

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612034

JOHNNY W. CORLIS, EMPLOYEE	CLAIMANT
GILL'S BACKHOE SERVICE, INC., EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MAY 15, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on April 13, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Jarrod S. Parrish, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted April 13, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on February 28, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to an amended stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record herein.

It was stipulated that the employment relationship existed between the parties at all relevant times, including October 19, 2006, and that the claim had

been controverted in its entirety for purposes of attorney's fees. At the hearing, the parties agreed that, at the time of the alleged injury, claimant's average weekly wage was \$420.00, entitling him to compensation rates of \$280.00 per week for temporary total disability and \$210.00 per week for permanent partial disability in the event the claim was found compensable.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable injury arising out of and during the course of his employment with Gill's Backhoe Service, Inc., as the result of a specific incident identifiable in time and place of occurrence on October 19, 2006; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability benefits for the period beginning October 20, 2006, and continuing through the present and until such date as the healing period had ended; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability, if applicable.

The respondents contended that the claimant did not sustain a compensable injury on October 19, 2006. Alternatively, in the event the claim was found compensable, respondent contends that it did not receive any notice of an alleged

injury until October 27, 2006, and would not be responsible for benefits prior to said date. Respondents maintained that the claimant's need for medical treatment and disability was associated with pre-existing problems and not in any way related to a work incident.

At the scheduled hearing, the claimant testified in his own behalf. Delbert James and Doug Gill were called as witnesses by the respondents. Claimant's wife, Elizabeth Corlis, was called as a rebuttal witness. The record is composed solely of the transcript of the April 13, 2007, hearing containing various medical records, as well as non-medical records.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over 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 credible evidence, that he sustained an injury arising out of and during the course of his employment with Gill's Backhoe Service, Inc., on October 19, 2006.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that his need for treatment and disability after October 19, 2006, was directly and causally related to an injury sustained while working for the respondent herein.

DISCUSSION

The record in this claim is replete with inconsistencies and contradictions. The claim turns almost entirely upon the claimant's credibility. The record reflects that the claimant has sustained prior injuries, including prior work-related injuries with the respondent/employer herein. The claimant knew, or should have known, the importance of promptly reporting a work-related injury. The record contains conflicting testimony concerning the nature of the claimant's physical complaints after October 19, 2006, as well as the causal connection to any employment activity. Again, the claim turns almost entirely upon the claimant's credibility. A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *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); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

The claimant, Johnny W. Corlis, testified in his own behalf. The claimant has a seventh grade education. His primary work experience has been as truck driver. In addition, the claimant has worked construction, as a machine operator, basically

dozer/grader operation, and as a welder. The claimant operated heavy machinery for the employer, Gill's Backhoe Service. The record reflects that the claimant sustained two (2) prior work-related injuries for the employer herein. The claimant was involved in a one-vehicle truck wreck in 2004 which was apparently treated as a medical only claim because the claimant only missed approximately one week of work. The claimant also sustained a work-related hernia injury in August, 2005, which required surgical repair. Again, respondents paid all appropriate benefits related to said injury. In addition to his work-related injuries, the claimant acknowledged undergoing a cervical fusion at multiple levels in 1996. The claimant stated that the cause of his cervical surgery was the result of degenerative disc disease and too many years of driving trucks.

The claimant maintained that he sustained a work-related injury on October 19, 2006, while changing tires on a dump truck. The claimant described that while pulling on the tire and hub "my back popped and I had to stop" because of the pain. The claimant allegedly reported his back pain to a co-worker named Anthony Bowers. Mr. Bowers was not called as a corroborating witness. The claimant failed to report the alleged incident to his employer on that day. The claimant has not returned to gainful employment since October 19, 2006. The claimant maintained that he and his wife attempted to report the injury on multiple occasions by telephone after October 19, but that no one for the employer returned his phone calls. (Tr.13-15, 26-27)

On cross-examination, it was pointed out that the claimant was experiencing multiple physical problems before October 19, 2006. The claimant was prescribed Oxycodone on September 20, 2005, for pain, apparently related to the hernia surgery. However, the record reflects that the claimant was prescribed Hydrocodone for pain on July 13, 2006, prior to the alleged injury, as well as another prescription for the same medication on October 25, 2006. (Resp. Ex. A-1) Further, the medical records reflect prior history of both the neck fusion in 1996, as well as back pain. When questioned concerning whether he ever reported a work-related injury to his employer, the claimant's testimony was extremely cautious. The claimant's testimony appeared to be self-contradicting. He appeared to avoid answering a direct question on the report of injury. The claimant candidly admitted that he never reported the injury to his employer verbally. (Tr.33, 39)

Delbert James, the claimant's immediate supervisor, stated that the claimant did not report a work-related injury to him on October 19, 2006. He further stated that he did not observe the claimant experiencing any physical problems on that date.

Steven Douglas Gill, the owner of Gill's Backhoe Service, also stated that the claimant never reported a work-related injury to him. Mr. Gill stated that he received a phone call from the claimant's wife on October 20, 2006, at which time Ms. Corlis reported that the claimant would not be at work that day because he was experiencing physical problems involving his arm and chest. Mr. Gill also testified

concerning a follow-up conversation with the claimant the following Monday requesting that he be laid off to draw unemployment compensation. Mr. Gill pointed out that the claimant first reported a work-related injury approximately eight (8) days later. Finally, Mr. Gill testified that the claimant's alleged eye witness, Anthony Bowers, was not at work at the time the claimant allegedly complained about the injury to said co-worker. Mr. Gill's illuminating testimony is set out below:

Q Okay. I understand that you had a conversation with the claimant's wife on October 20th.

A Yes.

Q Is that correct?

A Yes.

Q Okay. Can you tell the Judge what was said in that conversation, what you guys talked about?

A She called in and said that Johnny was – we call him J.C., that he was – his arm and chest was hurting, and didn't know if he had a light stroke or a heart attack or what, he was going to have to see, and that he would not be in that day.

Q Okay. Did she make any mention of any work-related injury or anything occurring at Gill's?

A I don't believe she did. Just that his arm and chest was hurting, and didn't know what had caused it.

Q Okay. And she told you he wasn't coming in that day?

A Yes.

Q When was the next time you had a conversation with either the claimant or his wife?

A J.C. called me the next Monday wanting me to lay him off. I don't normally lay

people off, for sure whenever I'm shorthanded and need people. So I told him I didn't – I'd have to think about that.

Q Okay.

A See what he found out from the doctor, this or that or something, because I'd have to think about that.

Q Okay. When he asked you to lay him off, did he make any mention of trying to draw unemployment, or give you any reason why he wanted to be laid off?

A Yeah, that's what he wanted, he wanted to draw unemployment.

Q He specifically told you that?

A Yes.

Q Okay. During that conversation, again, was there any mention of any work-related injury or anything occurring with the tire or hub or anything, that you recall?

A I don't remember. I remember the main topic was he wanted laid off.

Q Okay. And you left the conversation that you weren't going to lay him off, and you were going to think about it?

A I told him I would have to think about it, and I think he called a couple of times trying to get a hold of me and couldn't get a hold of me, and then he finally – I don't remember as to when – just a couple of days later or something. Anyway, I can't remember if I talked to him or if he called in and I wasn't there and Betty told him, but, anyway, I said, no, I would not lay him off.

Q Okay. At any point prior to making the determination that you weren't going to lay him off, did you receive any type of notice about an injury picking up a tire or hub at your job, at your place of employment?

A Not in the next couple of days or so. It was – I forget, I think it was eight or ten days later that he came up with it. He said he hurt his back. I can't remember an exact date.

Q Eight or ten days after the conversation about being laid off?

A I think so.

Q Okay.

A Right after his doctor's appointment that he had set up, or what – I can't remember the amount of days.

Q After the latest conversation about being laid off, that's when it started being discussed as being a comp claim or a potential comp claim?

A Yes.

Q Okay. Have you, in your investigation talking with your employees and supervisors of the claimant, have you found anybody that corroborates any story about picking up the tire on the 19th and Mr. Corlis injuring himself?

A No.

Q The claimant had two prior comp claims with your company, and it's my understanding there was no dispute over those?

A No.

Q They were reported timely and paid?

A Yes.

Q Is there any reason Mr. Corlis should be reluctant to report an injury, like a safety incentive, or do people get in trouble for getting hurt or anything like that at your company?

A No.

Q Both times before, with both injuries, the wreck and the hernia, you returned him to work once the doctors released him, didn't you?

A Yes.

Q Okay. There shouldn't be any concern about losing the job for getting hurt or anything like that?

A No.

Q The claimant mentioned Anthony Bowers as someone – Tony Bowers as being

someone that was there on the 19th –

A Yes.

Q – and I touched on it on redirect. Mr. Bowers is no longer with your company?

A That's correct.

Q Okay. Explain to me and the Judge why statements about Anthony Bowers being there on the 19th are inaccurate.

A He left a 1:58 with a load of gravel going to Moko, by Salem, which is about 30 miles away and –

JUDGE GREENBAUM: I'm sorry, 1:58 on what date?

THE WITNESS: On the 19th. On that day he got stuck and did not return back. Superintendent John Anderson had to go get him in his pickup, and he did not return until 4:24. I have records of every day, the logs on everybody that does anything, and he did not return until 4:24.

BY MR. PARRISH:

Q 4:24. Page 19 of my non-medical exhibit is a handwritten timecard, and it's your understanding this is for October 19th, '06, and this 3:30 down here at the bottom, would that be the time that Mr. Corlis left on that Thursday?

A Yes.

Q He obviously didn't work on that Friday, so that would be the last day of that week he worked?

A Right. Yes.

Q Okay. Mr. Corlis leaving at 3:30, Anthony Bowers didn't make it back with John until 4:24?

A Right. That's what our records show here on the logs.

Q Okay. While Mr. Bowers was still working for you, did he give you any type of report about any injury occurring with Mr. Corlis or knowing anything about the injury?

A No. (Tr.48-53)

The claimant's wife, Elizabeth Corlis, was called as a rebuttal witness. She stated that she called Mr. Gill on October 20 and reported that her husband had injured himself the previous day and would not be able to come to work.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The record in this claim is replete with inconsistencies and contradictions. The record reflects that the claimant had previously reported work-related injuries for the employer herein which were promptly paid. The claimant knew, or should have known, the importance of properly and promptly reporting a work-related

injury. Further, the record reflects that the claimant had initiated a claim for social security disability benefits prior to October 19, 2006. In fact, both the claimant and his wife made claims for social security disability. I did not find their self-serving testimony to be persuasive. (Tr.38)(Resp. Ex. A, p.9)

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that he sustained an injury arising out of and during the course of his employment with Gill's Backhoe Service, Inc., on October 19, 2006. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge