

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F501842

ROGER WILLIAMS, EMPLOYEE	CLAIMANT
CROCKETT BUSINESS MACHINES LLC, EMPLOYER	RESPONDENT
CINCINNATI CASUALTY COMPANY, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 15, 2006

Hearing before Administrative Law Judge Barbara W. Webb on June 15, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. M. Keith Wren, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on June 15, 2006, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on April 18, 2006. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee/employer/carrier relationship existed at all relevant times, including February 10, 2005.

3. That in the event the claim is found compensable, the temporary total disability rate would be calculated at the maximum compensation rate allowed.
4. That the respondents have controverted the claim in its entirety.

By agreement of the parties, the issues to be litigated are:

1. Whether the claimant sustained a compensable work-related injury on February 10, 2005.
2. Whether claimant is entitled to temporary total disability benefits and medical benefits.
3. Controversion and attorney's fees.

The record consists of a one volume transcript of the June 15, 2006 hearing, consisting of the testimony of Mario Sherrell and Roger Williams, and all documentary evidence consisting of Claimant's Exhibit No. 1 (medical index and records); Claimant's Exhibit No. 2 (medical index and records of prior treatment); and Respondents' Exhibit No. 1 (medical index and records).

FACTUAL BACKGROUND

The claimant testified at the hearing that he was employed by his brother at Crockett Business Machines in March of 1998 as general manager. His job duties included oversight of sales, service, and administration in all of the departments. He took machines out on demonstrations, serviced machines, set up machines, and relocated machines. He estimated that some of the heavier machines weighed 2,300 pounds. He testified that he handled heavy machines on a regular basis. He testified he injured his back in 2002 when

he was assisting another employee in trying to unbox a machine which weighed approximately 100 pounds. He testified he ruptured his back and received surgery. He remained off work for approximately 6-8 weeks. He testified that he eventually recovered and had little or no problems and took no medication for his previous back injury early 2005. He testified that on February 10, 2005, during the merger with another company, he was asked to assist another employee, Mr. Sherrell, to help him get a machine off the shelf. He testified that as they were trying to pull it off the shelf, the machine was too heavy for him and he stumbled and fell back against a rack with the machine on him. He testified that he felt a warm sensation down his leg and excruciating pain within fifteen minutes. He explained that due to the pain he left work and went to the emergency room. He received prescription medication and was released to see the neurosurgeon the following day. On cross-examination, the claimant testified that he had sought treatment from Dr. Holland on January 4, 2005, for similar left hip, leg, and calf pain. He testified that he moved back to Kentucky and began treatment with Dr. Krishnaswamy in March of 2005. He testified that he was sent to see Dr. Bean, a neurosurgeon. He testified that he returned to his family doctor, Dr. Echeverria, in April of 2005 and continues to see him for his cholesterol and back pain.

The claimant also offered the testimony of Mario Sherrell. Sherrell testified that he worked for the company for a total of sixteen years and the claimant was his general manager. He testified that he was now unemployed. He worked as a service technician. He recalled that on the morning of February 10, 2005, he was trying to load a machine that weighed over 200 pounds. He testified that he asked the claimant to help him load the machine onto a gurney. He testified that as the machine was lifted and lowered down, he

heard a pop and the claimant gave way and slipped toward the gurney. He testified that after the pop, the claimant helped him put the machine back up on the shelf. He observed the claimant holding his lower back and walking sideways with a lean. He testified that he had never noticed the claimant holding his back or complaining of back pain before that day or the week before. On cross-examination, Sherrell testified that he was terminated from the company about two months prior to the hearing.

The medical records in the case reflect that in 2000, the claimant sought treatment with Dr. Jay Holland complaining of back and leg pain. Lateral lumbar x-rays were taken and reflected that a mild area of pseudoarthrosis at L5 with very good alignment and no bony abnormalities. In 2002, the claimant again sought treatment with Dr. Holland complaining of lower back pain radiating down his left leg. He was diagnosed with a sacroiliac joint strain. Again the x-rays revealed an essentially normal lumbar spine. An MRI of the claimant's lumbar spine on March 8, 2002, reflects mild degenerative disk disease of the lower spine with a left disk herniation at L4-L5, resulting in moderate left foraminal narrowing, suggestive of displacement of the left L5 nerve root. There was also right disk herniation at L5-S1, resulting in minimal right foraminal narrowing. There was no evidence of significant spinal stenosis. He was referred for treatment with Dr. David Reding, a neurologist, and treated conservatively with outpatient therapy until his condition improved. He returned for treatment with Dr. David Reding in 2003. He complained of recurring and severe bouts of left sciatic pain. A second MRI was performed. The MRI showed a small left lateral disc extrusion at L4-5 with compression of the L5 nerve root in the lateral recess. There was a small annular tear or protrusion at L5-S1 on the opposite

side. On March 11, 2003, the claimant underwent a lumbar laminotomy, facetectomy, and nerve root decompression at L4-5, left. On March 24, 2003, the claimant returned for follow-up and continued to complain of pain in his left hip and leg. At that time, Dr. Reding noted that he did not have a disc rupture at the time of surgery but did have an element of lateral recess stenosis. On March 28, 2003, the claimant returned complaining of continued pain and numbness in his left hip and leg. On May 1, 2003, the claimant was referred for x-rays of his hip and leg. The x-rays of the left hip demonstrated a normal appearance of the femoral head and neck. No fracture or dislocation was identified. At that time, Dr. Reding noted that the reason for the pain remained obscure and referred the claimant for a bone scan. The bone scan was performed on May 15, 2003. Results showed mild degenerative change in the peripheral joints and was otherwise normal. On May 23, 2003, the claimant underwent a third MRI. The MRI showed the postoperative changes. There was no evident disc rupture and no sign of nerve root compression. The claimant was released to return to work and given a prescription of Vicodin tablets. On December 1, 2003, the claimant sought treatment at the Baptist Health emergency room after a rear-end motor vehicle accident complaining of neck and right lower rib cage pain. X-rays showed a 7th right rib fracture with minimal displacement and the cervical spine series was negative. On July 21, 2004, the claimant returned from treatment after a year complaining of pain in his back. The doctor noted that the "problem seems to be arthritic or possibly tendonitis". On January 4, 2005, the claimant sought medical treatment with Dr. Holland at the Hillcrest Family Practice Clinic complaining of pain in his left hip for the past two to three months which had gotten worse. Notes from the clinic reflect "No

trauma". X-rays were normal. On February 10, 2005, the claimant sought treatment complaining of left hip, leg, and calf pain after lifting a machine which fell and hit him on his left thigh. He continued treatment with Dr. Holland and was ultimately referred to Dr. John Wilson who treated him conservatively with physical therapy for two weeks. In March of 2005, the claimant presented to the Appalachian Regional Healthcare Clinic in Harlan, Kentucky, complaining of low back pain. His history reflects that he had been having severe back pain for the past 4-6 weeks. He reports that the pain is in the lower back and radiates down to his left back of the thigh and was different than the pain before his prior surgery. The notes further reflect that the claimant "Denies any injury." He was treated conservatively with prescription medication and physical therapy and referred for a neurological evaluation. On April 4, 2005, the claimant was treated by Dr. Bean, a neurologist. His notes reflect that the claimant's pain began around January, but it was early February when it became more severe. The notes do not reflect any mention of an injury. On April 7, 2005, Dr. Echeverria of the Department of Internal Medicine of Appalachian Regional Healthcare issued a medical opinion that claimant's "second lesion that he suffered on February 10, 2005 is different from the one that was taken care of in March 2003" based on the comparison of a new MRI and the Operative Report from Dr. Reding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. That the employee/employer/carrier relationship existed at all relevant times, including February 10, 2005.
- 3.. Claimant has failed to establish by a preponderance of the evidence that he had a compensable injury on February 10, 2005.
4. Respondent has fully controverted the payment of all additional benefits.

DISCUSSION

The claimant contends that he suffered a compensable injury to his low back on February 10, 2005, while moving office equipment; and that he is entitled to temporary total disability benefits until a date yet to be determined and medical benefits related to his compensable injury. The respondents contend that the claimant did not suffer a compensable injury to his low back on February 10, 2005; and that claimant suffers from a preexisting condition.

I. COMPENSABILITY

Ark. Code Ann. § 11-9-102(4)(A) defines “compensable injury”: (a)n accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If

claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In the instant case, the claimant has clearly suffered from lower back pain for a long time. It is undisputed that the claimant had undergone surgery for his lower back pain prior to February of 2005 and had continued to seek treatment for his lower back problems as recently as January of 2005, the month prior to the alleged work related incident. The medical records in this case reflect that claimant denied having an injury when he sought treatment in Kentucky in March of 2005. The only evidence offered by claimant to corroborate the on-the-job incident was the testimony of Mario Sherrell, a disgruntled ex-employee of the company. Moreover, the claimant's own version of the facts surrounding his alleged injury is not consistent with the description of the incident he gave to the emergency room personnel or with the version as described by Sherrell. Based on my

review of the evidence in this case, I do not find that the testimony of the claimant or Sherrell that the claimant was injured on the job to be credible or compelling.

II. AGGRAVATION/RECURRENCE

In the instant case, it is disputed that a specific incident occurred at work. Respondents contend the continuation of similar complaints should be considered a continuation and/or recurrence of the claimant's problems from his preexisting condition which was not work related.

In Maverick Transp. V. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000), the Arkansas Court of Appeals discussed the difference between an aggravation and a recurrence as it relates to workers' compensation law. The Court stated:

An aggravation is a new injury resulting from an independent incident. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Only where it is found that a second episode has resulted from an independent intervening cause is liability imposed upon the second carrier.

Id. at 130, 10 S.W.3d at 468. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The test to determine whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber

Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

The determination of the credibility of the witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Cooper v. Hiland Dairy, 69 Ark. App. 200, 11 S.W.3d 5 (2000).

The claimant relies primarily on the testimony of his co-worker, Mario Sherrell, and the opinion of Dr. Echeverria dated April 7, 2005. Sherrell testified that the claimant was assisting him lift a piece of machinery when he heard a “pop”, felt the claimant fall to the ground, and observed the claimant in pain. Dr. Echeverria rendered a medical opinion that the claimant’s “lesion” suffered on February 10, 2005, was different from the one that was the subject of his surgery in March of 2003 after reviewing the Operative Report of Dr. Redding (noting that Redding did not find problems related to a subligamentous extrusion showing on the new MRI). While at first blush, the arguments and evidence offered by claimant appear persuasive, a careful review of the totality of the evidence requires a different result. Dr. Echeverria, the claimant’s family doctor, is the only doctor to render a medical opinion that the claimant’s current back problems are not a continuation of his earlier problems. None of the specialists agree with that conclusion. Moreover, while Dr.

Echeverria states that the claimant's medical problems were caused at work, the doctor is clearly relying on statements of the claimant. Based on my review of the entire record, I find that the preponderance of the evidence demonstrates that claimant's condition was a recurrence of the pre-existing condition and not the result of a specific incident injury or intervening cause.

III. OBJECTIVE FINDINGS

Respondent contends that there are no "objective findings" as required in order to support compensability of a February 10, 2005 injury. The claimant bears the burden of proving a compensable injury by a preponderance of the evidence. Smith v. City of Fort Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004). In addition to proving his injury by a preponderance of the evidence, the claimant must establish the existence of the injury by medical evidence and supported by "objective findings." See Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those that cannot come under the voluntary control of the patient. See Ark. Code Ann. § 11-9-102(16)(A)(i). The claimant must also prove that there is a causal connection between the work-related accident and the injury. Stevenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). With respect to this proof, the claimant must show that the "major cause" of the injury is the workplace. When making this determination, the claimant does not receive the benefit of the doubt. Ark. Code Ann. § 11-9-704(c)(4)(Supp. 1995); Glencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991).

A claim for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. Arkansas Department of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

In the present case, the claimant has not presented any objective medical findings supporting a change of or the existence of a compensable injury as a result of any work performed by the claimant on February 10, 2005. Without such proof, claimant's claim against Respondent must fail.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

HONORABLE BARBARA WEBB
Administrative Law Judge