

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501053

FELTON BURGIE,  
EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC.,  
EMPLOYER

RESPONDENT

LIBERTY INSURANCE COMPANY,  
CARRIER

RESPONDENT

OPINION FILED APRIL 23, 2007

Hearing before Administrative Law Judge Mark Churchwell in Little Rock, Pulaski County, Arkansas.

The claimant was represented by Honorable Aaron Martin, Attorney at Law, Fayetteville, Arkansas.

The respondents were represented by Honorable Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on March 27, 2007 in Little Rock, Arkansas. A Prehearing Order was entered in this case on April 18, 2006. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the Prehearing Order and are hereby accepted:

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

2. The employee/employer/carrier relationship existed at all relevant times, including May 14, 2004.

3. The respondents controvert this claim in its entirety.

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

1. Whether the claimant sustained a compensable injury.

2. Whether the claimant is entitled to medical treatment.

The record consists of the March 27, 2007 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

The claimant contends that he sustained a compensable back injury as a result of a motor vehicle accident that occurred on May 14, 2004. The claimant was employed as a delivery driver at that time by United Parcel Service.

As a threshold matter, I note that the claimant's attorney at the hearing objected on pages 14-15 of the hearing transcript to the respondents' attorney questioning the claimant as to whether the claimant went looking for one of his supervisors, apparently on the evening of May 17, 2004. The claimant's pertinent response on page 15 was "I

can't really say where I went." In light of the claimant's response, I find the claimant's attorney's objection on relevance grounds to be moot.

To prove the occurrence of 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: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find that the claimant has failed to establish by a preponderance of the credible evidence that he sustained a back injury as a result of the incident which occurred on May 14, 2004. I reach this result based on the following. First, the first medical report containing any reference to a back complaint on behalf of the claimant after the incident on May 14, 2004 was not until an August 6, 2004 report by chiropractor

Michael L. Eggleston, some two and one-half months after the incident in May. Second, I am persuaded by the police report, which stated that neither party involved had any complaint or visible signs of injury. Third, I am persuaded by the police report and the photograph on page 5 of the respondents' exhibit which indicate that the large truck which the claimant was driving sustained only minor damage to the left rear of the truck when another driver backed a pickup into the claimant's truck while attempting to exit a store parking lot. Fourth, I am persuaded by Dr. Grant's May 17, 2004 report and June 25, 2004 note. The May 17, 2004 report indicates that the claimant did not sustain an injury in the motor vehicle accident, but was instead having headaches due to stress. The June 25, 2004 note indicates that Dr. Grant was seeing the claimant for emotional distress and again makes no reference to any alleged back injury.

I also find that the claimant has failed to establish the existence of a back injury with medical evidence supported by objective findings. In reaching this conclusion, I recognize that Dr. Eggleston typed on page six of a report dated August 6, 2004, that due to the severity of muscle spasm and tenderness at that time, activator adjustments would be utilized to initiate correction of

identified subluxations. In addition, on that same page of his report, Dr. Eggleston indicated that manual muscle stimulation would be applied to the claimant to specifically treat muscle spasm, muscle hypertonicity, and the soft tissue conditions associated with prolonged myo-dysfunction (edema, aberrant blood flow, and concentrations of metabolites). I note that a physician's observations of muscle spasm, hypertonicity of muscle, and edema are objective medical findings. However, in the present case, I also note that on page three of the same report, Dr. Eggleston indicated that there was no edema, and no spasm of the underlying musculature from C5-T2 in the claimant's spine. In light of the inconsistencies between pages three and six of Dr. Eggleston's August 6, 2004 report, I find that the claimant has failed to establish by a preponderance of the credible evidence the existence of objective findings in the medical records presented in this case.

For the reasons discussed herein, I find that the claimant has failed to establish by a preponderance of the evidence that he sustained a compensable back injury on May 14, 2004.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

2. The employee/employer/carrier relationship existed at all relevant times, including May 14, 2004.

3. The respondents controvert this claim in its entirety.

4. Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable back injury on May 14, 2004. Specifically, the claimant has failed to prove by a preponderance of the credible evidence that he sustained a back injury causally related to that incident. In addition, the claimant has failed to establish the existence of a back injury with medical evidence supported by objective findings.

**ORDER**

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

IT IS SO ORDERED.

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HONORABLE MARK CHURCHWELL  
Administrative Law Judge