

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F511516**

FREDDIE L. HARRIS, EMPLOYEE	CLAIMANT
SMI JOIST, EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

**OPINION FILED JANUARY 24, 2007**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE HOWARD GOODE, Attorney at Law, Texarkana, Texas.

Respondents were represented by HONORABLE GREG VARDAMAN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on November 9, 2006 in Texarkana, Arkansas. A prehearing order was entered in this case on September 20, 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 September 19, 2005.
3. The claimant earned wages sufficient to entitle him to a compensation rate of \$198 for total disability benefits.
4. The respondents have controverted 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. The claimant's appropriate permanent partial disability compensation rate.
2. Whether the claimant sustained a compensable injury.
3. Whether the claimant is entitled to temporary total disability benefits and medical treatment.
4. Attorney's fees.

The record consists of the November 9, 2006 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

The claimant contends that he sustained a low back injury while helping lift a piece of steel at SMI Joist on September 19, 2005. The claimant testified that he told L. D. Jones, a co-worker, that he had hurt his back. The claimant testified that he later told Steve Ward that same

day that he had hurt his back. The claimant testified that Mr. Ward took him to the next building for a drug test. The claimant testified that Jerry Wilson, the head of Safety, was in the Human Resources building, and that the claimant talked to Mr. Wilson. The claimant testified that Mr. Wilson responded, "You probably got a strained back or something."

Neither Mr. Ward nor Mr. Wilson were called to testify by either party. Mr. Jones testified that he still works for the respondent. Mr. Jones testified that about halfway through the shift, he saw the claimant pick up a cord (i.e., a piece of steel) and grab his back. Mr. Jones testified that he asked the claimant what was wrong, and the claimant said he thought he hurt his back. Mr. Jones testified that he told the claimant that the claimant needed to report it to the foreman, and the claimant walked off toward the desk to see the foreman. Mr. Jones testified that he did not see the claimant report an injury.

The claimant testified that he finished his shift that day, but has not worked since that day. The claimant first went to the doctor approximately three days later, on September 22, 2005. The claimant was ultimately diagnosed with an L4-5 disc extrusion, and through a series of

referrals, Dr. Edward Saer ultimately performed disc surgery on May 5, 2005. The claimant seeks benefits associated with his L4-5 disc extrusion.

### **1. Evidentiary Objection**

The respondents object as hearsay to the claimant's testimony on page 15 of the hearing transcript that Mr. Wilson, the Safety Manager, "told me you probably got a strained back or something." I do not find this testimony admissible for the purpose of establishing any sort of diagnosis made by Mr. Wilson. However, I do find this testimony admissible in connection with the claimant's testimony that he provided management with notice of an alleged work-related injury on September 19, 2005, despite the fact that no paperwork was filled out that day for a work-related injury.

### **2. Compensability.**

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 injured his back on September 19, 2005 as he asserts. I instead find credible the contemporaneous medical reports which make no reference to a new back injury on September 19, 2005. In this regard, I note that the history recorded in the emergency room on September 22, 2005 indicates that the claimant's pain had been present for one year, that the claimant had seen a doctor in the past, and that the claimant had no recent acute changes in his pain. (Jt. Exh. 1 pg. 76). Consistent with this history, the medical record also contains an emergency room history on July 27, 2005 (i.e., approximately seven weeks before September 19, 2005), indicating that the claimant complained of low back pain for one year with symptoms in the low back and down the left hip and leg. (Jt. Exh. 1 pg. 26). An emergency department report from September 29, 2005 likewise

contains a history of pain "for months." (Jt. Exh. 1 pg. 67). Finally, I note that the Sick and Hurt Pay/Leave Request Form signed by the claimant on October 19, 2005 indicates that the injury or illness was not work related. (R. Exh. 1). These documents persuade me that the claimant's back pain on September 19, 2005 was not caused by any new injury, and the claimant has therefore failed to persuade me that the condition for which he seeks benefits arose out of a lifting incident on September 19, 2005 as he asserts.

Because I find that the claimant has failed to establish that he sustained a compensable injury as he asserts, I find that the remaining issues of appropriate benefits are moot.

**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 September 15, 2005.
3. The claimant earned wages sufficient to entitle him to a compensation rate of \$198 for total disability benefits.
4. The respondents have controverted this claim in its entirety.

5. The claimant has failed to prove by a preponderance of the evidence that his back condition at issue arose out of an incident at work on September 19, 2005 as he asserts.
6. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury.

**ORDER**

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

**IT IS SO ORDERED.**

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MARK CHURCHWELL  
Administrative Law Judge