

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603672

RICK KINNEY	CLAIMANT
FIBRESOURCE, INC.	RESPONDENT
AMERICAN HOME ASSURANCE, INSURANCE CARRIER	RESPONDENT
AIG CLAIM SERVICES, TPA	RESPONDENT

OPINION FILED APRIL 19, 2007

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

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 23, 2007, in Fort Smith, Arkansas.

A pre-hearing order was entered in this case on December 18, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. At the commencement of the hearing, correction of a clerical error was made in regard to the respondent employer and American Home Assurance was shown as the appropriate workers' compensation carrier. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On March 10, 2006, the relationship of employee-employer-carrier-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$488.00 for total disability and \$366.00 for permanent partial disability.
3. The claim is controverted in its entirety.

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 back on March 10, 2006.
2. The claimant's entitlement to the payment of medical expenses.
3. The effect of §11-9-701 on all benefits accruing prior to March 29, 2006.

In regard to these issues, the claimant contends:

"a. The claimant contends that he sustained a compensable injury to his back on March 10, 2006 and that he is entitled to reasonably necessary medical treatment.

b. Temporary disability may also be an issue by the time this case is set for hearing.

c. The claimant contends that this claim has been controverted in its entirety and that his attorney will be entitled to an attorney's fee in regard to any disability benefits awarded."

In regard to these issues, the respondents contend:

"Respondents contend that the claimant did not sustain a compensable injury while working for respondent/employer. None of the initial medical records support any type of work related injury. Additionally, respondents contend that the claimant did not give notice of his alleged injury until March 29, 2006. In the event this is found to be a compensable injury, respondents should not be liable until actual notice was received."

### DISCUSSION

\_\_\_\_\_The central issue in this case is whether the claimant sustained a “compensable injury” to his back, as the result of a specific incident on March 10, 2006. The burden rests upon the claimant to prove all of the statutory elements or requirements necessary for a “compensable injury”.

First, the claimant must satisfy the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove, by medical evidence, the actual existence of some type of physical injury or condition involving his back. Further, he must show that the actual 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).

After consideration of the medical evidence presented, it appears that such evidence does establish the actual existence of a number of physical injuries or defects involving the claimant’s back or spine, which are supported by “objective findings”. X-rays of the claimant’s spine are interpreted as showing various defects in the thoracic and lumbar regions, which are opined to be degenerative in nature. An MRI of the claimant’s lumbar spine also revealed degenerative type changes involving the L2-3 and L4-5 levels. These findings include disc space narrowing and bulging of the L2-3 and L4-5 intervertebral discs with mild acquired stenosis at the L2-3 area, but no disc herniations or protrusions. A subsequent thoracic MRI study revealed the presence of a left paracentral disc herniation of the T8-9 intervertebral disc, and a

“tiny” central and right paracentral disc herniation of the T7-8 intervertebral disc. I find that the claimant has satisfied the statutory requirements for a “compensable injury”, which are set out in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that these medically established and objectively supported injuries or defects satisfy the definitional requirements for a “compensable injury”, that are contained in Ark. Code Ann. §11-9-102(4)(A). As the injury or defects involved in this claim are to the claimant’s “back” two different sets of definitional requirements are potentially applicable. These sets of requirements are found in Ark. Code Ann. §11-9-102(4)(A)(i) and §11-9-102(4)(A)(ii)(b). With this said, I recognize that the claimant clearly appears to only contend that his back injury is the result of a “specific incident” and would therefore be controlled by §11-9-102(4)(A)(i).

There is one requirement common to both of these potentially applicable subdivisions. This common requirement is that the claimant must prove that his alleged back injury “arose out of and occurred in the course of his employment”. In order to satisfy this requirement, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between his medically established and objectively documented physical injuries or defects involving his back and a natural risk or consequence of his employment. In order to satisfy the further requirements of Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must also prove that this natural risk or consequence of his employment

was a particular or specific incident and that the injury, itself, is identifiable by time and place of occurrence.

In the present case, the claimant's own testimony is the only evidence offered to establish the existence of a causal relationship between his difficulties with his back and his employment with the respondent. Clearly, the testimony of a party is never considered uncontradicted. However, this does not mean that it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address.

At the hearing, the claimant testified that he first experienced his symptoms at approximately 3:30 p.m. on March 10, 2006, when he was involved in a specific work related accident while operating a "bobcat" or forklift. However, when the claimant initially sought medical treatment on March 13, 2006 (only two days after the alleged bobcat incident), he made no mention of this incident. He only mentioned that he had been doing some increased truck driving in his employment over the previous two weeks. In fact, he made no mention of any specific incident or event as precipitating his difficulties. Instead, he gave a history of intermittent identical difficulties over the past two weeks. When the claimant returned to his family physician, on March 14, 2006, he failed to describe any particular or specific employment related incident as precipitating his complaints. The first mention, in the medical records, of any incident (such as that described by the claimant in his testimony) does not occur until March 23, 2006. At

that time, the claimant did relate a bobcat incident, but did not give any particular date for this incident. The March 10, 2006 date first appears in Dr. Terry Clark's records of March 29, 2006. The claimant also failed to report to his employer any specific employment related incident or event as causing or precipitating his complaints until March 29, 2006.

I find that the claimant's explanation for his failure to timely report this specific incident to both his initial treating physician and his employer to be inadequate. The delay by the claimant in reporting any specific employment related incident or event as causing or precipitating his difficulties to both his initial treating physician and his employer cast significant doubt upon the occurrence of this event and its causal role in the claimant's back difficulties. As a member of management for the respondent, the claimant should have been well aware of the need for reporting all employment related accidents or injuries and seeking medical treatment through his employer. Yet, the claimant failed to timely report any accident and initially sought medical treatment from his own personal physician. This in and of itself would cast substantial doubt on any employment related origin of the claimant's back difficulties.

Although the thoracic MRI study does objectively demonstrate two thoracic defects, the claimant's numerous physical examinations before and after this study have failed to show any objective abnormalities that would correlate with these defects or would indicate a recent or acute injury, such as muscle spasms, rigidity,

abnormal lordosis, etc. From the evidence presented, it is quite possible that these objectively demonstrated defects are merely incidental findings and not the source of the claimant's subjective complaints.

In summary, I find that the claimant's testimony is not sufficiently credible to prove the existence of a causal relationship between his back difficulties and his employment with the respondent, particularly a specific employment related incident on or about March 10, 2006. The claimant's failure to prove this essential requirement of Ark. Code Ann. §11-9-102(4)(A) prevents a finding of a "compensable injury" to his back or spine.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, including March 10, 2006, the relationship of employee-employer-carrier-third party administrator existed between the parties.

3. On March 10, 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 he sustained a "compensable injury" to his back on March 10, 2006. Specifically, he has failed to prove by the greater weight of the credible evidence the occurrence of any compensable injury to his back on or about that date, that

arose out of and occurred in the course of his employment with the respondent.

5. The respondents have denied the occurrence of any compensable injury to the claimant's back 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