

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612080

JUSTIN GRIFFITH	CLAIMANT
UNION DRILLING, INC.	RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 27, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on September 4, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 12, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On October 9, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$488.00 for temporary total disability and \$366.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's low back injury.
2. Claimant's entitlement to related medical.
3. Temporary total disability from October 10, 2006, to October 23, 2006, then from August 13, 2007, to a date to be determined.
4. Attorney's fees.
5. The defense of lack of notice until October 31, 2006.

In regard to the foregoing issues the claimant contends that he was injured on October 8, 2006. His lower back was injured when he tripped over a lead tong cable and landed on his back.

In regard to the foregoing issues the respondents contend that the claimant did not suffer a compensable injury while working for respondent employer. Further, respondents contend that they did not receive notice of any alleged injury until November 1, 2006, and should not be liable for any benefits prior to receipt of actual notice in the event compensability is found in this matter. Respondents also contend there are no objective findings to support a work related injury in the event an incident is found.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. The claimant proffered a witness's

statement which was been objected to by the respondents. The respondents' objection was sustained and the claimant proffered the statement which is marked Claimant's Proffer No. 1.

DISCUSSION

The claimant testified that he was thirty-six years old and had been hired by the respondent as a floor hand. The claimant testified that at the time of his accident he had been promoted to a chain hand on a drilling rig. The claimant explained that when they are putting pipe in the ground there is a drill bit on the bottom and when the bit needs to be changed you have to pull the pipe back out. The claimant testified that they would break every three pipes apart. The claimant testified that he had to wrap a chain around the two inch pipe. The claimant testified that he would wrap the chain around the pipe five times. The claimant stated that the other end of the chain is connected to a motor and it actually pulls the chain and causes the pipe to thread into other pieces of pipe. The claimant testified that there are usually four people on the floor of the rig and one man up on the derrick approximately seventy-five feet off the ground.

The claimant testified that on October 9, 2006, they were tripping pipe. The claimant testified that as the pipe comes out of the ground it is very muddy and causes the floor of the rig to be slippery. The claimant explained that in the process of pulling the pipe out, wrapping the chain around the pipe, and then pushing it back out of the way his chain got caught and he was between the chain and the cable and he was pushed back and he tripped. For

clarification the claimant testified that it was the pipe that pushed him back and he was pushed back into the cable of the lead tong and he tripped, fell, and landed on his back. The claimant testified that since he was caught from behind by his leg it kind of spun him and twisted him as he went to the ground. The claimant testified that he tried to catch himself on another cable with his right arm but he still fell flat on his back. The claimant testified that all the hands on the floor witnessed the accident except for the man who was seventy-five feet in the air. The claimant agreed that Mr. Hatley and William Wright, his supervisor, were present and witnessed the accident. The claimant testified that when he fell everything stopped and everyone came to his assistance. The claimant testified that Mr. Hatley helped him get up. The claimant testified that tripping pipe is a real team effort and his first instinct was to get back at his job. The claimant testified that he did not realize that he was hurt until he stood up and tried to get back to his work. The claimant testified that he took a couple of steps and realized that his back was hurt. The claimant testified that it was the lower part of his back which was in pain. The claimant testified that his supervisor, Mr. Wright, told him to go home which he did. The claimant testified that he was scheduled to work the next day but due to the pain and lack of sleep he was unable to go to work.

The claimant testified that the next day he called the office and the respondent made him an appointment at Cooper Clinic but it would be like two weeks so he took himself to the emergency room

because his back was hurting. The claimant testified that it was a couple of days before he went to the emergency room because he was in hopes that his condition would get better. The claimant was asked if he had ever had back problems before this accident and the claimant responded, "No, Ma'am." The claimant testified that when he was seen at the emergency room he was having lower back pain and muscle spasms for which he was prescribed medication. The claimant testified that he also kept the appointment which the respondent made for him at Cooper Clinic even though it was a couple of weeks later. The claimant testified that when he was seen at Cooper Clinic he was given medication for his low back and muscle spasms and he was taken off work for two weeks. The claimant testified that between the time of his accident and when he was seen at Cooper Clinic he had been placed on light duty. The claimant testified that he also was prescribed physical therapy but there was no way he could afford it. The claimant testified that Cooper Clinic made a follow up appointment for him but when he got home after his first visit to the clinic he had a letter from the respondent terminating him and denying his workers' compensation claim. The claimant testified that he did not keep the second appointment because he could not pay for it. The claimant testified that he was unable to afford any type of medical treatment until recently when he was seen by Dr. Tubb in Rogers. The claimant testified that his family and his girlfriend helped pay for this visit. The claimant testified that since his accident

he has continued to have low back pain and muscle spasms as well as problems sleeping due to his discomfort.

The claimant testified that he has tried to work since being terminated by the respondent. The claimant testified that Gary Johnson hired him to do some landscaping but he was only able to work ten to fifteen days and then just a few hours during the work day because of his problems with bending and the problems with his back. The claimant testified that he is not currently working and needs treatment for his back so he can get back to work.

The claimant testified that when he was seen by Dr. Tubb he was prescribed medication for his back pain and for his back spasms and physical therapy was recommended as well as an MRI. The claimant testified that he has not been able to afford the physical therapy or the MRI. The claimant was asked if prior to his injury he had ever seen a chiropractor for back problems. The claimant testified that when he was ten or eleven years old his mother took him to a chiropractor but he has not seen one since. The claimant testified that he has never seen a specialist or taken medications for his back prior to his fall.

The claimant testified that he received some papers from the respondent after his fall which he filled out and sent in. The claimant testified that he was informed that there was one paper that was not filled out properly and he spoke with Pam who was the secretary for the respondent and she gave him to a certain date to return the paperwork. The claimant testified that on the day the paperwork was to be returned he went to Cooper Clinic and that he

explained to the staff that he had to get the paperwork back in that day and it was his understanding that this information was faxed to the respondent.

On cross examination, the claimant testified that when an accident happened he understood he was suppose to go to the supervisor and fill out an accident report. The claimant testified that william wright, a tool pusher for the respondent, and Chris Hatley, another employee of the respondent, are both related to him by being married to two of his nieces. The claimant testified that william Graper was a floor hand and he and Ronnie Meeks were both on the rig floor when he had his accident. The claimant testified that after his fall he knows that Chris Hatley helped him up and he remembers Ronnie Meeks helping him up. The claimant testified that all the employees on the floor of the rig saw the accident happen. The claimant testified that after his fall he did not finish his shift but was sent home by the driller without filling out any paperwork. The claimant testified that the next day he called the tool pusher but is unsure as to who was the tool pusher that day. The claimant testified that he is sure that his accident was reported the next day because the respondent had made him an appointment with Cooper Clinic but it was so far off he went ahead and went to the emergency room for treatment. The claimant testified that he thinks he called Pam to set up an appointment and when he learned that it was going to be two weeks off he went to the emergency room. The claimant was asked if when he talked to Pam if he told her anything about having kidney problems. The

claimant responded that he cannot recall but at the time he was not sure he had hurt his back or what he had done to himself he just knew he was in pain in his low back. The claimant testified that he has not applied for work since he quit the landscaping business and that he takes over the counter pain medications for his pain. The claimant testified that he reported his injury to the driller the day after his accident. The claimant was shown some payroll data which the claimant testified he did not fill out but that the driller, William Wright, had filled out. Both for the 8th and the 9th these payroll reports show that he worked twelve hours and there was not accident on the tour. The claimant admitted that he was in arrears of child support. The claimant was shown a Form C which set forth that the date of injury was October 8, 2006. The claimant testified that he did not fill that out but he had signed it. The claimant also admitted that he had a criminal conviction for man slaughter.

On redirect examination, the claimant testified that he has never had kidney problems and when he was seen at the emergency room he was not administered any tests on his kidneys. The claimant testified that on the day he was injured it was pretty much at the end of his shift somewhere around 4:00 or 5:00 in the morning and his shift normally ended at 6:00. The claimant testified that he worked twelve hour shifts for the respondent and at the time of his accident he was reporting to work around 10:00 in the evening and would get off at 6:00 the next morning. The

claimant was shown his letter of termination and agreed that this letter set forth that he had been off since October 9, 2006.

On recross examination, the claimant was reminded that in his deposition he had testified that the accident happened anywhere between 3:00 and 4:00 in the morning. The claimant responded, "Yeah, it was in the morning time." The claimant testified that he did not work his whole shift that after his accident he was sent straight to the house.

Christopher Gene Hatley testified that he was working for the respondent in October 2006 and worked with the claimant. Mr. Hatley testified that he does remember the claimant's accident on October 9, 2006. Mr. Hatley testified that someone was throwing a chain and the chain got caught up into this wheel and then it pulled the tongs. Mr. Hatley continued by testifying that the tongs got connected to the chain, it pulled the tongs over, the tongs came back at the claimant, hit one of his feet, he flipped back and he fell down. Mr. Hatley testified that he saw this accident happen. This witness testified that as soon as the claimant fell they all went over to help him up. Mr. Hatley testified that the claimant's supervisor was the driller, William Wright, and that the tool pusher was Johnny Covey. Mr. Hatley testified that he has never seen any light duty that is available at the respondent's business. Mr. Hatley testified that the day following the claimant's accident he stopped by the claimant's room and asked him if he was going to work and the claimant appeared to be in pretty bad shape and kind of teary eyed and told him he was

not going to make it. Mr. Hatley was asked if the claimant continued to work after his accident. This witness responded that he remembers them lifting the claimant up, took him to the doghouse, and that William Wright told him to go home. Mr. Hatley testified that the respondents asked him to fill out a statement concerning the accident and he did it either that day or shortly thereafter. Mr. Hatley testified that other personnel filled out statements and he remembers those persons to be Randall a.k.a. Bugger, William, Ronnie, and he was not sure if Rob filled out papers.

On cross examination, Mr. Hatley testified that on the day of the accident Johnny was the tool pusher. This witness testified that Johnny was asleep in the shack and he did not see anything happen but he came up after William went down and woke him up. Mr. Hatley was shown the payroll records for the day of the accident which set forth that he, William, Robert, Ronnie, Randall, and the claimant were all present. The respondents' attorney pointed out that James Lauterback was the tool pusher that day. Mr. Hatley responded, "No, it was Johnny." Ms. Hatley testified that the respondent does the paperwork and they hand it in to someone when the shift changes. Mr. Hatley again stated that it was Johnny that was present as the tool pusher. Mr. Hatley testified that he is no longer working for the respondent because he quit and is currently working for Weatherford Williams a drilling manufacturing company.

On redirect examination, Mr. Hatley testified that he does not know whether the payroll report is filled out at the beginning of

the shift or at the end of the shift. Mr. Hatley testified that tool pushers work four days on and four days off. This witness explained that the tool pusher will work twenty-four hours a day for four days and then another tool pusher comes in and relieves him. This witness was asked if a tool pusher might be there for half a shift and then gone and this witness responded, "Right."

On recross examination, the claimant testified that he believes that the claimant's accident happened a couple of hours before the end of the shift. Mr. Hatley testified that he believes that the claimant got hurt around 4:00 in the morning and the shift is over at 6:00.

Pamela Sue Cozort testified that she works for the respondent as the benefits administrator doing the insurance benefits, workers' compensation, and family medical leave. Ms. Cozort testified that she has been working for the respondent since May 15, 2006. Ms. Cozort testified that a tool pusher on a rig is a salaried position and is in charge. Ms. Cozort testified that the driller and the other floor hands are supervised by the tool pusher. Ms. Cozort testified that on October 10 she received a call from James Lauterback and he reported that the claimant did not show up for work. Ms. Cozort testified that she called the claimant and she believes she woke him up and she asked him why he did not go to work. This witness testified that the claimant told her that his back was hurting and that he had a kidney problem and was going to the doctor and would return to work on the eleventh. Ms. Cozort testified that on October 13 she contacted the

claimant's supervisor to see if he had returned to work and learned that he had not. Ms. Cozort testified that at that point she got the claimant's paperwork together for his FMLA and put it in the mail to him. Ms. Cozort testified that she did not receive the paperwork back nor hear from the claimant so she spoke to the claimant's tool pusher and they said that they had not heard from him. On October 24 Ms. Cozort testified that the claimant called her saying he was having a problem with his back and it could be work related. Ms. Cozort testified that she asked the claimant to tell her if his back problems were work related or due to his kidneys because that was what he had initially told her and the claimant told her that he could not tell her definitely what it was. Ms. Cozort testified that she then reminded the claimant that he had fifteen days in which to return his FMLA papers and if they are not returned by that date he would be terminated. Ms. Cozort was asked if on the 24th of October when she talked to the claimant did he say for sure that his injury was work related and Ms. Cozort responded, "No, he did not. He said he couldn't say for sure." Ms. Cozort testified that on October 31 the accident reports showed up in her office. This witness testified that the accident reports are faxed to her fax machine at her desk but for some reason these reports came mixed with the daily sheets from the rig and the time sheets. Ms. Cozort testified that a lady in payroll brought the papers to her and asked if she knew anything about it. Ms. Cozort testified that she told the lady that no this was the first time she had seen anything of an accident report and all she knew was

that the claimant was off due to personal illness. Ms. Cozort testified that she then took the papers to their manager and told him that they had just come in although they were dated October 10. Ms. Cozort testified that she then called the claimant and told him that she had the reports and was going to file a workers' compensation claim and he needed to go to Cooper Clinic that day. Ms. Cozort testified that Cooper Clinic has a walk in clinic where they will see patients that day as long as they get there by 4:30. This witness testified that the claimant told her that he could not go that day but he could go the next day. Ms. Cozort testified that it was not true what the claimant had testified to earlier about Cooper Clinic not being able to see him for a two-week period of time. Ms. Cozort was asked if William Wright was working during this time frame and Ms. Cozort responded that Mr. Wright had been off for a ten-day period from the 11th through the 21st. Ms. Cozort testified that she never got the FMLA paperwork back from the claimant. Ms. Cozort testified that she was then instructed to send a letter of termination to the claimant. Ms. Cozort was then shown crew payroll data sheets and asked who fills those out. Ms. Cozort testified that the driller fills out these forms but that the employee is suppose to initial and put no but if the employee does not fill that portion out then the driller does. Ms. Cozort testified that the driller was William Wright on October 9, 2006. Ms. Cozort testified that if the claimant had reported a work related injury on the first day that she talked to him she would have filled out paperwork. This witness testified that on October

31 when she received the accident reports she filled out the proper paperwork.

On cross examination, Ms. Cozort testified that she did not know why the emergency room doctor nor the doctor at Cooper Clinic did not explore kidney problems when the claimant was seen by these two institutions. Ms. Cozort testified that due to the tool pusher's work schedule they do sleep part of the time and when they are asleep the driller would be in charge. Ms. Cozort agreed that the driller in this particular case was William Wright.

The medical records set forth that the claimant was seen at Spark's Regional Medical Center on October 12 reporting that he fell while working on a rig and immediately experienced back pain. These medical records set forth that the claimant reports low back pain when he tripped and fell at work three days ago and has had back pain since. The nurse's notes indicate that the claimant denies any previous history of back problems. X-rays of the claimant's chest, thoracic spine, pelvis, and lower lumbar spine were normal. Medications were prescribed and the claimant was discharged from the ER. The claimant was seen at Cooper Clinic on November 2, 2006, where he reports that he tripped over a cable and fell causing him to have low back pain. The claimant reported the date of his injury to be October 9, 2006. The claimant reports that his pain radiates to the right hip and slightly distal but no true radicular symptoms. The claimant reports that his hip discomfort is intermittent and that his discomfort is exacerbated by activity and relieved with rest and hot showers. It is noted

that the claimant denies pain or injury elsewhere. Upon examination, it is noted that the claimant has no asymmetrical joint swelling or arthritic changes although he is tender to palpitation of the right para lumbar area with spasm. The claimant was diagnosed with having lumbar strain for which medications were prescribed and physical therapy was recommended three times a week for two weeks. It is noted that the claimant can return to work with no lifting over twenty pounds, to alternate sit, stand, and walk as tolerated and he is to limit bending, stooping, and twisting. There is an appointment card indicating that the claimant had an appointment with Dr. Terry Clark on November 16, 2006, at 11:30. Dr. Norman Tubb writes on August 13, 2007, that he would recommend physical therapy for the claimant's back, that he would like to see the claimant's records from Cooper Clinic, advised the claimant to do no heavy lifting, and prescribed medications for the claimant's pain. Dr. Tubb diagnosed the claimant with having low back pain. There is a certificate to return to work signed by Dr. Tubb on August 13, 2007, indicating that the claimant is under his care from August 13, 2007, and can return to work on August 27, 2007. Dr. Tubb indicates that this time off work is due to the claimant's injury. The medical information marked Claimant's Exhibit No. 1, Page 1, appears to be part of Cooper Clinic's records since it is dated November 2, 2006, at the bottom where it sets forth date and time.

In the non medical documentation there are two time cards dated October 8 and October 9 which indicate that the claimant was

working for the respondent on those days. There is a report of occupational injury on the respondent's company form which sets out that an injury occurred to the claimant on October 9, 2006, and was reported to the respondent on October 10, 2006. This report sets forth that William Wright was the driller on site at the time of the accident. The form continues on the second page indicating that the claimant experienced low back strain and back problems. This form is signed by William Wright. There is a witness statement from Chris Hatley setting forth that the claimant was injured on October 9, 2006, and that at the time of the accident Mr. Hatley was doing the corner tong. Mr. Hatley sets forth that the claimant tripped over lead tong cable, held his back when coming up. This form is signed by Chris Hatley on October 10, 2006. There is an unsigned form on the respondent's letterhead titled Union Drilling, Inc., Supervisor's Accident Investigation which is dated October 10, 2006. This form shows that the injured person's name is Justin Griffith, and his job classification was floors. The date of injury is set out as October 9, 2006. There is a notation which indicates that James Lauterback on duty, nothing on books or verbal, will have to talk to James, all this information is from hands on tour, and that the driller is off on family emergency. This form further sets forth that the claimant called at 5:30 p.m. October 10, 2006, and said that he was going to the emergency room but did not indicate where. It is further noted that they could barely understand the claimant because of poor phone reception. On October 13, 2006, Pam Cozort, the benefits

administrator for the respondent, sent a letter to the claimant indicating that it was their information that he would be off work for an undetermined period of time. Ms. Cozort enclosed the respondent's leave of absence forms which needed to be completed by the claimant and the claimant's physician and return within fifteen days further setting forth that the respondent must have the completed form returned to their office before he can return to work. This letter indicates that FMLA request and group benefits continuation policy are enclosed. On November 6, 2006, the claimant was sent a letter of termination signed by Brandi English, the office manager for the respondent. This letter notifies the claimant that his employment has been terminated as of November 6, 2006, since he did not submit the required FMLA paperwork and he has been off since October 9, 2006.

The non medical evidence sets forth that the Commission is on notice that the claimant is in arrears of child support in the amount of \$16,077.74 as of January 19, 2007. This child support lien is from Benton County, Arkansas, and is notice that 25 percent of any benefits paid to this claimant should be deducted and paid to the child support unit.

After a complete review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury while working for the respondent on October 9, 2006. The claimant has testified as has a co-worker that the claimant did in fact sustain a compensable low back injury due to a fall while working for the respondent on

October 9, 2006, and there is an accident report in the record confirming this event as well as a witness statement from Mr. Chris Hatley signed the day after the accident noting the accident. Pam Cozort testified that the claimant called in complaining of kidney problems but when he was seen at the emergency room there is no mention of any complaint of kidney problems only complaints of a low back injury due to a fall while at work on October 9, 2006. It is noted that when the claimant was seen at Cooper Clinic on November 2, 2006, muscle spasms in his low back were noted for which medications were prescribed and physical therapy recommended. The medical records set forth that when the claimant was seen at the emergency room on October 12, 2006, medications were prescribed but no off work slips were issued. On November 2, 2006, the claimant was seen at Cooper Clinic and Dr. Clark recommended that the claimant work with a lifting restriction of twenty pounds and to tolerate stand, sit, walk as tolerated and to limit his bending, stooping, and twisting. There is no indication in the record that the claimant contacted the respondent attempting to return to work on light duty. The claimant was terminated on November 6, 2006, he has testified that he sought employment and did in fact work approximately fifteen days for a landscaping company working a few hours a day. After the claimant was seen by Dr. Tubb on August 13, 2007, the doctor took the claimant off work from August 13, 2007, to August 27, 2007, therefore, the claimant should be entitled to temporary total disability for his back problems from August 13, 2007, to August 27, 2007. It should be noted that 25 percent of

the claimant's entitlement to temporary total disability should be subtracted from his benefits and submitted to the Benton County Child Support Enforcement Unit.

The claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical care for his compensable low back injury beginning October 10, 2006. The respondent's form dated October 10, 2006, indicates that the claimant called in at 5:30 p.m. that date and indicated that he was going to the emergency room but did not know where.

FINDINGS & CONCLUSIONS

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

2. On October 9, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$488.00 for temporary total disability and \$366.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury while working for the respondent on October 9, 2006. See discussion above.

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's low back compensable injury. See discussion above.

6. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from August 13, 2007, to August 27, 2007. See discussion above.

7. 25 percent of any temporary total disability benefits paid to this claimant should be sent to the Benton County Child Support Enforcement Unit to apply to the claimant's arrearage. See Respondents' Exhibit No. 2, Page 7 and 8.

8. The respondents have controverted this claim in its entirety.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury while working for the respondent on October 9, 2006.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable low back injury.

The respondents should pay temporary total disability to this claimant from August 13, 2007, to August 27, 2007, subject to a 25 percent reduction in this benefit to be sent to the Benton County Arkansas Child Support Enforcement Unit to apply to the claimant's child support arrearage.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE