

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603281

ERNEST BROWER	CLAIMANT
LINDSEY MANAGEMENT CO., INC.	RESPONDENT
INSURANCE COMPANY-STATE OF PENNSYLVANIA, INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 19, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by BRENT STERLING, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA ROSS WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 24, 2006, in Fort Smith, Arkansas.

A pre-hearing order was entered in the case on August 22, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The appropriate weekly compensation benefits are \$192.00 for total disability and \$154.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his neck or cervical spine as the result of a specific employment related incident on February 27, 2006.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from March 6, 2006 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends that he sustained a compensable injury and/or aggravation of a pre-existing condition to his cervical spine as a result of an injury that occurred on February 27, 2006. On that date, the claimant was working as a maintenance man at The Links apartment complex in Fort Smith, Arkansas. He was standing on a stool changing a light bulb or fixture in an apartment bathroom when he fell hitting his head on the wall and ribs on the way down. The claimant injured his neck from this fall.

In regard to these issues, the respondents contend the claimant did not suffer a compensable injury on February 27, 2006, and the respondents should not be liable for benefits associated with such injury. Respondents contend the claimant's current need for medical treatment is associated with conditions unrelated to any work-related injury and pre-existed the incident that allegedly occurred on that date.

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained a “compensable injury,” as the result of a specific employment related incident or accident on February 27, 2006. The burden rests upon the claimant to prove all of the elements necessary to establish this alleged compensable injury.

The first of these elements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence, the actual existence of the physical injury or condition alleged to be compensable. Further, the claimant must prove that the actual existence of this physical injury or condition is supported by or based upon “objective findings,” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

Clearly, the medical evidence presented “establishes” the actual existence of a physical injury or condition involving the claimant’s neck or cervical spine. Such a condition has been diagnosed as a small left paracentral disc hernia at C5-6 with resulting radicular complaints involving the claimant’s left upper extremity. The actual existence of this herniated disc is supported by purely objective findings noted on MRI study. Thus, the claimant has satisfied the essential elements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that this medically established and objectively documented physical injury or condition satisfies the definitional requirements for a “compensable injury” that are

contained in Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

- (1) The physical injury or condition must arise out of and occur in the course of the employment;
- (2) The physical injury or condition must be caused by a specific incident;
- (3) The physical injury or condition must be identifiable by time and place of occurrence;
- (4) The physical injury or condition must cause internal or external physical harm to the claimant's body;
- (5) The physical injury or condition must require medical services or result in disability.

In order to satisfy the first three of these definitional requirements, the claimant must prove by the greater weight of the credible evidence, the existence of a causal relationship between his cervical disc difficulties in the form of a herniated disc with a resulting radiculopathy, and a specific employment related incident on February 27, 2006. The only direct evidence the claimant has offered to prove this causal relationship, is his own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be arbitrarily disregarded. If such testimony is found credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident on February 27, 2006, and to prove the existence of a close temporal relationship between such an incident and the initial onset of symptoms indicative of the occurrence of the herniated disc.

The claimant testified that on February 27, 2006, he was performing his regularly scheduled duties as a maintenance man in one of the respondent's apartments. In order to perform his assigned duties, he climbed on top of a bar stool. He somehow fell from the stool, striking the right side of his face on the wall and the right side of his chest on a counter top. In describing his immediate symptoms, the claimant testified that initially it was more his ribs hurting him, except for an "electric jolt" that shot down his arm. However, he describes this latter sensation as going away within five minutes. It was not until "more time went by" that he started experiencing pain in his neck. He subsequently testified that the day of the incident he was only experiencing "a little discomfort" in his neck for only about ten minutes. The claimant testified that he reported the incident and injury to his supervisor, Lonnie Davis, shortly after it occurred. He concedes that he continued to work at his regularly assigned employment duties for the remainder of February 27, 2006, and for all of his subsequently scheduled work days through March 5, 2006. However, it was also his testimony that during this period of time the symptoms and discomfort in his neck increased, that he continued to complain of these difficulties, and that on March 6, 2006, he could not stand the discomfort anymore. He stated that, at that time, he again complained to Mr. Davis and also complained to Rebecca Torres, the apartment complex manager and his overall supervisor.

Mr. Davis testified that the claimant did report a fall to him in February of 2006. However, it was Mr. Davis' testimony

that, at that time, the claimant only complained that he had hurt his right side in the area of his ribs. When the claimant inquired about seeing a doctor, Mr. Davis advised him that he would have to see Ms. Torres and fill out the appropriate paperwork. He denied ever telling the claimant that he would likely be terminated if he filed a workers' compensation claim or sought medical attention. Mr. Davis further testified about various statements made to him by the claimant concerning his involvement in a motor vehicle accident in early February of 2006, a fact that the claimant denies. Mr. Davis stated that the claimant had told him that his head had struck the windshield of the vehicle and that he needed to take off that day because he was shook up. Mr. Davis testified that on March 6, 2006, the claimant reported that he was having difficulties putting up a ceiling fan and needed to see a doctor. He again told the claimant that he would have to see Ms. Torres, which apparently the claimant did. Mr. Davis stated that he could not recall the claimant making any complaints with his neck or upper extremities, until March 6, 2006.

Ms. Torres testified that the claimant came to her on March 6, 2006, and complained with his neck. He requested to take off work on that day, so he could go home and lay down for awhile. Ms. Torres approved this request. Apparently, later that same day, the claimant went to the emergency room of Sparks Regional Medical Center. She stated that the claimant did not return to see her, until after he gone to the emergency room. At that time, he returned with a light duty slip. She also testified that the

claimant initially gave her, as the date of his fall, February 23, 2006. She also testified that when the claimant initially commenced began working at her complex in the early part of February 2006, he told her that he had been involved in a motor vehicle accident and had hit his head against the windshield.

The medical evidence presented shows that the claimant was previously treated for neck and upper extremity complaints in January of 2004, and October of 2004. Both of these episodes of difficulties followed what would essentially be considered falls. The complaints in January of 2004 were attributed by the claimant to a fall at work. The October 2004 complaints were attributed by the claimant to an incident when he “jumped off” a ladder.

It is significant to note that the initial history recorded, when the first sought medical treatment on March 6, 2006, expressly contradicts the claimant’s testimony concerning the onset of his neck or cervical complaints. This initial history noted a previous injury two years prior to March 6, 2006, with intermittent difficulties thereafter. These reports specifically noted that there was “no new known injury”. These reports also recorded that the claimant’s complaints of left shoulder neck pain were approximately of one week duration and indicate the complaints began when the claimant merely “turned neck”. In his testimony, the claimant conceded that he had informed the emergency room personnel that his symptoms began when he had “twisted his neck” at work, although he maintains that he did tell them that this occurred at work.

The first mention in the medical evidence of any work related accident or fall does not appear until March 16, 2006. This was not until after the MRI and after the claimant realized the magnitude or seriousness of his neck difficulties and the likelihood of extensive and expensive medical treatment.

After consideration of all the evidence presented, it is my opinion that the claimant's testimony concerning the existence of a reasonably close temporal relationship between the described employment related fall on February 27, 2006, and the initial onset of his neck or cervical complaints is not sufficiently credible to prove the likelihood of a causal relationship between his objectively demonstrated cervical defects with radicular symptoms and a specific employment related incident on February 27, 2006. His testimony in this regard is inconsistent with his initial report to Mr. Davis of only an injury to his rib area. It is inconsistent with his ability to continue to perform regular strenuous employment activities without apparent difficulty. Most importantly, his testimony is inconsistent with his initial medical histories. One would reasonably expect that a patient generally gives the most thorough and accurate history of the onset of symptoms, when they initially seek medical treatment and before they realize the nature and magnitude of their condition and the expense and loss it will entail.

Clearly, the fall described by the claimant, if it occurred, could have reasonably produced the subsequently observed cervical defect at C5-6. However, the claimant's two prior falls and motor

vehicle accident would be, at least, equally reasonable causes of this defect. Unlike a fracture, substantial stress or trauma is not necessary to produce the observed small disc herniation, or to cause such a pre-existing defect to again become symptomatic. Merely the turning or twisting of the claimant's head and neck in conducting the normal activities of daily life could also be sufficient to accomplish this. The greater weight of the more credible evidence would indicate that this latter common activity was the most likely or probable cause of the episode of cervical difficulties, which the claimant experienced in March of 2006, and the most likely or probable cause of the objectively documented cervical defect.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On February 27, 2006, the relationship of employee-employer existed between the parties.

3. On February 27, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$192.00 for total disability and \$154.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a compensable injury to his neck or cervical spine as the result of a specific employment related incident or accident on February 27, 2006. Specifically, he has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between his medically

established and objectively documented physical injury or condition involving his cervical spine and a specific employment related incident or accident on that date. Thus, he has failed to prove the occurrence of a compensable injury that arose out of and occurred in the course of his employment, that was caused by a specific incident, and that is identifiable by time and place of occurrence, as required by Ark. Code Ann. §11-9-102(4)(A)(i).

5. The respondents have denied the occurrence of a compensable injury to the claimant's neck or cervical spine and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE