

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600861

CLIFTON MASON	CLAIMANT
QUALITY MILLWORK, INC.	RESPONDENT
FIRSTCOMP INSURANCE COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 2, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by LAURA J. MCKINNON, Attorney, Fayetteville, Arkansas.

Respondent represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 31,, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 7, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 18, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a compensation rate based upon an average weekly wage of

\$194.00 per week, therefore, entitling him to a temporary total disability rate of \$129.00 per week.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's cervical back and spine injuries.
2. Related medical.
3. Temporary total disability from November 8, 2005, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he sustained a compensable multiple trauma injury arising out of and in the course of employment with the respondent on or about October 18, 2005. Claimant contends entitlement to workers' compensation benefits as set forth in the issues response in the pre-hearing memorandum, and specifically, reasonable, necessary and related medical expenses; temporary total disability benefits; Ark. Code Ann. §11-9-505 benefits; permanent partial/total disability benefits (reserved); and controverted attorney fees. All other benefits are reserved under the Act.

In regard to the foregoing issues the respondents contend that it is the contention of the claimant that he suffered an alleged injury October 18, 2005. However, the initial medical report from Nurse Max Beasley indicated that there was no specific date of injury. Also, Nurse Beasley noted that the claimant smelled of

alcohol. In addition, the only trauma noted was that the claimant had a board fall, which hit him in the abdomen. Two days later, the claimant developed neck problems. The respondents contend that the two are not causally related.

The documentary evidence submitted in this matter consists of a Prehearing Order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. The respondent submitted medical information marked Respondent's Exhibit No. 1, employment records marked Respondent's Exhibit No. 2, the deposition of Dr. Knox, marked Respondent's Exhibit No. 3, and the deposition of the claimant, marked Respondent's Exhibit No. 4. All of these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 43 years old and had an eleventh grade education. The claimant testified that he began working for the respondent on September 29, 2005. The claimant testified that he had never done the type of work which the respondent was engaged in and stated that it required knowledge of wood, molding, lifting, and carrying. The claimant testified that the respondent put together house building kits. The claimant testified that the different weights he would be required to lift would be from very small to extremely heavy, noting particularly the different types of plywood which were used. The claimant testified that he worked with another man who was in his 20's and

seemed to be sort of spaced out or not paying attention to what he was doing. The claimant testified that on the date of the first event, they were putting together a building kit and were carrying some crown molding which was twelve feet (12') long. The claimant testified that the other gentleman dropped his end of the molding and it bounced up and hit him, the claimant, in the arm. The claimant testified that it hit so hard that it felt like it broke his arm and he reported this event to Heath, his supervisor, that day. The claimant testified that he told Heath that if his arm kept swelling that it may be broken and he may need to go get x-rays. The claimant testified that he had pain down his upper arm and, when the molding hit him, it shocked him. The claimant testified that they were getting down the crown molding from a height of about six feet and when the other gentleman dropped his end, the crown molding was flexible and it bounced up and hit him in the arm.

The claimant testified that his arm continued hurting but he continued working for the respondent. The claimant testified that approximately two weeks later he was feeling a bit better and he was again working with the same man. The claimant testified that they usually use a forklift to get the plywood down but there was material in the way so another man climbed up on the shelf about ten feet (10') high and started handing down a piece of plywood to himself and the 20 year old man he had previously worked with. The claimant estimated that the piece of plywood being handed down was approximately 125 pounds, that it was four feet by eight feet (4'

x 8') in size and required two people to handle it. The claimant testified that when the man on top was handing the plywood down and let go of it, he and the 20 year old man were supposed to grab each end of it but that the 20 year old did not grab his end and the plywood came down and hit him, the claimant, in the stomach. The claimant testified that he really never did get a hold of the plywood because it was coming down and he was trying to catch it. The claimant further explained that his arms were straight up above his head trying to grab a hold of the plywood because it was so high on the shelf. The claimant testified that when the plywood hit him in the stomach, he felt a burning sensation. The claimant testified that he did not feel pain anywhere else, just in his stomach area. The claimant testified a little later on in the day as he continued work his back and shoulder blade area began to bother him. The claimant testified that he kind of blew it off and continued working out his shift. The claimant testified that he thought it was the plywood incident that was causing his back to hurt because of the way he was reaching up, the way it came down, and the way he was trying to catch the wood. The claimant testified that he continued working and that his stomach area did improve and the bruising and swelling began to resolve. The claimant testified that he still had discomfort in his back and thought he had pulled a muscle. The claimant testified that after about a week, his back was extremely painful and he had a sharp pain that ran from his shoulder blade area into his neck and down into his left arm. The claimant testified that he reported the

plywood incident to Heath the day after the event happened and even showed him his stomach. The claimant testified that he told his supervisor that the 20 year old man that he was working with was going to hurt someone really bad because of the way he was so spacey when he worked.

The claimant testified that he continued to work and began to realize that he had something more than a pulled muscle in his back. The claimant testified that at one point it got so bad that he had his father-in-law drive him to work and he went in and asked the respondent to send him to the doctor. The claimant testified that there was nothing said about workers' compensation at that point, he just figured that the respondent knew that he was injured. The claimant testified that he did not pay for this initial doctor's visit. The claimant testified that after his initial visit he was sent for an MRI and then referred to Dr. Knox by the respondent. The claimant testified that he would like to continue being treated by Dr. Knox if the respondent would authorize the treatment. The claimant testified that the respondent wanted another opinion so they sent him to Dr. Kyle.

The claimant testified that when he was seen by the first doctor that the respondent sent him to, he had had a couple of beers that morning to help relieve his pain because he had no other type of medication to help with his discomfort. The claimant testified that he did not drink on the job and that he did not work on the day that he consumed the two beers.

The claimant was again asked about the dates of his two incidents and the claimant testified that he could not be absolutely certain but thought that the first incident happened about a week to a week and a half after he first starting working for the respondent. The claimant testified that he was fairly certain that the second incident with the plywood occurred two weeks after the first incident. The claimant agreed that he worked five weeks total for the respondent. The claimant testified that he returned to Mississippi in February 2006, and began working around the middle of March.

On cross examination, the claimant was asked why during his deposition he did not tell the respondent's attorney about the first incident where he was hit in the arm. The claimant testified that he could not say yes or no if the first incident had anything to do with his neck getting hurt. The claimant testified that he did not tell the first doctor at his first doctor's visit at the Arkansas Occupational Health Center about being hit in the arm nor did he tell Dr. Knox about that event. The claimant testified that he did not think that he hurt his back with the first incident because he thought he had broken his arm. The claimant indicated that he felt like it was when he was hit in the abdomen by the piece of plywood that caused his neck to hurt. The claimant testified that when he was seen by Dr. Knox he thinks that he told the doctor that he was lifting some wood and hurt his back. The claimant testified that he would not disagree with Dr. Knox's statement in his deposition that at no time did he, the claimant,

indicate that he was hit in the abdomen, resulting in his neck injury. The claimant was shown his AR-c form which was filed on January 24, 2006. The claimant read from the AR-C form as to what he described as his injury and read as follows:

“I was lifting wood, and felt a pop in the neck and back injuring neck, back, upper and lower extremities.”

The claimant agreed that this description is different from his testimony. The claimant testified that there was another event while working for the respondent when he was picking up some wood and his back popped, noting further that he can pop his knuckles or his wrist. The claimant was asked by the respondent's attorney, “Are you now saying that the AR-C is correct, and what you just told us on direct examination is not correct?” The claimant responded, “I guess it is all correct.” The claimant was asked to describe what happened at the popping incident and the claimant testified that one day he was working with Adam and it was just an incident that happened. The claimant testified that he did not report this event to his supervisor because it was just like a pop with no pain associated with it at the time. The claimant testified that it was like when people popped their bones and knuckles and stuff, and he didn't feel hurt right then. The claimant testified that his discomfort started with the incident when the wood hit him in the abdomen and he thought he had pulled a muscle in his back, describing the shoulder blade area. The claimant testified that when he saw the first doctor he remembers

being asked a lot of questions about his pain, it's location, and how it happened. The claimant testified that he could not recall what he told the doctor because he was in quite a bit of pain. The claimant testified that he could not recall or give a date of an incident when his problem began. The claimant was asked why he told Nurse Beasley that his pain started two days after the incident when in his testimony he had testified that the pain became apparent the day of the accident. The claimant testified that it was a couple of days later that the pain got worse. Ultimately, the claimant could not explain why he had testified one way and told Nurse Beasley something different. The claimant was asked if he still had the bruise when Nurse Beasley saw him on November 8, and the claimant responded, "I guess it was still kind of there. It takes a while for that kind of bruise to go away." The claimant was told that Nurse Beasley's records do not reflect or note any bruising and the claimant responded, "I can't remember if he looked at it or not." The claimant was asked if on the date of the plywood incident until he was first seen by the doctor if he continued to work without restrictions and the claimant responded, "Yes, sir. Trying to." The claimant was shown his deposition and reviewed his responses to various questions. The claimant's answers to the various questions indicated that other than the pain in his stomach, he did not have any other symptoms at that time. The claimant agreed that this testimony in the deposition was different than what he had testified at the hearing. The claimant in his deposition also indicated that he had continued working for

the respondent doing his exact same duties. The claimant testified that a couple of days after his incident with the plywood, he woke up with neck pain and thought he had pulled a muscle. In the claimant's deposition he did state that when he talked to his supervisor, Mr. Echols, he did not tell him that his neck problems were related to his abdomen incident. The claimant testified that he has always thought that his neck problem was related to the plywood accident because of the way it happened but he just wasn't sure. The claimant was reminded that he did not have any pain medication when he went to see Nurse Beasley. The claimant testified that he took some Tylenol and he had also taken some pain medication which was for his sister to see if it would help. The claimant was again asked why he had testified that he did not have any pain medication and now was testifying differently on cross examination. The claimant testified that his arm pain began a couple of days after the plywood had slipped and hit him in the belly area. The claimant testified that he continued to work for the respondent for another two weeks but during this period of time he might have to adjust how he did his work and sometimes he would just have to sit down for a minute.

On redirect examination, the claimant testified that his shoulder blade area continued to hurt during the two weeks he worked for the respondent. The claimant testified that his shoulder blade area was hurting when he went to bed the night before he first saw Nurse Beasley.

Keith Echols testified that he has been working for the respondent for the past two years and in October 2005, he was the shipping manager as well as the claimant's supervisor. Mr. Echols testified that around the 1st of October, he remembers that the claimant came to him and reported that he had been hit in the forearm. Mr. Echols testified that the claimant told him that his arm might be broken and that he might need to see a doctor. This witness testified that this is the only time that the claimant mentioned anything about his forearm and that was the last he had heard of the incident. Mr. Echols testified that he does not recall any incident where the claimant reported being hit in the abdomen nor did the claimant ever show him a bruise on his abdomen. Mr. Echols testified that on November 4, the claimant did come to him and told him that he had hurt his back and that he would need to see a doctor, but did not report any incident nor did he indicate how he hurt himself. Mr. Echols testified that approximately one week later, he learned that the claimant was contending that he hurt himself at work but did not indicate how he had hurt himself. Mr. Echols testified that after the claimant was seen by the doctor, they had light duty work available for him such as sweeping, picking up trash and dumping it in the dumpster. Mr. Echols testified that after the claimant was seen by the doctor, he never returned to work nor did he call in. Mr. Echols testified that the claimant was working his regular job and doing his regular duties up until November 4, when he asked to be seen by the doctor. This witness testified that during the period of time the claimant

worked for the respondent, up until November 4, he did not exhibit any indication that he was in pain or favoring his back or arm.

On cross examination, Mr. Echols testified that they have had a Mexican individual who he had warned about getting up on the stacks of lumber and handing wood down. Mr. Echols testified that they have a scissors lift to do this kind of work. Mr. Echols also testified that there was a 20 year old who worked for approximately two weeks and that he, Mr. Echols, would not question that he worked with the claimant. Mr. Echols testified that the 20 year old was fired. Mr. Echols testified that when the claimant reported the work related incident he was not present that day but was called and asked what happened.

The medical records set forth that the claimant was seen by Max Beasley, a physician's assistant on November 8, 2005. Nurse Beasley indicates that the claimant cannot recall a specific date of injury but does recall an event approximately two weeks earlier when he was working with a board overhead and the other person who had the board dropped their end and caused the claimant's end to fall onto his right lower abdomen. Nurse Beasley writes that the claimant thinks that two days later he started having neck and thoracic pain. The claimant reported that he had been taking a family member's medication because of his discomfort but he has continued to work without restrictions. X-rays of the claimant's cervical and thoracic spine revealed no fractures or dislocations and it is noted that there is C5-C6 degenerative changes and anterior osteophyte. These x-rays also indicate a loss of cervical

