

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F602222

ERIC STILES, Employee	CLAIMANT
LONG AGO ANTIQUES, Employer	RESPONDENT
ONE BEACON INSURANCE, Carrier	RESPONDENT

OPINION FILED OCTOBER 10, 2006

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

Claimant appearing *pro se*.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 13, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 28, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his back on November 23, 1999.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$250.00 for temporary total disability benefits and \$180.00 for permanent partial disability benefits.

Prior to the hearing the respondent withdrew its stipulation that claimant had suffered a compensable injury to his back on November 23, 1999.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. State of limitations.
2. Claimant's entitlement to additional medical treatment; including medication and steroid injections.

Prior to the hearing the respondent withdrew as an issue its contention that claimant's claim for additional compensation benefits was barred by the statute of limitations. Instead, having withdrawn its stipulation that claimant suffered a compensable injury to his back on November 23, 1999, respondent raised as an issue compensability of an injury on that date.

The claimant contends that he suffered a compensable injury to his back on November 23, 1999, and that he is entitled to additional medical treatment for that compensable injury.

The respondents contend that claimant did not suffer a compensable injury to his back on November 23, 1999, and that if claimant did suffer a compensable injury any additional medical treatment is not related to that injury.

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 the within claim.
2. The employee-employer-carrier relationship existed between the parties at all

relevant times.

3. Claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$250.00 for temporary total disability benefits and \$180.00 for permanent partial disability benefits.

4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back on November 23, 1999; specifically, there are no objective findings establishing an injury as required by Arkansas law.

#### FACTUAL BACKGROUND

The respondent refinishes furniture. The claimant testified that he suffered a compensable injury to his back while lifting a desk into a "strip tank" on November 23, 1999. Claimant testified that at that time he felt something wrong with his back. Claimant initially sought medical treatment from his family physician, Dr. Hart, and missed approximately six to seven weeks of work. Initially, claimant's claim was not covered by workers' compensation due to an apparent mix up as to whether claimant should have been covered as a family member of the owner of respondent. According to claimant's testimony respondent paid back premiums and his injury was accepted by the carrier as compensable and he received reimbursement for prior medical expenses and continued to receive benefits in the form of medical treatment.

This medical treatment included evaluations by Dr. Runnels, Dr. Mitchell, and Dr. Blankenship. Dr. Blankenship treated claimant's condition conservatively and provided a series of epidural injections. In addition to the steroid injections which claimant received periodically, claimant also was prescribed medication by Dr. Hart, his family physician.

At some point in time the claimant was to return to Dr. Blankenship for another epidural steroid injection. However, this treatment was not accepted by the respondent and claimant requested a hearing on his entitlement to additional medical treatment for his

compensable injury. Even though respondent initially accepted claimant's injury as compensable, respondent now contends that claimant did not suffer a compensable injury because there are no objective findings establishing an injury.

### ADJUDICATION

The claimant contends that he suffered a compensable injury to his low back while lifting a desk on November 23, 1999. 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 there were no objective findings establishing an injury; therefore, claimant did not suffer a compensable injury pursuant to Arkansas Workers' Compensation law.

Initially, I find the claimant's testimony credible and worthy of belief. In short, I believe claimant's testimony that he suffered back pain while lifting a desk on November 23, 1999, and that he continues to suffer from back pain. However, even though I find

claimant's testimony to be believable, under the Arkansas Workers' Compensation law, in order for an injury to be compensable, it is necessary for a claimant to offer objective medical evidence to establish the existence and extent of an injury. Objective findings are defined at Ark. Code Ann. §11-9-102(16) as those findings which cannot come under the voluntary control of the patient. Complaints of pain are not recognized as an objective finding.

In this particular case, claimant underwent a lumbar MRI scan on March 22, 2000, approximately four months after the incident in November. That MRI scan was read as being within normal limits with the lumbar vertebral bodies showing normal alignment and no pathologic signal intensities. In addition, the disc spaces were "well maintained and there is no disc herniation or spinal stenosis." The MRI report goes on to note that there was no evidence of "disc herniation, annular tear, or neural exit foraminal narrowing."

In short, the MRI scan which is an objective test revealed no objective findings establishing an injury.

It should be noted that claimant underwent a second MRI scan on July 23, 2002, which did reveal straightening of the normal lumbar lordosis. While this might be considered an objective finding, it must be noted that this MRI scan was not performed until July 2002, more than two and a half years after the incident in November 1999. Furthermore, the earlier MRI scan of claimant's lumbar spine in March 2000, less than four months after the injury, did not reveal this same finding.

It should also be noted that testing has revealed degenerative changes in the claimant's lumbar spine. However, these degenerative changes were not noted on the initial MRI scan in March 2002.

In short, even though claimant has offered credible testimony that he felt pain in his back while lifting a desk in November 1999 and that he continues to suffer from back pain, a claimant's testimony by itself is not sufficient to establish a compensable injury. Under

Arkansas workers' compensation law, in order to establish a compensable injury a claimant must offer objective medical findings establishing an injury. In this particular case, an MRI scan taken of the claimant's lumber spine on March 22, 2000 was read as within normal limits with no evidence of disc herniation, spinal stenosis, annular tears, or neural exit foraminal narrowing. The first finding which could possibly be considered an objective medical finding is the straightening of the normal lumbar lordosis on the MRI scan which was performed on July 23, 2003. However, this scan was not taken until almost three years after the incident and this finding was not present at the time of the original MRI scan in March 2000. Absent objective medical findings establishing an injury, claimant cannot meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by respondent on November 23, 1999. Specifically, there is no objective evidence establishing an injury. Therefore, his claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE