

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607351

CRAIG HALE	CLAIMANT
FORSGREN INC.	RESPONDENT
CONTINENTAL CASUALTY COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 9, 2007

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

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 14, 2006, in Fort Smith, Arkansas. A pre-hearing order had been entered in this case on October 4, 2006. However, immediately prior to the hearing, extensive changes and additions were made in regard to this pre-hearing order. First, the appropriate employer was identified. Secondly, an additional stipulation was offered (in regard to applicability of Ark. Code Ann. §11-9-411). Finally, the issues were amended to reflect that the claimant was only requesting temporary total disability benefits through August 10, 2006. A copy of this pre-hearing order with these amendments noted thereon 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. On June 7, 2006, the relationship of employee-employer-carrier existed between the parties.
3. The appropriate weekly compensation rates are \$488.00 for total disability and \$366.00 for permanent partial disability.
4. The claim is controverted in its entirety.
5. Should disability benefits be awarded the respondents would be entitled to a set off for a short term group disability policy benefits under §11-9-411.

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 lumbar spine on June 7, 2006.
2. The claimant's entitlement to medical services, temporary total disability benefits from June 8, 2006 through August 10, 2006, and attorney's fees.

In regard to these issues, the claimant contends:

"That claimant suffered a compensable specific incident injury to the lumbar spine on June 7, 2006. That claimant is entitled to temporary total disability benefits from either June 8, 2006 or June 29, 2006 through August 10, 2006. That claimant is entitled to medical benefits, attorney's fees and will be entitled to permanent partial disability benefits."

In regard to these issues, the respondents contend:

(a) the claimant did not sustain a compensable injury while working for respondent Forsgren.

(b) Claimant is not entitled to an award of weekly or medical benefits.

DISCUSSION

The central issue in this case is whether the claimant sustained a “compensable injury” to his lower back or lumbar spine on June 7, 2006. The burden rests upon the claimant to prove all of the facts necessary to establish this alleged compensable injury. Should the claimant fail to prove even one of these required facts, he will have failed to prove the occurrence of a “compensable injury”.

The first requirements for a “compensable injury” are contained 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 that is alleged to be compensable. Further, the claimant must show that the existence of this physical injury or condition is supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence presented is clearly sufficient to “establish” the actual existence of a physical injury or condition involving the claimant’s lower back or lumbar spine. The claimant has been diagnosed as suffering from degenerative disc disease and arthritic changes at multiple levels and spondylolisthesis at L4-5 and L5-S1 with a retrolisthesis at L3-4. All of these physical conditions or defects are objectively demonstrated by various radiographic studies, a MRI study, and visual observations made during subsequent surgery. Thus, the

claimant has all of the statutory requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove by a preponderance of the evidence, that these medically established and objectively documented physical conditions or defects satisfy the definitional requirements for a “compensable injury”. In the present case, those definitional requirements are found in Ark. Code Ann. §11-9-102(4)(A)(i). This subdivision requires:

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

In his testimony the claimant described two episodes of difficulties with his back that occurred prior to the alleged incident of June 7, 2006. The claimant testified that, in April of 2006, he began experiencing difficulties with his back while operating a road grader for the respondent. However, he stated that this episode of difficulties totally resolved, after he put on and wore a back brace for that particular day. He required no

medical treatment and missed no work as a result of this episode of difficulties.

The claimant testified that the second incident occurred at home on the Saturday prior to June 7, 2006 (i.e. June 3, 2006). He stated that he was merely "rolling" a block of salt along the ground and chipping pieces off the block with a pick. He described a sudden onset of pain in his back and leg, while performing this activity. He again testified that his symptoms from this incident also totally resolved within an hour. He stated that he again sought no medical treatment and missed no work, as a result of this episode of difficulties. It was his testimony that he experienced no further difficulties with his back or leg, until June 7, 2006.

The claimant testified that while performing his assigned employment activities on June 7, 2006, he attempted to pick up a small piece of angle iron that weighed some 10 to 12 pounds. At that time, he experienced a sharp severe pain in his low back and down his right leg to his knee. He stated that this pain was so severe that it caused him to fall to his knees. It was following this incident that the claimant first sought medical treatment.

The claimant's testimony, concerning the events occurring on June 7, 2006, is somewhat corroborated by the testimony of Danielle Harmon, a co-employee and the claimant's step daughter. Ms. Harmon testified that she remembered the claimant hurting his back at home, on the weekend prior to June 7, 2006. She further testified that shortly after the incident at home, she no longer observed the claimant experiencing any difficulties with his back or leg,

especially while he was at work on the Monday and the Tuesday, immediately prior to June 7, 2006. However, on June 7, 2006, the claimant appeared to hurt himself while attempting to pick up a piece of angle iron. This occurred shortly before work was to cease for the day (the work had been "rained" out). She stated that she finished the remainder of the work necessary that day and then took the claimant to the doctor.

However, the testimony of the claimant and Ms. Harmon, particularly concerning the rapid and complete resolution of the claimant's prior difficulties, after the accident at home on Saturday, June 3, 2006, is inconsistent with and contradicted by the claimant's statements to his various physicians. This testimony is further contradicted by the testimony of the claimant's supervisor, Jimmy Ray Burnett, and other personnel of the respondent.

Mr. Burnett testified that on a Monday morning, the claimant looked like his back was hurting him when he got out of his truck to start work. He asked the claimant what was wrong, and the claimant advised him that he had hurt his back Sunday lifting a salt block at home. He stated that the claimant appeared in pain all that day and the following day, a Tuesday. He did testify that on Wednesday, Ms. Harmon called him and told him that the claimant had hurt his back lifting a laser or piece of angle iron and was going to the doctor. He further testified that, later that same day or the next day, the claimant called him and essentially told him the same thing as he had been told by Ms. Harmon.

Lynn Castelman, the respondent's safety director, testified that shortly after June 7, 2006, she met the claimant in the hallway of respondent's office, and he appeared in visible pain. When she mentioned this fact to the claimant, the claimant told her that he had hurt himself at home and that his difficulties were not work related. It was not until June 28, 2006, that the claimant came to the office and told her about the road grader incident in April of 2006 and the angle iron incident on June 7, 2006. At that time, he first advised her that he thought his back difficulties were work related and attributable to these two incidents.

Cindy Stephens, an employee in the respondent's office, testified that, in June of 2006, the claimant called in and stated that he wouldn't be in to work due to pain. She testified that the claimant further told her that he had hurt his back lifting a salt block, approximately a week before.

Although the claimant testified that he had reported both the salt block and the work related angle iron incident, when he initially sought medical treatment, the medical record indicates otherwise. The hand written record of a Dr. Reyenga of Sparks Preferred Medical Clinic records the following history;

“Right hip pain radiates (down) to knee.
Picked (up) mineral block Saturday.”

“Since Saturday-pain (right) buttocks and
(right) upper lateral thigh to knee.”

No mention is made in Dr. Rayenga's record of any employment related incident as causing, aggravating, or contributing to the claimant's complaints. Based upon the claimant's symptoms and his

physical examination, Dr. Reyenga diagnosed the claimant's difficulties as being attributable to a lumbar radiculopathy and recommended appropriate follow up including a MRI study of the lumbar spine.

The claimant elected not to continue follow up with Dr. Rayenga or to seek medical services from the respondent. Instead, he sought follow up services through the Veteran's Administration facilities. The initial records of the Veteran's Administration dated June 9, 2006, also fail to record any employment related incident as causing, aggravating, or precipitating the claimant's symptoms. In fact, these records note that the claimant's symptoms have been present for one week and began "six days ago" (Claimant's Exhibit No. 1, page 8).

The first mention of an employment related incident was in connection with the claimant's back and radicular complaints, in a Veteran's Administration report dated June 13, 2006. In this record, the following history is noted:

"Scheduled visit, patient states that he hurt his back on 6-3-06. He picked up a salt block and stumbled with it. Then on 6-7-06, he bent over to pick up a piece of channel iron and hurt his back. Went to a chiropractor and again on Thursday 6-8-06 but his back hurt worse after he left." (Curiously, no records from any chiropractor have been introduced).

There is no indication in this record that the claimant's symptoms resolved or even improved between June 3, 2006, and June 7, 2006. This record also indicated that the claimant had sought medical treatment in "the emergency room Saturday night". However, no

records from Sparks Regional Medical Center emergency room were tendered by either party.

A similar history was recorded by the Veteran's Administration primary care registered nurse, Robert C. Pruett, also on June 13, 2006. Nurse Pruett noted:

"Called and spoke with the patient, he states that he hurt his back on 6-03-06, when he picked up a salt (block) and tripped and fell. He then hurt his back again on Wednesday on 6-07-06 when he bent over to pick up a piece of metal."

Again, there is no indication that the claimant's symptoms resolved or even improved between these two incidents.

Another entirely different history of the onset of the claimant's difficulties is recorded in the neurological nursing assessment by the Veteran's Administration on July 27, 2006. This report recorded:

"Vet states has pain in right hip to right knee since June 2006. He states he was swinging a pick and felt something pull at that time. Pain has gotten progressively worse."

In a neurosurgery note, also dated June 27, 2006, Dr. Vincent Runnels recorded a somewhat confusing "addendum". Dr. Runnels stated:

"The patient called, and he is having a lot of pain. The cortisone shot helped temporarily. He did have to go into the doctor's office to file his workers' compensation claim. After he sat there for some time, they told him that the doctor was not there and to come back the next day, which he did. He states that his injury was not work related. I advised him to get a second opinion with a physician who had testified for him and to counsel further with an attorney. I think it is likely that the

herniated disc is work related the way he described. I told him I would be happy, if he did not want to wait for two weeks to see if the cortisone works, to make a referral to Little Rock. He may well try to go the prior route, as he is approved for workers' compensation. I told him to rest more with his knees bent and nothing else to suggest at this point".

Dr. Runnels subsequently saw the claimant for a neurological consultation for the Veteran's Administration, on June 30, 2006. In this report Dr. Runnel recorded:

"History of the present illness: It started on June 3, 2006, when he picked up a salt block. His right side was burning and he reached over to pick up some channel iron and the pain was so severe he went to his knees. It was worse in his right hip. He walked his truck. The pain was going sharply down to his knee and the front of his thigh, nothing below the knee. He denied numbness. He has had some minor problems before, but this was the first time it went down his leg. It was worse with the first lifting event, but got unbearable when he lifted the channel iron. He has been off since June 14, 2006. He went to a chiropractor twice. The first treatment seemed to be a bit better. The second one made him worse. He then went to Dr. Alexander, who got x-rays and an MRI and sent him here. His wife works for an attorney. He has some private insurance, but the deductible is high."

Subsequently in this report, Dr. Runnels attributed the claimant's difficulties and need for medical treatment to the herniated disc at L2-3. It would further seem that he attributed the occurrence of this herniated disc to the same incident that resulted in the radicular symptoms involving the claimant's right leg. Based upon the history that these symptoms first began following the angle iron incident, Dr. Runnels concluded that this was the incident that produced the claimant's disc herniation and nerve root

impingement at L2-3. However, the premise that the radicular symptoms in the right leg first began with the angle iron incident would appear erroneous in light of the prior medical histories, which indicate that all of the claimant's symptoms (including the radicular symptoms into the right leg) began with the salt block incident.

However, the real problem with Dr. Runnels' conclusion is that the subsequent corrective surgery for the claimant's radicular problems conclusively showed that there was no herniation of the L2-3 intervertebral disc. This surgery was performed by Dr. Rodney Routsong, on July 20, 2006. In his operative report, Dr. Routsong expressly recorded the following observations:

“Initial inspection in the upper lumbar region revealed the right paraspinous soft tissue mass to be grossly normal. Hypertrophic changes were noted at the right L2-L3 facet area. The pedicle was noted to be shortened. Ligamentum flavum was noted to be hypertrophied. These factors caused significant lateral recessed stenosis compressing the right L2-3 nerve region. Inspection of the floor of the spinal canal revealed no disc herniation. Inspection through the foramen likewise revealed no distal disc herniation or other extra dural pathology.” (emphasis mine)

Dr. Routsong's postoperative diagnosis was that the claimant's back and radicular symptoms were attributable to a right L2-3 radiculopathy secondary to spondylosis and lateral recess stenosis, which are caused by degenerative arthritic changes.

Clearly, aggravations of pre-existing degenerative changes can constitute a compensable injury. However, in the present case, the greater weight of the credible evidence presented shows that any

aggravation of the claimant's pre-existing degenerative condition of the lumbar spine, particularly at the L2-3 level, was the result of the non work related incident on June 3, 2006, rather than the alleged work related incident on June 7, 2006. The evidence shows that it was this non work related incident that precipitated the claimant's episode of difficulties with his back and neurological or radicular difficulties into his right lower extremity and that these symptoms persisted thereafter.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the existence of a causal relationship between his medically established and objectively documented physical injury or condition involving his lumbar spine and any employment related incident on June 7, 2006. Thus, he has failed to prove that these medically established and objectively documented physical conditions arose out of or occurred in the course of his employment, were caused by a specific incident, and are identifiable by time and place of occurrence. His failure to prove these required facts would prevent these physical conditions from representing a "compensable injury", as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On June 7, 2006, the relationship of employee-employer-carrier existed between the parties.

3. On June 7, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$488.00 for total disability and \$366.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that on June 7, 2006, he sustained a "compensable injury" to his lumbar spine, as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).

5. The respondents have denied the occurrence of any compensable injury to the claimant's lumbar spine on June 7, 2006, 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