

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603699

CHRIS KOLLN

CLAIMANT

HANKE BROTHERS

RESPONDENT EMPLOYER

AMERICAN HOME ASSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED MAY 2, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE C. BURT NEWELL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on February 23, 2007. A prehearing conference was held on December 12, 2006 and a prehearing order was filed the same date. 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 March 15, 2006.
2. The compensation rates are \$297/233.

The claimant contends he sustained a compensable specific incident injury on March 15, 2006 and is entitled to medical benefits and temporary total disability benefits from March 27, 2006 through July 20, 2006, and attorney's fees.

Respondents contend the claimant did not suffer a compensable specific

incident injury on March 15, 2006. Respondents also contend that while the medical records might reference a gradual onset condition, it contends there was also no gradual onset injury. Respondents contend the claimant's problems were pre-existing and no benefits have been paid.

ISSUES TO BE LITIGATED

1. Compensability.
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 March 15, 2006.
2. The compensation rates are \$297/223.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on March 15, 2006.
4. Respondents are responsible for all reasonable and necessary medical treatment.

5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and totally unable to earn wages from March 27, 2006 through July 20, 2006.

6. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 47 years old, worked for the respondent employer for about one year and three months. The claimant was a helper and was involved in building sunrooms, which required lifting and grunt work. According to the claimant, his health problems before his employment was plantar fasciitis in his feet but he wears insoles and does not wear them constantly. The claimant testified he was able to perform the full range of labor duties, to include carrying heavy objects and lifting glass. In October 2005, the claimant testified that he tore his rotator cuff at work and participated in four and a half weeks of therapy while treating with Dr. Mark Lefler and Dr. Jon Hardy. The claimant did not miss work for the shoulder injury and continued working full time.

The claimant testified that on March 15, 2006, a Wednesday, at about 1:30 p.m., he was loading up material from a project and while carrying a large roof panel, he slipped on grass and fell and felt pain in his neck and shoulder and shoulder blade. The claimant finished working that day; however, both Michael Morgan and Teddy Caldwell were alerted of the fall. The claimant worked a 12 to 13 hour day and when he got home, he slept for a half hour and was in a great deal of pain when he woke up.

The claimant did not work the following day but did return to work on Friday and worked part of the day. The claimant also worked on the following Monday and Tuesday and was using a slap stapler to put insulation up but was having more pain. The claimant tried to get a doctor's appointment on Wednesday but was unable to get one so he continued to work light duty on Wednesday and Thursday. The claimant saw Jon Hardy, physical therapist, on Thursday and was taken off work for Friday. The claimant got some medication, was recommended to get a MRI and started therapy. The claimant eventually had surgery performed by Dr. John Pace and was released to return to work on July 20, 2006.

Under cross examination, the claimant verified that Teddy Caldwell saw him fall and witnessed the whole event. The claimant also verified that he advised Michael Morgan, lead man, about the fall as Mr. Morgan was on the roof and did not see the incident. The claimant did not go to the doctor the day of the fall; however, he testified that he told Michael the next morning that he was real sore. The claimant also stated that he told Woody Morgan the day after his slip and fall that he had gotten hurt. The claimant testified that Woody spent two hours on the telephone trying to talk him out of filing a workers' compensation claim. The claimant verified that he was in such pain at the time he first saw the therapist that he did not know what was causing his pain and did not report the fall. The claimant testified that none of the doctors asked him what could be the cause of his pain. According to the claimant, he first told Dr. Lefler that his injury was work related and that was April 11, 2006.

The claimant verified that since leaving the respondent employer, he has found two different jobs making more money than he was making. The claimant verified that

he first went to the doctor following his fall at work on March 21, 2006. The claimant also verified that he completed an AR-C Form on August 16, 2006 and he described his injury as “neck injury after slipping and falling while carrying building materials.” The claimant testified that he went to the employer’s office and completed paperwork stating he was injured from a fall at work and that was before he saw Dr. Hardy.

Woody Morgan, supervisor or lead man of the sunrooms for the respondent employer, testified that he worked with the claimant at Bradford Marine and had known him about seven years. Mr. Morgan testified that the claimant told him about his injury the week after the incident and the claimant stated his neck and shoulder problems were not work related.

Michael Lee Morgan, sunroom installer for the respondent employer, testified that he has been so employed about four years and that Woody Morgan is his father. Mr. Michael Morgan is a crew chief for the respondent employer. Mr. Morgan could not remember the claimant advising him he had fallen; however, Mr. Morgan stated that could have happened. Mr. Morgan testified he could not remember the claimant filing a report of injury with him. Mr. Morgan testified the roof panels in question weighed 52.8 pounds and further stated he has not discussed the claimant’s claim with anyone at the respondent employer except his father.

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).

In the present case, the claimant has proven by a preponderance of the evidence that he sustained a specific incident injury arising out of his employment. I found the claimant's account of the incident to be a plausible account and found the claimant to be a credible witness. The claimant's account of a slip and fall while carrying a roof panel was believable and there was no direct contradiction of that event.

Mr. Michael Morgan testified, in part:

Q [Ms. Wood] Do you recall anything about an injury that day?

A [Mr. Morgan] I really don't; I don't recall it. It could have happened; I don't really recall.

Q Did he ever tell you he was injured on that date?

A I'm going to say, 'No.' It's possible I just don't remember.

Q Tell me what you do remember.

A I remember we were working, and it's possible he fell at some point during the day. But it wasn't anything that was so big that it would stick out in my mind, you know, that he extremely complained about.

Q Had he ever complained about neck and shoulder problems before March of 2006?

A Probably occasionally. When we work construction, we get lots of pains here and there. (T., p. 65, lines 22-25; p. 66, lines 1-22.)

Mr. Woody Morgan testified he learned about the claimant's injury the week following the incident and he conceded that the claimant could have slipped and fell because he was not there. Mr. Morgan also testified that the claimant told him initially that his problems were not work related. Mr. Morgan testified that he never discussed the claimant's work injury claim with management at his employer.

The claimant contends the slip and fall happened on March 15, 2006, with the first medical report dated March 21, 2006, from Jon Hardy, physical therapist. Mr. Hardy's report notes the claimant began experiencing an onset of problems while at work on a sunroom installation. The claimant's symptoms were acute cervical pain and right upper extremity radiculopathy and muscle spasms. Dr. Mark Lefler saw the claimant on March 27, 2006 and ordered a MRI and prescribed medication for pain and muscle spasms. A MRI revealed a herniated nucleus pulposus at C5-6 and on June 19, 2006, Dr. John Pace performed a fusion surgery and released the claimant to return to work on July 20, 2006. I found the contemporaneous medical records supported the claimant's testimony.

Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued. Ark. Code Ann. §11-9-508.

The claimant further contends that he is entitled to temporary total disability benefits from March 27, 2006 through July 20, 2006. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark.

244, 613 S.W.2d 392 (1981).

In the present case, the claimant began treating with Dr. Mark Lefler and it was Dr. Lefler's opinion that the claimant should remain off work as of March 27, 2006 and obtain further evaluation, including a MRI, as well as see a neurosurgeon. The claimant complied with Dr. Lefler's recommendation and began treating with Dr. John Pace and ultimately underwent surgery on June 19, 2006 and was released to return to work on July 20, 2006. I find the claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages from March 27, 2006 through July 20, 2006.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on March 15, 2006. Respondents are responsible for all reasonable and necessary medical treatment. The claimant has proven by a preponderance of the evidence that he remained in his healing period and totally unable to earn wages from March 27, 2006 through July 20, 2006.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**