

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511024

TERRY WISE, EMPLOYEE	CLAIMANT
NORWOOD-LYNDA MCDOUGALD, INC., EMPLOYER	CLAIMANT
AMERICAN INTERSTATE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 31, 2006

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant appeared pro se.

Respondents represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted by Judge Cynthia Rogers to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

_____A prehearing conference was conducted with Judge Linda Marshall on January 23, 2006. The parties stipulated to an employer-employee-carrier relationship on or about September 15, 2005 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$304.00/\$228.00, in the

event this claim is found to be compensable.

The claimant contends he sustained a compensable gradual onset back injury on or about September 19, 2005, and is entitled to medical benefits and temporary total disability benefits from the date of the injury through a date yet to be determined.

The respondents contend the claimant did not sustain a compensable injury within the course and scope of his employment. The respondents contend the claimant did not sustain a specific incident injury nor did the claimant sustain a gradual onset injury. No benefits have been paid in this case.

The following were submitted without objection and comprise the evidence of record: the claimant's exhibits consisting of photographs, medical records, and medical bills. The parties' prehearing questionnaires were not admitted into evidence.

The following witnesses testified at the hearing: the claimant, co-worker Parnell Jackson, and automotive repairman, Lewis Elton. Mr. Jackson corroborated the claimant's complaint of an injury and Mr. Elton testified he repaired the log truck. Mr. Elton was unsure of the date or exactly how the truck was damaged. He did state that it was common to repair u-bolts after driving the trucks over rough roads.

The claimant, age 47 (D.O.B. July 29, 1959) has seventeen years of experience driving trucks hauling lumber out of the woods to the mill. The claimant denied any prior back injuries, but did state that driving made his back sore on occasion (Tr. p. 6/11-12). He worked for the respondent-employer for a year and a half prior to the accident.

The claimant testified his back began hurting on Thursday, September 15th, after driving his truck over rough terrain (Tr. p. 7-10/12-13/15-18). The next day he told a co-worker, Parnell Jackson, that he hurt his back and Mr. Jackson provided him with aspirin.

The claimant remained symptomatic and on Monday after lunch he reported the injury to his employer, Mr. McDougald, and made a doctor's appointment. After he received the test results, the claimant contacted his employer again and an accident report was filed with the carrier. The claimant has not returned to work since September, 2005. He stated he has radicular pain in his left leg and pain in his "tail bone" and is unable to work.

On cross-examination, respondents questioned the claimant about the onset of symptoms (Tr. p. 12-13/19). The claimant thought it was some time between September 15-19. Mr. Ryburn also questioned the claimant about statements made to his employer and the WCC Form AR-N. The employer, Mr. McDougald, was not called to testify and the Form AR-N could not be located in the transcript as an exhibit.

MEDICAL EVIDENCE

The claimant provided medical records, bills, and a letter from Dr. Camilla

Carter of Louisiana dated January 11, 2005. I am not familiar with Dr. Carter and assume she is a general practitioner.

An MRI scan of the lumbar spine conducted November 4, 2005 was interpreted as showing multilevel degenerative disc disease with bulging discs more pronounced on the left at L4-5 and L5-S1 with nerve root compromise. The radiologist, Dr. Brenton McDonald commented, "I cannot completely exclude a component of a far left lateral disc herniation at L5-S1." As I interpret this evidence, the claimant has at least aggravated a preexisting degenerative condition resulting in nerve root compromise if not suffered a new injury with a herniation. Obviously, further diagnostic testing and consultation with a specialist will be needed for a definitive diagnosis.

Correspondence from Dr. Carter indicates she saw the claimant on September 20, 2005 with a new symptom – a history of back pain for one week. The claimant gave a history of injury of driving a log truck on a rough road. The claimant was treated with medication but there is no recommendation for further treatment, time off from work, work restrictions, or permanent impairment.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The elements of proof for a gradual back injury are set forth in the case of Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). The claimant has the burden of proving these elements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4) proof that the injury was not caused by a specific incident and

proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence of record shows the claimant has worked for the respondent-employer for 1-1/2 years driving a truck over rough terrain to haul logs from the forest to the mill. There is no evidence the claimant has ever suffered from any prior

back problems that necessitated medical treatment or caused him to miss time from work.

During the week of September 15, 2005, the claimant's back began to bother him, did not resolve with rest on his days off from work and resulted in radicular left leg pain. He reported the problem to a co-worker and his supervisor.

The claimant consulted a physician and gave a history of injury consistent with his testimony. An MRI scan was performed which revealed multilevel degenerative changes and bulging discs on the left at L4-5 and L5-S1 which correlate with the claimant's symptom of radicular left leg pain. According to the radiologist, further diagnostic testing is needed to rule out a disc herniation at L5-S1. The claimant is being treated conservatively with medication.

As I interpret the lay and expert testimony, the claimant gradually developed back pain performing his job duties. The injury is objectively established by the MRI showing left nerve root compromise. And the injury is the major and only cause for the need for medical treatment. Accordingly, I find the claimant has met his burden of proof.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during September 2005 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$304.00/\$228.00.
2. The claimant has proven by a preponderance of the evidence of record that he sustained a gradual back injury arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, which was the major cause of his need for medical treatment pursuant to Ark. Code Ann. §11-9-102.
3. The respondents are directed to pay for all reasonable and necessary medical expenses within thirty days of receipt pursuant to Rule 30 and reimburse the claimant for out-of-pocket expenses as well as travel costs.
4. The respondents are directed to send a WCC Form AR-3 to the claimant's physicians and solicit their response to determine the healing period.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge