimant testified that if he went back to work he was concerned that if he fell again would he be accused of returning to work too soon knowing that he was still hurt. The claimant testified that he was able to visit with Dr. Blankers out in the foyer and ask him what was going on. The claimant testified that after visiting with Dr. Blankers it was his impression that the doctor thought he was in the doctor's office when the respondent called or contacted him concerning his return to work. The

claimant testified that it was his impression that the doctor thought that he wanted to return to work. The claimant testified that the only contact he had had with the respondent was when he would go to the doctor's office and the office would ask him to bring back his paperwork to them which he did. The claimant agreed that he was waiting to let Dr. Blankers tell him when he could return to work. The claimant testified that Dr. Blankers sent another note to the respondent that same day, later in the afternoon, that the claimant did not need to return to work until after his appointment on March 13, 2006. The claimant testified that when he was again seen by Dr. Blankers on March 13, 2006, the doctor took him off work until March 24, 2006. The claimant testified that at this next appointment, Dr. Blankers took him off work until he was seen by a neurologist. The claimant agreed that he was not released to return to work. The claimant agreed that he would return to work if he could and he was hoping to get treatment which would allow him to return to work. The claimant was asked if he thought he could return to work and the claimant responded, "In the present condition that I am in, no."

The claimant testified that he has reapplied for social security disability a couple of months prior to this hearing. The claimant testified that on his social security disability application he listed as his disabilities the blindness in his left eye which also affects his right eye, hypertension, high blood pressure, bad knees and his back. The claimant testified that his parents applied for social security for him in 1975 or 1976 after

he was kicked in the head by a horse and was blinded in one eye. The claimant testified that this social security application was denied. The claimant testified that he again applied for social security disability benefits in 1990 after he was discharged from the Navy due to blindness in his eye. The claimant testified that he has worked straight through since that time. The claimant agreed that the most recent social security disability application he has filed was done primarily because of his back condition. The claimant agreed that his other medical problems were not keeping him from working in and of themselves except for his back injury. The claimant further agreed that if he did not have his back condition he would be working.

The claimant testified that he has had several injuries throughout his life. The claimant testified that he was kicked in the head by a horse when he was fourteen which caused the blindness in his left eye. The claimant testified that he was also kicked in the shoulder blade area by a cow when working in a slaughter house in Kansas, pinned under a pallet of feed which caused him to have a collapsed lung and was hit in the head by a sign at Wal-Mart which resulted in him having a mild concussion. The claimant testified that he never did hurt his lower back up and until his accident on February 16, 2006. The claimant testified that he has experienced some upper back pain but this was due to being kicked by the cow.

On cross examination, the claimant agreed that prior to going to work for the respondent he had hypertension as well as problems

with his knees. The claimant explained that the job which he held before working for the respondent was building fences and the getting up and down caused his knees to hurt. The claimant also agreed that he filled for social security in 2005 and that this claim was still pending when he went to work for the respondent. The claimant was read from his deposition when it was asked if he was claiming to be permanently and totally disabled from working when he filed his claim for social security disability benefits in 2005 and his response at the time of the deposition was, "Yes." The claimant agreed that throughout his life he has worked in fairly heavy manual labor type jobs involving bending, lifting and carrying. The claimant testified that as a teenager he participated in bull riding and was thrown several times. The claimant testified that when he was thrown from these bulls, he primarily landed on his head or his feet. The claimant testified that he does not remember ever making a statement to the personnel at the Washington Region Medical Center on February 16, 2006, that his only back problem was fifteen years ago and it took at least three months to get over it. The claimant testified that when the plant manager, Mr. Nicholson, called him and told him he could come back to work on light duty, he wanted to know what his doctor had to say before he had to go back to work. The claimant denied that prior to being called by Mr. Nicholson to come back to work on light duty, he had been out at the respondent's plant indicating that he was bored and ready to come back to work.

On redirect examination, the claimant stated that the medical report from Washington Regional that sets forth that fifteen years ago he had a back injury which took him three months to recover from could be referring to the incident where he got kicked in the back by a cow. The claimant testified, however, that he was back to work in thirty minutes following this incident. The claimant denied telling anyone that he had a back injury fifteen years ago that required three months to recover from. The claimant testified that he has never had an injury to his lower back and that when he applied for social security in 2005 he did not allege that part of his disability was due to a low back problem.

Gaylene Deere testified that she was employed by the respondent and had been working for them for twelve and a half years and works with finances as well as administration. Ms. Deere testified that Bob Nicholson had been the plant manager for the respondent but has been gone from this position for three or four weeks. Ms. Deere testified that the claimant had come out to the respondent's business several times indicating that he was bored and ready to return to work. This witness testified that she called Dr. Blankers' office to inquire about light duty for the claimant. Ms. Deere testified that she made this call with the permission of Mr. Nicholson, the plant manager, because it was their understanding that that was what the claimant wanted. Ms. Deere testified that the respondent always has light duty available and some of these jobs could be done by sitting or standing. Ms. Deere then explained that the respondent has a job pertaining to a

small plastic part in which a small brass part is inserted. Ms. Deere testified that there is no quota assigned to this particular assignment. Ms. Deere agreed that this type of job was indicative of the kind of light duty work that the respondent would have available. Ms. Deere testified that if the claimant had come back to this type of job, his wages would have been the same as it was at the time of his accident.

On cross examination, Ms. Deere testified that it was her impression that the claimant was very interested in returning to the workforce until she called Dr. Blankers' office. Ms. Deere testified again that the day she called the doctor inquiring about the claimant, the claimant had been in and he had told Bob Nicholson and Cindy Taylor that he was so bored that he was ready to come back to work. Ms. Deere testified that the claimant would come out to the respondent's plant to bring in paperwork but sometimes he would just come to the plant without bringing any paperwork to his supervisor. Ms. Deere agreed that the claimant had expressed interest in returning to work up until the doctor was contacted about him actually returning to work and that was when he suddenly decided he did not want to return to work. This witness testified that the claimant has not been back to their plant since the February 28, 2006, event. Ms. Deere testified that she did not tell Dr. Blankers' office when she contacted them about light duty that the claimant had expressed an interest in wanting to return to work. This witness testified that when the claimant would bring in his off work slips, they would normally go to Cindy Taylor who

would put them in his personnel file. Ms. Deere testified that she is over personnel or HR and has reviewed the claimant's personnel file. Ms. Deere had the personnel file with her and reviewed some of the off work slips from Dr. Blankers. This witness agreed that an off work slip dated March 13, 2006, sets forth that the claimant cannot return to work until his appointment on March 24, 2006. Ms. Deere testified that she had seen the report from Dr. Blankers dated March 24, 2006, taking the claimant off work until he is seen by a neurologist. Ms. Deere testified that she was only aware of one off work note from Dr. Blankers and that was the note which has been thoroughly discussed. This witness testified that she is not familiar with seeing any other notes from Dr. Blankers' taking the claimant off work subsequent to March 13, 2006.

On redirect examination, Ms. Deere testified that the claimant has not been out to the respondent's plant since February 28, 2006. Ms. Deere testified that light duty was available for the claimant subsequent to February 28 to date. Ms. Deere was asked if she had received any indication from Dr. Blankers that if the claimant desired to return to light duty he was ok with it has she seen anything from Dr. Blankers' office indicating that he is not ok with the claimant working light duty. Ms. Deere responded, "Just the retraction, the next one said that the claimant did not want to come back to work."

On recross examination, Ms. Deere testified that even though a person might be returned to work on light duty if a doctor's note is received taking them off work at a later date it is her

experience that the last note is the one which is followed. Ms. Deere agreed that the note dated March 13, 2006, completely took the claimant off work.

The medical records set forth that the claimant was seen at the Washington Regional Medical Center on February 16, 2006, where it is reported that he injured his low back due to a fall. The medical records set forth that the claimant reports that his only back problem was fifteen years ago and it took at least three months to get over it. The doctor writes that the claimant is unable to tolerate the MRI, therefore, a CT was suggested. After examination, the claimant was diagnosed with having low back pain with contusion and strain. The claimant underwent a CT scan of his lumbar spine on February 16, 2006, which showed degenerative disc disease at L1-L2 with small osteophytes at those levels. It is noted that they are degenerative osteophytes at L2-L3 and that the claimant has no fractures or subluxation or no other acute abnormalities. On February 16, 2006, the claimant was given an off work slip until he was checked by the doctor on Monday. At the time the claimant was released from the hospital on February 16, 2006, he was instructed to rest until Monday, to do no lifting or bending, to apply heat to his back and to lay down as much as possible. Medications were prescribed and it was recommended that he be seen by a doctor on Monday of his company's choosing. The claimant was seen by Dr. Christian Blankers on February 20, 2006, for his complaints of leg numbness and pain in his low back. After examination, the claimant was diagnosed with acute lumbar strain

and medications were prescribed as well as the claimant was to remain off work until February 27, 2006. The claimant was seen by Dr. Blankers on February 27, 2006, for follow up of his back and leg problems. Again, after examination, the claimant was diagnosed with having lumbago, back strain and left side radiculopathy. It was recommended by Dr. Blankers that he undergo an MRI, medications were prescribed as well as physical therapy. Dr. Blankers also indicated that the claimant could not return to work until after his next appointment on March 13, 2006. Dr. Blankers indicates on a return to work slip or a fax cover sheet dated February 28, 2006, that if the claimant desires to go back to work on light duty the doctor was ok with it. This note was written in response to a fax from the respondent asking if the claimant could do light duty. Dr. Blankers' office notes on February 28, 2006, that the claimant came in to inquire why he had received a call from the respondent telling him to return to work when it was his understanding that he was to be off work until March 13, 2006. There is a second note of the same date indicating that the claimant does not need to return to work until March 13, 2006, further setting forth that the doctor's office assumed that the patient desired light duty but apparently he does not. The claimant was seen by Dr. Blankers on March 13, 2006, noting that he has had some short term relief from his physical therapy after four sessions but that his left leg numbness persists. Dr. Blankers notes that the insurance carrier cancelled the claimant's MRI which he had recommended. Again the claimant was diagnosed with lumbago as well as left sided

radiculopathy for which medications were prescribed as well as to continue with physical therapy. Dr. Blankers sets forth that the claimant cannot return to work until his next appointment on March 24, 2006. The claimant underwent an MRI of his lumbar spine on March 20, 2006, indicating that he has degenerative changes at L2-L3 and no disc herniations noted. Dr. Blankers writes on March 24, 2006, that the claimant has had no progress with his physical therapy, continued his medications and recommended that the claimant stay off work until he was seen by a neurologist.

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 compensable injury to his low back while working for the respondent. Arkansas law requires objective medical evidence of injury in order to establish a compensable injury. It is not questioned that the claimant took a fall at work which required him being taken to Washington Regional Medical Center for evaluation. The respondents, therefore, should pay for this medical visit as well as all tests run at that time, however, there is nothing in this record to indicate that the claimant has an injury requiring ongoing treatment as a result of this fall, therefore, everything subsequent to the date of his visit at Washington Regional Medical Center on February 16, 2006, should be at the claimant's expense.

FINDINGS & CONCLUSIONS

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

2. On February 16, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate for temporary total disability in the amount of \$142.00.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable low back injury on February 16, 2006, while working for the respondent. See discussion above.

5. The respondents should pay for the initial visit at Washington Regional Medical Center following the claimant's fall at work on February 16, 2006. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back on February 16, 2006, while working for the respondent. Therefore, this claim should be denied in its entirety except for the visit to Washington Regional Medical Center on February 16, 2006, following the claimant's fall.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE