

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408086

ANTHONY TUCKER, EMPLOYEE	CLAIMANT
CITY OF LITTLE ROCK, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED FEBRUARY 8, 2006

Hearing held on November 17, 2005, in Little Rock, Pulaski County Arkansas, before the HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant, ANTHONY TUCKER, of Little Rock, Arkansas, appeared pro se.

Respondents represented by HON. BETTY J. DEMORY, Attorney at Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on November 17, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

A prehearing telephone conference was conducted on September 8, 2005, and a prehearing order was filed on September 12, 2005. At the hearing the parties announced that the stipulations, issues, and their respective contentions were properly set out in the prehearing order. A copy of the prehearing order was introduced into evidence as Commission Exhibit "1", and made a part of the record without objection.

It was agreed the Arkansas Workers' compensation Commission has jurisdiction of this claim, and that the employee/employer/carrier relationship existed at all relevant times, including July 26, 2004.

Tucker, Anthony/F408086

By agreement of the parties, the following issues were to be presented at the full hearing for determination:

- 1) Compensability.
- 2) Compensation rates.
- 3) If compensability is overcome, to what extent the claimant is entitled to associated medical and indemnity benefits.
- 4) Whether this claim is barred by the Shippers Transport Defense.

At the prehearing conference, the claimant contended, in summary, that on July 26, 2004, while working for the City of Little Rock loading wood, he sustained a compensable back injury. Claimant further contended he is entitled to temporary total disability benefits from July 26, 2004 to a date yet to be determined, and all associated medical expenses.

The respondents contended, in summary, the claimant did not sustain a work-related injury arising out of and in the course and scope of his employment. Respondents asserted the claim should be barred by the Shippers Transport Defense. Further, respondents contend claimant had pre-existing back injuries and problems which he did not disclose when he was hired by the City of Little Rock on May 24, 2004. Respondents assert that the alleged back strain sustained on July 26, 2004 is due to pre-existing conditions and therefore, not causally related to his employment with the City of Little Rock.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury to his back at the work place on July 26, 2004. Specifically, the claimant failed to prove that his back injury arose out of and in the courses of his employment with the City of Little Rock.
- 4) In the absence of a finding of compensability, the other issues outlined herein are rendered moot.

DISCUSSION

The claimant testified he had been working for the City of Little Rock approximately two months, when on July 26, 2004, he injured his back while loading some wood. The claimant testified as follows regarding the incident:

Tucker, Anthony/F408086

MR. TUCKER: Okay, as we was working - me and Robbie, we had a job we was fulfilling at - on Broadway - a cemetery right up the road here. We was trimming trees and loading wood, and by the truck being so big, we couldn't get inside of the graveyard. We had to park it on the street side and throw the wood over into the bed of the truck. And as we was loading wood, I lifted something I guess was a little too heavy and twisted an turned and I heard a snap in my back and I hit the ground and he told me not to move and he called an ambulance and I went to Baptist Med. (T. pg. 20, lns. 5-16)

The claimant testified he injured his lower back on July 26, 2004 at the L4-5 position. (T. pg. 21, lns. 20-21) The claimant testified that immediately after his alleged injury he was transported to the emergency room for treatment.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirement of A.C.A. §11-9-102(4)(a)(i) must be established.

- 1) Proof by a preponderance of the evidence of an injury arising out of and in the course of 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 medical findings, as

Tucker, Anthony/F408086

defined in A.C.A. §11-9-102(16), establishing the injury; and

4) Proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. **Mikel v. Engineered Specialty Plastics**, 56 Ark. App. 126, 938 S.W. 2d 876 (1997) The claimant must prove that his/her injury was the result of an accidental injury that arose in the course of employment and that it grew out of or resulted from the employment. **Cook v. Aluminum Co. of America**, 35 Ark. App. 16, 811 S.W. 2d 329 (1991) The claimant has the burden of proving the job relatedness of any alleged injury with out the aid of any kind of presumption in his favor. **Farmers v. Little Knight Co.**, 220 Ark. 355, 247 S.W. 2d 111(1952).

In the present case, the claimant had numerous pre-existing problems with his lower back. The medical records introduced at the full hearing are replete with reports evidencing the claimant's pre-existing back problems. Dr. Chakalas' May 6, 2003 report, approximately one year prior to the claimant going to work for the respondents, states as follows:

" Mr. Tucker comes in. He is having a lot of back pain and spasm. He has a bad disc L4-5. L3-4 is okay, but L5-S1 is questionable. He needs to have decompression from L4 to the sacrum and fusion at the same levels bilaterally. I have given him literature to read and will set him up to give auto blood. He is disabled and unable to work." (RX-1, pg. 166)

Tucker, Anthony/F408086

The medical records indicate the claimant complained of low back pain as early as 2001. (RX-1, pg. 9) On August 21, 2001, the claimant underwent an MRI of the lumbar spine. The MRI report stated the following impression:

"Mild degenerative disc disease with mild disc bulge at L4-5."

(RX-1, pg. 101)

On September 24, 2002, Dr. Chakalas diagnosed the claimant with lumbar disc syndrome with radiculitis and found him to be temporarily totally disabled. (RX-1, pg 126-127) On November 6, 2002 the clamant was seen at Metropolitan Emergency Medical Services because concrete blocks had fallen on him. At that time, the claimant again reported low back pain, and reported that he was taking Lorcet for another pre-existing back injury. (RX-1, pg. 148)

With all the claimant's back problems, Dr. Chakalas recommended a lumbar discogram in his February 4, 2003 report. (RX-1, pg. 166) The Lumbar discogram was conducted on February 20, 2003 and revealed an "abnormal discogram at L4-5, with complete extravasation of the dye, large annular tear." (Emphasis added.) The CT of the lumbar spine with contrast also on February 20, 2003 showed a diffuse disc bulge at L4-5. (RX-1, pg. 177).

It is obvious to this examiner that the claimant's alleged compensable injury to his low back was pre-existing to his employment with the respondents. The record clearly shows the claimant was diagnosed with degenerative disc disease, bulging disc at L4-5, and an annular tear well before July 26, 2004. As stated earlier, Dr. Chakalas had recommended low back surgery to claimant prior to his employment with respondent; however, the recommendation was never followed.

Tucker, Anthony/F408086

In addition to the overwhelming material evidence showing the claimant's pre-existing problems, the claimant's own testimony shows his low back problems pre-existed his employment with the City of Little Rock. The claimant testified that in 1998 he had filed for social security disability because of back problems. (T. pg. 27, lns 17-21) The claimant admitted under oath he was scheduled for bone fusion surgery in his low back by Dr. Chakalas prior to his employment with the respondents. (T. pg. 33, lns 7-9) The claimant went on to testify the problems with his low back prior to his employment with the respondents was at the L4-5 level. (T. pgs. 34, 24-25 & pg. 35 lns 1-2)

Based on the testimony of the claimant, the numerous medical records and all the evidence contained in the record, I find that the claimant has failed to prove his low back injury arose out of and in the course of his employment with the respondents. Specifically, I find the claimant's low back problems pre-existed his employment with the City of Little Rock. As such, the claimant has failed to meet his burden of proof regarding compensability.

ORDER

_____After careful consideration of all the evidence in this matter, and viewing such impartially, and without giving the benefit of the doubt to either party, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while in the respondents' employ on July 26, 2004. Therefore, respectfully, the above captioned claim is hereby denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge