

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509577

JAMES R. TONEY, EMPLOYEE	CLAIMANT
ABC PLUMBING ELECTRIC, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 26, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 4, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FREY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On June 27, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions regarding the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. Claimant now asserts that the date of injury which as the basis for the claim occurred on July 12, 2005.

The testimony of James R. Toney, the claimant, and John Drum, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

James R. Toney, the claimant, with a date of birth of August 27, 1964, is a 1982 high school graduate. After high school commenced his employment working for his uncle in plumbing. Plumbing is the only work performed by the claimant during his adult life. Claimant, who was born and raised in Monroe, Louisiana, moved to Jonesboro, Arkansas in the late 1980's.

Claimant's first employment in Arkansas after moving to Jonesboro was with Sign Systems as a welder. Claimant later secured employment as a master plumber with Adams and Cooper Plumbing where he remained for several years. Thereafter claimant obtained employment with respondent-employer in May or June 2001. Claimant's general duties in his employment with respondent-employer as a master plumber was as a service technician as well as new construction.

Claimant describes the state of his health at the time of his employment by respondent as "fine" and noted that he did not have any health problems for which he was being treated at the time. Claimant added that over the course of the next two to three years his health remained good. Claimant denies that he was treating with any physician for any condition or injury before July 20, 2005. Claimant denies ever having any back injuries or any back problems prior to July 20, 2005.

The testimony of the claimant reflects that on July 20, 2005, respondent was doing a rough-in for Rex Boulding at the Mockingbird Plaza in Paragould, a commercial project.

Claimant testified:

A rough-in is the plumbing that goes under the initial slab board. Depending on what type building you're putting up or what the customer wants as far as sinks, lavatories, commodes. All the piping has to be on the job history before the slab is actually poured. And you decide where each fixture or lab, each fixture or whatever's going to be in under the slab. . . (T. 15).

In describing the mechanics of his injury on July 20, 2005, claimant's testimony reflects:

The ground was very hard, tremendously hot, a lot of humidity that day, 100 degrees plus, probably. With the dehydration and the ground being so hard trying to shovel and dig the rough-in, to originally start the rough in. At some point with all that stress of digging and pulling, that's where I felt like the injury, I sustained an injury to my back. (T. 15-16)

claimant testified that they started working around 6:30 or 7:00 a.m. in an effort to avoid the heat, and that between 10:00 and 10:30 a.m. is when he first noticed his back pain. The testimony of the claimant reflects, regarding his actions at the time he first noticed the pain:

Well, I thought I had, I didn't know what had happened. It just felt like, it was just a sharp pain shot in my lower back and into my hip. And I remember standing up and straightening my back up. And it was just tight, you know. And it hurt.

Well when I stood up, I thought if I stood up, it may ease the pain in my lower back. But I don't remember exactly, seeing something immediately at that time because I thought maybe I just turned the wrong way. So I continued to work, continue the duty. And the more that I done, the worse and the sharper the pain was shooting in my back. (T. 16-17).

Claimant asserts that he continued to work the remainder of the day. While the claimant testified that he is uncertain if John Drum, his supervisor, was present the remainder of the day, his testimony reflects that he did not report the injury until the following day, July 21, 2005. (T. 17)

Claimant asserts that the night of July 20, 2005, his back was really hurting him and that he could hardly get out of bed the next morning.

Regarding the reporting of his injury to supervisory personnel of respondent-employer on

July 21, 2005, claimant's testimony reflects:

Well, I explained that I thought I had hurt my back. I just could not get out of bed that morning. And I felt like that it was something had pulled, felt like it ripped in my lower back. I believe that's where the particular conversation was about that, you know the area of chiropractic. Maybe it just needed to be put back into place or something to that - -

I had mentioned to him that my back was hurting and I thought I had pulled it or something. And he mentioned that, well, you need to see Dr. Jarman. He's a good chiropractor, in those words, thereabout. And I think we mentioned something about chiropractors may do more damage than good at times. Again, offered for me to do that. Initially, I thought it was kind of strange that we didn't want to file a report at that time on the injury. But he offered to pay for the chiropractor, for me to go see. (T. 18-19).

Claimant's testimony reflects that he continued working the remainder of July 21, 2005, as well as the remainder of the month. Claimant maintains that he last day that he worked for respondents was August 30, 2005, due to his injury. Claimant asserts that he explained to Mr. Drum it was too painful for him to continue to work. Claimant's testimony reflects that during the time he received medical treatment while he was continuing to work he furnished to respondent off work slips of his treating physician. Claimant maintains that a week and a half before his last day of work he had a conversation with Mr. Drum regarding light duty work. Regarding the discussion about light duty with Mr. Drum, claimant's testimony reflects:

I had came in to work, and - - or I had called John. It's just when I was off for the vacation and sick leave time with the injury. I had called him and asked him could I come back and do something light. Because I knew he wouldn't continue to pay me for now working. I didn't have that much - -

And I called him. And he said well, come in. Bring the truck in or something to that effect. Just come on in or something. And when I came in, he said you can go to Jonesboro at my office over there and help Roberta in my office, in her office. And I said, you've got to be kidding me. I said you're not going to pay me \$16.00 an hour just to sit

behind a desk. And I thought he was joking, really. And I told that in the deposition. I thought he was joking. But he never had anything else. He said well, if you can't do that. I said, there's service work to be read. There's things that I could do as a master plumber. I don't even have to work at all. I could supervise people. So that did not go well. And he said well, park your truck. And I said well, you take me home, and then I'll figure out what I'm going to do because I'm still on sick leave anyway. So that's what I did. I went home. (T. 36).

The testimony of the claimant reflects that he did not work for respondent or anyone else after August 30, 2005. Claimant applied for unemployment benefits and received six (6) months of benefits at the weekly rate of \$337.00, every week after \$200.00, in child support payments were deducted. Claimant last received unemployment benefits in March 2006. Claimant's child support obligation is \$120.00, per week. Claimant also applied for disability benefits after August 30, 2005.

The testimony in the record reflects that each employee was responsible for filling out his own time sheet. (RX. #2). Claimant acknowledged that at the time of his January 30, 2006, deposition, he testified that his injury occurred on August 4, 2006. (JX. #2). Regarding the confusion claimant explained that he did not have the time sheets and he was relaying on his memory of when he started seeing Dr. Cagle in pinpointing the date of his injury.

The testimony of the claimant reflects that the project or job of respondent-employer on July 21, 2005, was still the initial rough-in, and that equipment, a digger, was bought to job site to help. An additional employee, Chuck, was bought over to help dig. Claimant explained the reason that the additional personnel and equipment was bought to the job site:

Because we had worked 8 or 10 hours on the 20th, and we had made very little head way because the ground was so very hard. There was two or three of us digging, and we wasn't getting very far. (T. 20).

Claimant testimony reflects that after July 21, 2005, he sought medical treatment relative to his back injury. Claimant testified that the first physician that he saw for his back complaint was Dr. Jarman, the chiropractor:

Dr. Jarman was the very first one I walked in his office and told him I had a back problem. (T. 20).

The medical records reflect that the claimant saw Dr. Jarman on August 18, 2005. Claimant explained that he was seen by Dr. Cagle, his family doctor, on July 23, 2005, three days after his July 20, 2005, accident:

Because the chiropractor didn't do any good. It was still killing me. I knew something was seriously wrong. It wasn't - - (T. 20).

Claimant disputes the accuracy of the date of Dr. Jarman's records:

That's not right. Dr. Jarman was the very first because John paid for that, cash. He gave me a \$100.00 bill cash to go down and see Dr. Jarman. The very first guy I went to see was Dr. Jarman. I'm absolutely sure about that. (T. 21).

Claimant maintains that he was seen by Dr. Jarman within a few days of his July 20, 2005, injury. Claimant estimates that he saw Dr. Jarman on two occasions for treatment of his back.

Claimant's testimony reflects that at the time he saw Dr. Cagle he relayed a history of having pain in his lower back. Claimant asserts that due to the severity of pain in his lower back Dr. Cagle provided treatment for his kidney or kidney stone. Claimant was sent for some test, CAT scan, by Dr. Cagle regarding his kidney. The test was negative. Upon return to Dr. Cagle claimant relayed that the back pain was still present and that his complaint had to be more than kidney stones. Claimant asserts that he paid for the visits to Dr. Cagle but not Dr. Jarman.

The testimony of the claimant reflects that while under the care of Dr. Cagle at one point

he was seen at the emergency room of Arkansas Methodist Medical Center for a pain shot due to severe back pain. Claimant added that at the time of the emergency room visit, Dr. Cagle was either gone, closed, or otherwise unavailable.

Claimant explained that the nurse case manager, Ms. Shy Cox, removed his medical treatment from the care of Dr. Cagle and arranged for him to be seen by Dr. Brent Sprinkle, a Little Rock spine specialist, in late August/early September 2005. Regarding his initial contact with the claims adjuster, claimant testified:

No, sir. She just called me when she found out that I was going to Dr. Cagle without being workman's - - I guess between the time that I started seeing Dr. Cagle, John must have contacted workers' comp at some point - -

- - to start procedures. And then she responded and called me. (T. 24).

Claimant was seen by Dr. Sprinkle on one occasion. Claimant asserts that Dr. Sprinkle recommended physical therapy and possible injections in terms of further treatment. Claimant asserts that Ms. Cox was suppose to arrange the physical therapy, however it done. Claimant acknowledged that during his conversation with Ms. Cox he was informed that the physical therapy would not be scheduled because respondents were denying the claim.

Claimant's testimony reflects that following the September 1, 2005, visit to Dr. Sprinkle, he had access to medication which had been provided by Dr. Cagle, and that he was drawing unemployment benefits. Claimant maintains that he was "just sitting down and being very careful". Claimant eventually came under the care of Dr. Eubanks, a Jonesboro neurosurgeon. Claimant explained how he came under the care of Dr. Eubanks:

Because one morning I stood up, and I collapsed. Five months

down the road. (T. 26).

Claimant's testimony reflects that he was referred to Dr. Eubanks by Dr. Cagle following the above incident.

The testimony of the claimant reflects that Dr. Eubanks ordered a MRI scan. Claimant testified that his understanding of the MRI scan is that his back is still damaged. Claimant was seen by Dr. Eubanks on April 27, 2006. Regarding the status of his back, claimant testified that his back feels about the same, that it still hurts when he walk, sit or stand too long. Claimant asserts that he remains in need of medical treatment for his back.

On cross examination, claimant acknowledged that he operated his own business, Plumbing Concepts, which he opened when he moved to Paragould two (2) years ago. Claimant asserts that he started advertising his business in the local telephone book "this year". The ad in the phone book reflects, "Plumbing Concepts, James Toney, owner serving northeast Arkansas". The phone number listed for the business is the claimant's home phone number. The advertisement reflects that the phone is answered 24 hours a day, seven days per week. Claimant maintains that the business is jointly owned by him and his wife. Claimant also concedes that he has done work at Plumbing Concept in 2006.

While the claimant testified that presently he and his wife are the only employees of Plumbing Concepts, he has "had people working for me in 2006, under me". (T. 42). Claimant is uncertain of the amount of income derived for Plumbing Concepts in 2006, or how many jobs Plumbing Concepts has performed in 2006. Claimant testified that Plumbing Concepts did a rough-in on the Treece property. Regarding the afore as being similar to the activity he was

doing when he got hurt working for respondent-employer, claimant testified:

Yes, but I had someone doing the work for me at this time.(T. 42-43).

Claimant asserts that he supervised the employee that was helping him do the rough-in at the Treece property. The job was performed a month to month and a half prior to the August 2006, hearing. Regarding other jobs performed by Plumbing Concepts, claimant testified:

Just change flappers in commodes, something I can just walk in a house and do in ten minutes and walk out. Just basically your light duty stuff, what I would have been doing for anyone else. That doesn't take a lot of physical stress on my back to do it. I guess is the best way to explain that. (T. 44).

Claimant is uncertain if Plumbing Concepts did any jobs after September in 2005.

On cross-examination, claimant acknowledged that the records of Dr. Jarman reflects that his "initial consult" was had on August 18, 2005, which would not square with the July 20, 2005, date. Likewise, the claimant acknowledged that his earlier reported date of injury of August 4th or 5th would not line-up with the medical in the record. Claimant responded "most definitely" regarding feeling a sharp, stab, tearing sensation in his back at the time of his injury of July 20, 2005.

Claimant testified that he had symptoms of back pain and hurting in his lower back between July 20th and July 21st when he went to see Dr. Cagle. (T. 47). Claimant concedes that Dr. Cagle recorded symptoms of difficulty voiding and blood in the urine. Dr. Cagle's office note is devoid of complaints of back pain or injury regarding the claimant. Dr. Cagle recorded symptoms of burning urination and lower back pain regarding the claimant during an August 12, 2005, visit. Claimant insists that he gave a history of his back injury to Dr. Cagle at the time of the first visit. Claimant disputes Dr. Cagle's description of his complaint during the August 12,

2005, visit of urinary tract disorder, urethritis, and prostate problems. Claimant concedes that he paid for the visit to Dr. Cagle out of pocket.

On the one hand, claimant asserts that he never heard anything from the workers' compensation carrier while he was going to Dr. Cagle, while on the other hand he insists that the reason for the afore was because Shye Cox, the nurse case manager, took him away from Dr. Cagle's treatment. Claimant asserts that while he told Dr. Cagle that his injury was going to file under workers' comp, Dr. Cagle still required him to pay. Claimant testified that Dr. Cagle was supposed to contact respondent about paying for the claimant's treatment. Claimant asserts that when he went to Arkansas Methodist Medical Center he indicated that it was workers' comp.

On August 17, 2005, claimant was again seen by Dr. Cagle to review his test results and for the swelling in his lower back. Claimant explained that the swelling was across the lower back into his right hip and right leg. The August 21, 2005, records of Arkansas Methodist Medical Center reflect that the claimant provided a history of back pain for three weeks, which coincided with the date of injury claimant provided during his January 30, 2006 deposition. Claimant questions the origin and accuracy of the history contained in the August 21, 2005, hospital records. Claimant acknowledges telling hospital personnel of an injury at work.

When the claimant returned to Dr. Cagle on August 30, 2005, his chief complaint was that of having sharp back pain radiating down the left leg. Claimant maintains that the symptoms recorded by Dr. Cagle on August 30, 2005, had been present and relayed since the initial visit, however had not been documented in the office notes. Claimant denies ever having a prior workers compensation claim. The prior injuries to his hands and knees ten years earlier were the product of fighting. Claimant noted that he was formerly a fighter.

On September 1, 2005, claimant was seen by Dr. Sprinkle. Claimant noted that at the time of the September 1, 2005, visit his symptoms were sharp pain in his lower back and hip area; tingling and numbness in his legs; and sensation of his legs going to sleep the longer he sit. Claimant acknowledged listing August 4, 2005, as the date of his injury in the initial history survey document that he completed at Dr. Sprinkle's office on September 1, 2005. Claimant indicated, on the document, problems with his neck, shoulder, wrist, hand, headaches, back, feet, right wrist, left shoulder and both legs. Claimant testified that the afore problems started progressing the same time as his initial injury.

Claimant acknowledged going to the emergency room on December 23, 2005, with complaints of headaches, irritated eyes, chest, and congestion. Claimant asserts that he received a pain shot for his back during the December 23, 2005, emergency room visit.

Claimant's testimony reflects that when he was seen by Dr. Eubanks on April 27, 2006, he relayed his symptoms, which included tingling sensations in his hands, legs, and feet. Claimant acknowledged that Dr. Eubanks indicated that the injury might be some kind of degenerative process. (T. 67). Claimant testified that he did not remember the conversation with Dr. Eubanks regarding a referral to a neurologist.

The testimony of the claimant reflects that on July 20, 2005, when he started the rough-in Chuck Hampton and John Drum were present. Claimant acknowledged that he did not mention anything to Mr. Hampton when he hurt his back, only that he "stood up". (T. 70). Regarding his communication with Mr. Drum on July 21, 2005, claimant testimony reflects:

I mentioned that my back was hurting. I didn't never say injured.
I said my back was hurting.

* * *

I told him I did. I thought I hurt it on the rough in, yes. (T. 70)

Claimant asserts that Mr. Drum gave him a \$100.00 to go to the chiropractor. Claimant denies that the afore was a loan.

The rough in was completed on July 25, 2005. On August 1, 2005, claimant performed a top out for Jimmy Gramlin. On August 4, 2005, claimant did a material rough in on Kenny Hall. Claimant testified that he continued to work the same pace after July 20, 2005, with his back injury. Claimant asserts that he complained to folk that he was working that his back was hurting during the afore period., to include John Drum and the owner.

Regarding the offer of light duty, claimant asserts that he did not decline it. During his January 2006, deposition, claimant testified that he was going to go home and think about it. Claimant denies that he immediately filed for unemployment benefits:

Not right away. No. I tried to contact John to see if I could do back to working light duty doing service work. That was my last alternative, the unemployment. I hounded him for a month to put me back to work. And he said that he did not have a release from the doctor. I had no choice for unemployment. (T. 73).

Claimant acknowledged contacting Roberta Hampton and relaying that he thought he had a release from the doctor. Claimant also testified that once the workers compensation insurance carrier denied his claim, he again contacted Ms. Hampton and relayed that he needed to go back to work. Claimant asserts that he told Ms. Hampton that he felt that he could do his duty - - service work, which was very easy. Claimant denies telling Ms. Hampton that he was quitting and not coming back. Claimant maintains that what he told Ms. Hampton was that he was going

to seek counsel for this.

Claimant testified that his injury occurred on July 20, 2005, between 10:00 and 10:30 a.m. The worksheets reflect that on July 20, 2005, from 9:00 to 12:00, rough in, no digging, and from 12:30 to 6:30 p.m. digging with help of three people.

Mr. John Drum testified that he one of the owners of respondent-employer, having taken over the business on June 30, 2005. Regarding Eric Bouling and the working relationship of same with respondent-employer, Mr. Drum testified:

As far as I know, the working relationship has been going on for two or three years from what I understand. When I took over the company, I got one of the last projects he had, one of the last buildings he had. (T. 81).

The testimony of Mr. Drum reflects that on July 20, 2005, respondent-employer started the job for Eric Bouling. Mr. Drum noted that there was a problem with the ground:

Yes. We found out the ground was hard. It was dry from the summer. And after Mr. Toney and Mr. Hampton, they were digging and they called me and told me the ground was hard, and they needed some more help. And at that point I determined let's just get a digger in here. (T. 82).

Mr. Drum testified that they attempted to dig for three to four hours before deciding to get the excavating equipment.

Mr. Drum denies that there was any mentioning of the claimant having hurt his back at the time he received the call about the hard ground. Further, Mr. Drum denies that the claimant reported to him on July 21, 2005, that he had hurt his back. Mr. Drum testified that the first time he realized that the claimant was having back problems and attributing them as work-related was August 22, 2005:

He told me that he had hurt his back on the job and thought it was on the Eric Bouling job around August sometimes. And so at that point, I told Roberta to get a hold of him and fill out the workman's comp forms. (T. 83).

The Form 1A-1 was filed by respondents on August 22, 2005, with the date of injury reflects as July 20, 2005. (RX. #3). The testimony of Mr. Drum reflects that between July 20, 2005, and August 22, 2005, claimant performed service calls, rough ins, and top outs for respondent. Mr. Drum testified that on August 18, 2005, claimant told him that his back was stiff, which was the only time he registered back complaints between July 20, 2005, and August 22, 2005.

Regarding the \$100.00, that was provided to the claimant, Mr. Drum testified:

We had a discussion because I've told the guys, talked in different days, Monday morning I wake up and if my back is stiff then I go to the chiropractor and get my back done. And then on August 18th, he asked me about the chiropractor and what it did, did it help. And I said I've been using one for a long time and it's always helped me. And he said well, I wouldn't mind trying one because my back's stiff. And he said, I won't get paid again until Thursday. And this was on a Wednesday and then he said I don't have any money to go. Can you lend me \$100.00? So, of course, I loaned all the guys money when they asked me. So I loaned him \$100.00. (T. 85).

Mr. Drum testified that it was not until that Monday, August 22, 2005, that the claimant indicated that his back complaint was work related.

Mr. Drum testified that after the accident report was completed on August 22, 2005, claimant was offered light duty:

The offer of light duty came after he told us he was injured. We basically told him to go see the doctor. Get a doctor's note and let us know what you can do. Once the doctor said he can do light duty, that's offered to him. (T. 85).

It was Mr. Drum's recollection that it was Dr. Cagle that first gave the claimant a light duty note.

Mr. Drum testified that based on the restrictions, no bending and restrictions on lifting, respondent had the claimant doing basic service calls. After August 30, 2005, the claimant did not return to work. Mr. Drum testified regarding the afore:

Well, what we did is we found out that he needed to basically be off light, light duty. So I offered him an office job with Roberta, doing whatever with Roberta. Because I'd prefer to have them working than on workers' comp or disability. And I got the lady from the insurance company on the phone with me. She called me and was talking about something. I hung up with her and then I told James that, Mr. Toney, that I would offer him a job in the office to help him stay working. And basically he just went off and said he was a master plumber, and he's got to do service work and this and that. And he said no way in hell would I do that job. And got really irrate about it. And then Roberta called him and he told her the same thing. And I guess the lady from the insurance company talked to him. (T. 86-87).

Mr. Drum testified that the claimant must have filed for unemployment benefits against the old owner of the business because he never got anything.

The first medical in the record in close proximity to the claimant's asserted date of injury of July 20, 2005, is office note of July 23, 2005, of Dr. Roger Cagle regarding the claimant, which reflects a chief complaint of having difficulty voiding and blood in the urine. There no mention of a back injury or complaint associated with the visit. (JX. #1, p. 1-2). The August 12, 2005, office note of Dr. Cagle regarding the claimant dose reflect lower back pain as one of the claimant's present illness, however the same is devoid of any mention or notation of an injury, work related or otherwise. (JX. 1, p. 3-5). At the time of his August 17, 2005, visit to Dr. Cagle to review the test results, claimant reported that he has swelling in his lower back. The August 17, 2005, report of Dr. Cagle reflects a diagnoses of low back pain and muscle spasms regarding the claimant. The clinic note also reflects that a MRI of the lumbar spine was scheduled for the claimant on August 23, 2005. (JX. #1, p. 8-9).

The record reflects that on August 18, 2005, claimant was seen by Dr. Michael W. Jarman, a chiropractic physician. The August 18, 2005, office note reflects regarding the claimant's visit:

INITIAL CONSULT: The patient was seen today for an initial consult. A case history was taken, patient question and interaction discussion and an examination schedule was discussed. The patient reported the following symptoms and problems: low back pain with radiation to the right and left lower extremity. The patient was seen today for orthopedic, neurologic and chiropractic testing. . .

The claimant was again seen by Dr. Jarman on August 19, 2005. The office note relative to the visit reflects, in pertinent part:

The patient entered the office complaining of low back pain with radiation to the right lower extremity. The patient did exhibit decreased lumbar range of motion. Muscle spasm was present along the right lumbar paravertebral region, extending into the right sacral and right pelvic region. Inflammation was present over the right lumbar paravertebral region. Palpable trigger points were noted over the right lumbar paravertebral region. Inflammation was present over the left lumbar paravertebral region. . . (JX. #1, p. 10).

On August 21, 2005, claimant was seen at the emergency room of Arkansas Methodist Medical Center. The medical records regarding the August 21, 2005, hospital visits reflects that the claimant provided a history of back pain for three week, which was worse that past week and one half. The report also reflects that he had gone to a chiropractor. The emergency room records reflects findings of swelling, muscle spasm on the right, and tender in th e focal paraspinous muscle on the right, along with diagnoses of SI inflammation and acute sciatica. (JX. #1, p. 15).

On August 26, 2005, claimant underwent an MRI of the lumbar spine at St. Barnards Regional Medical Center, pursuant to the directions of Dr. Cagle. The MRI report reflects:

1. Degenerative disk desiccation and posterior disk bulging at L4 through S1. No significant spinal or neuroforaminal stenosis, however.
2. DJD of the posterior facet joints bilaterally at L3 through S1.(JX. #1, p. 20)

The record reflects an August 30, 2005, office slip authored by Dr. Cagle reflecting that the claimant need to be on light duty until seen by a referring physician, on September 15, 2005. (JX. #1, p. 21). Dr. Cagle's August 30, 2005, clinic note reflects that referred to Spine AR. (JX. #1, p. 24).

On September 1, 2005, claimant was evaluated by Dr. Brent Sprinkle, D.O., at Arkansas Specialty Spine Center, pursuant to the directions of respondent-carrier. Claimant relayed his date of injury as August 4, 2005, during the September 1, 2005, visit. Following his examination of the claimant and review of the prior diagnostic studies, Dr. Sprinkles' impression of the claimant's complaint was that of lumbar strain which was consistent with the history of sharp pain and stiffness following a rough-in job. (JX. #1, p. 26). Dr. Sprinkle provided the claimant with a limited duty release to return to work with no lifting over 40 pounds, and no frequent bending/stooping. (JX. #1, p. 29).

On April 27, 2006, claimant was evaluated by Dr. K. Dewayne Eubanks, a Jonesboro neurosurgeon, pursuant to a referral of Dr. Cagle. Following his examination of the claimant and review of prior diagnostic studies, Dr. Eubanks reported:

IMPRESSION: I think there is too many symptoms to account for by lumbar disc disease or lumbar radiculopathy. On the other hand, some his things are definitely related to lumbosacral pathology.

* * *

He needs extensive pain management prior to any consideration to attacking his degenerative disc disease surgically. He needs EMG/NCVs

and a neurology consult for a possibility of peripheral neuropathy as well as Raynaud's disease. He needs dynamic and statis plain films. I will see him back in about six weeks with all these things. In the meantime, it is my opinion that he can not work in his present condition, especially not allowing the possibility of improvement. (JX. #1, p. 45).

The record reflects the presence of a September 1, 2005, Form AR-N which bears the claimant's signature recites the date of injury as August 4, 2005, with the respondents being notified on August 5, 2005. In describing the injury, the form reflects, " pulling - bending - twisting Plumbing trade High stress on your body". (RX. #1, p. 28).

The record also reflects a September 2, 2005, correspondence from respondent-employer to the nurse case manager, Ms. Shy Cox, regarding the claimant. The document reflects, in pertinent part:

On the morning of September 2, 2005, James Toney was offered the opportunity to perform light duty office work while he recovers from his injuries. James stated that he didn't want to do that, he wanted to do service calls. He was then informed that at this time that was not an option due to the current service calls available were under houses and in yards that would require going against his doctor's advise.

At that time James told John to take him home, he was going to call his lawyer. At that point John took him home. (RX. #1, p. 29).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of medical reports and other documents, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 20, 2005, the relationship of employee-employer-carrier existed among the parties.

3. On July 20, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits at the maximum applicable rate.

4. On July 20, 2005, the claimant did not sustain a specific incident injury, identifiable by time and place of occurrence, arising out of and in the course of his employment with respondents.

CONCLUSIONS

The claimant asserts that he sustained an injury to his back on July 20, 2005, within the course and scope of his employment with respondents, and that it was reported to appropriate supervisory on the following day. As a consequence of the injury, claimant maintains that he continues to require medical treatment and that he has been rendered incapacitated from engaging in gainful employment. Claimant seeks corresponding temporary total and medical benefits as well as controverted attorney fees. Respondents deny that the claimant's back problems are work related.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence.

Ark. Code Ann. §11-9-102 (4)(A)(i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastic*, 56 Ark App. 126, 938 S.W.2d 876 (1997).

In the instant claim, the evidence fails to establish by a preponderance that the claimant's back complaint, for which he seeks workers' compensation benefits, was caused by a specific incident and is identifiable by time and place of occurrence. Accordingly, the claimant has failed to sustain his burden of proof of having sustained a compensable injury.

Contrary to the assertions of the claimant, the evidence, in the form of the claimant's own worksheet entries, does not reflect that the claimant was digging the rough-in on the morning of July 20, 2005, and the job site of respondent-employer. Further, the credible testimony of Mr. John Drum reflects that the first time the claimant registered a complaint about his back was August 18, 2005, and at that time it was "stiffness". Corroborative of the afore is the fact that the claimant was seen by Dr. Jarman, a chiropractic physician, on the same day after borrowing \$100.00, from respondent. Claimant did not relate to Dr. Jarman that his need for treatment was the product of a work-related injury or his employment with respondent.

When the claimant completed the Form AR-N on September 1, 2005, he stated that the date of injury was August 4, 2005, and that he notified respondent of the accident on August 5, 2005. In describing the injury on the Form AR-N claimant did not describe a specific incident. While the claimant had been seen by his family physician, Dr. Roger Cagle, on several occasions prior to August 18, 2005, the records of the visits are devoid of any reference to an injury, work related or otherwise.

While it is not a prerequisite of compensability that the claimant identify the precise date upon which an accidental injury occurred, the claimant must prove that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). A claimant's inability to specify the date might be considered in weighing the credibility of the evidence, although Ark. Code Ann. §11-9-102 (4)(A)(i) does not require that the exact date be identified.

When review in the conflicting testimony of the witnesses and as well as the conflicts in the claimant's own testimony, along with the medical and documentary evidence, I find the claimant to be wholly lacking in credibility. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained an injury to his back on July 20, 2005, arising out of and in the course of his employment with respondents. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge