

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510647

| | |
|------------------------------------|-------------------|
| ROBERT L. DOCKERY, EMPLOYEE | CLAIMANT |
| LENNOX INDUSTRIES, EMPLOYER | RESPONDENT |
| ESIS, CARRIER | RESPONDENT |

OPINION FILED MARCH 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on December 15, 2006 at Jefferson County, Pine Bluff, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

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 does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on August 15, 2005 at which time the claimant was earning an average weekly wage of \$575.00 in the event this claim is found to be compensable. The claimant's group carrier Blue Cross Blue Shield paid medical expenses on this claim.

The claimant contends he fractured his right hip on August 15, 2005 when he bumped into

a cart at work. The claimant seeks payment of medical expenses, temporary total disability benefits from September 13, 2005 to February 1, 2006 and from February 17, 2006 to a date yet to be determined as well as attorney's fees.

The respondents contend the claimant's condition (avascular necrosis and hip fracture) is not due to an injury arising out of and in the course of his employment. The claimant did report a left knee injury but no hip injury.

The following were submitted without objection and comprise the evidence of record: the claimant and Tim Brown an emergency medical technician (EMT) with the Human Resources Department.

The claimant, age 53 (D.O.B. October 8, 1953), has a twelfth grade education. His health history includes alcohol abuse and a 2003 work-related back injury which resolved with medication and physical therapy. The claimant began working for the respondent-employer in 2003.

On August 15, 2005, the claimant was pulling and pushing carts when he became caught between two carts (Tr. p. 11-23, 14-17, 54). He stated he experienced severe enough pain in his hip that he thought he had broken a bone. Inexplicably, he also thought the pain would go away with time and he did not report any injury to his employer. He took over-the-counter pain medication and continued working until September 13, 2005.

The claimant developed a limp and decided he needed medical attention. He saw his family physician, Dr. B. E. Holmes who referred him to Dr. Marty Siems. The claimant was diagnosed with bilateral avascular necrosis and left hip fractures.

The claimant used his group health insurance and short term disability benefits (\$212.00 weekly from September 5, to February 2, 2006) during surgery in December on his right hip. He returned to work in February, 2006 for two weeks before undergoing surgery for his left hip.

He drew short term disability benefits again from February 2006 to May 2006. In May, 2006 the claimant applied for Social Security Disability benefits (\$1,351.00) which he began receiving in September 2006.

On cross-examination, respondent's counsel emphasized discrepancies in the claimant's history of injury by comparing the recorded statement (Tr. p. 37) to the answers to interrogatories (Tr. p. 56) and the report of injury, AR-C (not filed until July 25, 2006) with medical reports showing the onset of symptoms at different times (see reports of 9-28-07 and 1-3-03).

Tim Brown testified the claimant completed an accident report dated September 29, 2005. The claimant was unsure of the origin of the left hip pain and attributed his symptoms to either bumping a cart or twisting in August 2005.

MEDICAL EVIDENCE

In January, 2003 the claimant was evaluated by MRI scans at the hip and back for complaints of left hip and leg pain.

Examination reveals a small focal cystic are anteriorly left femoral neck consistent with a benign herniation pit felt to not be clinically significant. The remainder of the visualized marrow signal is normal. There is no evidence of AVN, fracture, or bone marrow edema. (Emphasis added)

The claimant was diagnosed with a lumbar disc bulge and stenosis at L4-5. He responded to physical therapy as noted as noted in a report dated February 17, 2003.

Several years later, the claimant saw Dr. Marty Siems on September 28, 2005 for "severe left hip pain that has been going on for the past several months, slowly worsening." After an X-ray and MRI scan, Dr. Siems diagnosed bilateral avascular necrosis caused by alcoholism with "subchondral collapse" of the left femoral head. There is no mention of trauma or a specific work-related injury in Dr. Siems' records.

A radiology report dated February 9, 2006 indicated the collapse of the femoral head was associated with advanced avascular necrosis. There was also deformity of the left acetabulum which “could be associated with remote trauma or possibly associated with an exostosis.”

Dr. Jack Fendley’s report of 2-9-06:

This a 52-year old black male who does manual labor who developed painful bilateral hips on about August 2005. He does some pretty heavy work and thought he just hurt himself moving around but kept getting worse until he finally had a decompression surgery of the right hip... in December 2005... Apparently the left hip needs something more done. The patient is scheduled for a February 13, 2005 left total hip arthroplasty because this area apparently had more disease... He is noted to have no history of diffuse arthritis but the left knee has been aching some as he has been having to limp about he reports.

Patient Information Survey of 4-13-06:

Duties: On my feet all day, walking on concrete all day, picking up heavy thing.

Describe the Activities that your problem/complaint is limiting you from performing:

jogging, basketball, walking on concrete to (sic) long, carrying (sic) to (sic) much weight.

In a report dated May 17, 2006, Dr. Siems stated that the claimant would be unable to work as a manual laborer and prolonged sitting might be problematic as well. Dr. Siems felt the claimant could not be gainfully employed **DOCUMENTARY EVIDENCE**

Dr. Holmes completed a disability form for the claimant. The question regarding a work related injury under the “History” section has been left blank.

FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant suffers from bilateral avascular necrosis (worse on the left) caused by alcoholism. The claimant developed left leg pain as a result of the condition

and sought treatment from his family physician using his group health insurance. Once he understood the severity of his condition, he filed a claim with a vague history of bumping into carts. There is no evidence of a bruise or laceration to confirm a specific incident. Accordingly, I find the claimant's condition did not arise out of and in the course of his employment.

1. The parties stipulated to an employer-employee-carrier relationship on August 15, 2005 at which time the claimant was earning an average weekly wage of \$575.00 in the event this claim is found to be compensable. The claimant's group carrier, Blue Cross Blue Shield, paid medical expenses on this claim.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This case is respectfully denied and dismissed

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge.

Entered Nunc Pro Tunc: March 22, 2007