lordosis as well as mild dextroscoliosis being present. After examination, the claimant was assessed with having cervical and thoracic pain. Nurse Beasley recommended range of motion exercises for the claimant's cervical and thoracic spine, he injected the claimant with medication, prescribed medication, and the claimant could return to work but not to work overhead and avoid far reaching, and not to lift more than ten (10) pounds as well as to avoid prolonged static conditions. Nurse Beasley writes on November 11, 2005, that the claimant continues to have pain in his cervical and thoracic area. Nurse Beasley notes that the claimant has constant pain with pain going down his left arm and describes having muscle spasms in his left forearm when the radicular symptoms are present. Upon examination, no spasm was noted and Jon Lee was asked to evaluate the claimant. The consensus opinion with Mr. Lee was that the claimant had a herniated disc of the cervical spine and an MRI was noted. An MRI of the claimant's cervical spine was made on November 14, 2005 which revealed cervical spondylosis with left foraminal stenosis at C5-C6 and C6-C7. Nurse Beasley writes on November 16, 2005 that the claimant reports that the pain in his neck and left shoulder is worse. Nurse Beasley notes that the claimant has undergone an MRI and notes that the claimant also has osteophyte anteriorly and posteriorly at C5-C6 and C6-C7 levels. Nurse Beasley notes that the MRI reveals that the claimant has bony impingement on the left and foramina at the C5-C6 and C6-C7 levels. After examination, Nurse Beasley recommended that the claimant be seen by Dr. Knox for evaluation.

Nurse Beasley returned the claimant to work under the same restrictions which he had previously been given until he had been seen by a neurosurgeon. On December 8, 2005, Dr. Luke Knox writes that he has seen the claimant for his complaints of neck and arm pain. Dr. Knox writes that the claimant reports that he had a job related injury while lifting a heavy load of lumber at work. Dr. Knox reviewed the claimant's MRI and found that the claimant had a disc herniation at C6-C7 on the left with marked adjacent spondylitic changes with neural foraminal encroachment. Dr. Knox examined the claimant and notes that he is absolutely miserable with his complaints and surgery was recommended. There is an off-work slip for the claimant dated December 15, 2005, signed by Dr. Kelly Danks, setting forth that the claimant should remain off work pending surgery. Dr. Richard Kyle writes on January 24, 2006 that he has seen the claimant in consultation and reviewed his MRI. Dr. Kyle notes that the claimant has a herniation on the left C6-C7 which is consistent with his left C7 radiculopathy. Dr. Kyle recommended surgery.

Dr. Luke Knox, in his deposition, testified that disc herniations of the neck do not have to necessarily be related to trauma. Dr. Knox was asked to give instances which will cause disc herniations. Dr. Knox responded, "car wrecks, slip and falls, or twists, or cough, or sneeze. I have had them wake up with them in the morning after, otherwise, a non-consequential bed rests." Dr. Knox testified that a disc herniation could result from trauma and not necessarily trauma to the neck. The doctor explained that it

could be some sort of traumatic incident to the body, resulting in a flexion or rotation of the head or neck. Dr. Knox was asked if a person has a big disc herniation like the claimant has, would they normally have symptoms fairly quickly as to neck pain and arm pain. Dr. Knox responded, "I think that is probably typical." Dr. Knox further explained that when a person reports that he or she woke up with neck pain, normally this pain is attributable to some prior event. Dr. Knox stated that he did not believe that sleeping will cause a herniation of the neck. Dr. Knox was shown Nurse Beasley's initial visit with the claimant and agreed that the history given to Nurse Beasley was different than what the claimant had reported to him as the cause of his problem.

On cross examination, Dr. Knox testified that if someone is lifting something overhead and then looking up, this results in extra strain and stress on the cervical disc. Dr. Knox continued by stating that if you drop a board or something causes a jarring injury this could result in a herniated disc. Dr. Knox agreed that if the claimant experienced a work injury as set forth in Nurse Beasley's initial report, that could result in a herniation of his neck.

After a complete review of this case, I find that the claimant has failed to prove by a preponderance of the credible testimony that he sustained a compensable injury while working for the respondent in October 2005. It is not questioned that this claimant has a herniation of his cervical spine which needs treatment. However, it is seriously questioned that this injury

occurred while working for the respondent. The claimant cannot recall a date, time, a period of the day, the names of anyone he was working with, or a day of the week when his injury occurred. The claimant has testified that he reported the plywood incident to his supervisors that day and even showed him the bruise on his abdomen. Keith Echols, the claimant's supervisor, denies any type of report of a plywood incident or seeing a bruise on the claimant's abdomen. Mr. Echols was quite straight forward in his testimony concerning the firing of a 20 year old, and not denying that some of the help does climb up on the shelving to get down materials even though they have been instructed not to do so. Based upon all of the evidence, as well as the numerous contradictions in the claimant's testimony, I find that this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 18, 2005, the relationship of employee-employer existed between the parties.
3. The claimant is entitled to a compensation rate based upon an average weekly wage of \$194.00 per week, therefore, entitling him to a temporary total disability rate of \$129.00 per week.
4. The claimant has failed to prove by a preponderance of the credible evidence that he

sustained a compensable injury while working
for the respondent in October 2005.

ORDER

The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury while working for the respondent in October 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE