

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701858

SHAWN HUFF

CLAIMANT

GENUINE PARTS CO.

RESPONDENT EMPLOYER

ST. PAUL TRAVELERS

RESPONDENT CARRIER

ORDER AND OPINION FILED JULY 26, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE EMILY S. PAUL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on July 10, 2007. A prehearing conference was held on April 25, 2007 and a prehearing order was filed the same day. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on February 10, 2007.
2. The compensation rates are \$239/179.

The claimant contends that he sustained a specific incident injury in the form of a lumbar strain and a hernia. The claimant contends he is entitled to medical benefits, temporary total disability benefits from February 10, 2007, and a controverted attorney's fee.

Respondents contend the claimant did not suffer a compensable event on that date. The claim has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability of a back injury and a hernia.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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. There was an employer-employee relationship on February 10, 2007.
 2. The compensation rates are \$239/179.
 3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment.
- The claim for benefits is respectfully denied and dismissed.

DISCUSSION

The claimant was an employee of the respondent on February 10, 2007 and was working his regular job on a Saturday and was moving batteries out of the way. The

claimant testified that he felt a sharp pain in his back and stomach, as he was picking up and moving batteries. According to the claimant, he advised Nathan Meyers immediately and he was told to just take it easy and rest a bit. The claimant testified that he just sat and rested the balance of the day and then left.

According to the claimant, after he told Nathan Meyers about the incident, Nathan advised him that the office in the warehouse was closed and the paperwork was there and he could not get to it. The claimant testified that he called Nathan Meyers on Sunday as well and he was told to come in Monday and get the paperwork all filled out and everything would be taken care of. The claimant testified that on Monday he was told to go upstairs to speak with Shanna Adams and she fired him. The claimant went to the employer's doctor at Concentra and he told them how he injured himself and was given a diagnosis. The claimant has not been back to work since the incident nor has he had surgery. The insurance company denied the claim.

Under cross examination, the claimant confirmed that he initially did delivery work for the company and then moved to dispatch. At the time of the incident, the claimant was working in dispatch and testified he was moving batteries. According to the claimant, the incident happened about 3:00 or 3:30 p.m. and the claimant testified that he notified Mr. Meyers shortly thereafter when Mr. Meyers was out walking. The claimant testified that he believed that Jeremy Johnson was working the counter that day and he is an assistant manager. The claimant testified that he sat or stood around the rest of the day and then clocked out. The claimant testified that he also called his friend who works at the store, Ronnie Rounsaville, and told him about the incident. Mr. Rounsaville was not working that particular day. The claimant testified he called his

friend, Ronnie, because he felt he was not being treated fairly since he was not sent to the doctor that day.

The claimant confirmed that he purchased parts the same day as his incident. The claimant explained he had an "A.R. account" and he took his parts to the counter and signed a ticket and took his parts. He testified that he thought Jeremy Johnson handled that transaction for him. The claimant confirmed that when he experienced the back and stomach pain, it was excruciating and he remained in excruciating pain until he went home and remained in pain the next day. The claimant testified that he still is in pain and can hardly sit in the chair.

Nathan Meyers, store manager for the respondent employer, testified that the claimant simply did not report an injury to him on Saturday, February 10, 2007. Mr. Meyers testified his procedure when an injury is reported is to immediately complete an accident report and send them for medical attention immediately, if such is needed. Mr. Meyers further testified that the claimant did not call him at home on Sunday and report an injury. Mr. Meyers testified that the first time he knew the claimant was contending an injury at work was Monday morning, February 12, 2007, about 8:15. Mr. Meyers testified that he told the claimant to come in later and talk to him and Shanna Adams. Mr. Meyers explained that Ms. Adams would be in later in the morning and it was in the afternoon when the claimant came in to report the incident. Mr. Meyers further testified that he remembers February 10, 2007, because of an incident where parts were taken and he was investigating that situation. Mr. Meyers verified that he keeps work injury reports in his file in his office and those reports are available at all times. Upon re-examination by respondent, Mr. Meyers confirmed that Jeremy Johnson had reported to

him on February 10, 2007, that the claimant left the premises with unpaid auto parts.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant also contends in addition to his back injury that he sustained a compensable hernia. Ark. Code Ann. §11-9-523 provides that a compensable hernia must meet the following requirements:

- (1) That the occurrence of the hernia immediately followed as the result of sudden effort, severe strain, or the application of force directly to the abdominal wall;
- (2) That there was severe pain in the hernial region;
- (3) That the pain caused the employee to cease work immediately;
- (4) That notice of the occurrence was given to the employer within forty-eight (48) hours thereafter; and
- (5) That the physical distress following the occurrence of the

hernia was such as to require the attendance of a licensed physician within seventy-two (72) hours after the occurrence.

See, *Cooper v. McBurney Corp.*, 72 Ark. App. 332, 39 S.W.3d 1 (2001).

To prove a compensable injury, the burden is on the claimant to show, among other things, that a causal connection exists between the injury and employment. *Horticare Landscape Mgmt. v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002). In the present case, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claimant testified that he sustained a specific incident hernia and back strain on Saturday, February 10, 2007, while picking up batteries at his employment. He further testified that he told his supervisor about the incident but did not complete paperwork that day and did not work the balance of the day. The testimony of the supervisor, Nathan Meyers, differed from the claimant's. Mr. Meyers testified that no notice of an injury was provided him until the following Monday, February 12, 2007, and Mr. Meyers testified the claimant was fired that same day for events unrelated to the claimant's alleged incident. Mr. Meyers testified that he remembered February 10, 2007, vividly because he was investigating a situation where the claimant took auto parts without paying for them.

The sparse medical evidence did not provide any report of a work injury only a diagnosis of a hernia and a lumbar sprain. The whole case turns on a credibility issue. Taking all the testimony into consideration and the medical evidence, I found the testimony of Mr. Meyers to be more credible than the claimant's testimony. Where the claimant's case for causation rests mainly on his own testimony, the issue is that of

credibility and one that is left to the discretion of the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**