

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411256

L.V. PEARSON, EMPLOYEE	CLAIMANT
RICELAND FOODS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE, CARRIER	RESPONDENT

OPINION FILED MARCH 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on December 15, 2006 at Jefferson County, Pine Bluff, Arkansas.

Claimant represented by the HONORABLE SHEILA F. CAMPBELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102 and whether or not the claimant is entitled to benefits prior to the date he gave notice of his injury to his employer pursuant to Ark. Code Ann. §11-9-701.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on December 1, 2003 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$388.00/\$291.00 in the event this claim is found to be compensable. Some disability benefits (from

January 16, 2004 to March 16, 2004) have been paid through Riceland.

The claimant contends he reinjured his back on December 1, 2003 lifting heavy objects at work. This incident aggravated a preexisting injury. The claimant seeks payment of medical expenses, temporary total disability benefits from December 2, 2003 to a date yet to be determined and attorney's fees.

The respondents contend the claimant was not injured at work. His symptoms are the result of a preexisting condition. There are no objective medical findings of a new condition. The claimant applied for disability benefits through Riceland and did not report a work-related injury until September 2004.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: The claimant, who was emotionally distraught, former employees, Bennie Pruitt and Larry Walker, the claimant's father, James Pearson, Supervisor, Kenneth Dailey, Manager Opal Derrick and Human Resource Director, Linda Debrovich. Credibility was a factor for both sides. The claimant seemed too dramatic in his testimony while it was evident that management made no effort to investigate his claim.

The claimant, age 50 (D.O.B. May 23, 1956) walks with a cane. He has a sixth grade education and has difficulty reading and writing. His health history includes a 1995 back injury barred by the statute of limitations, and a 1997 back injury at Riceland.

The claimant began work with Riceland in 1995 performing a variety of manual labor jobs (Tr. p. 15-18). On December 1, 2003 the claimant injured his back while moving a heavy motor. He reported the incident to his supervisor but he was never informed about workers' compensation

insurance. He was told to use his group health insurance and handle the problem by himself.

The claimant sought medical attention on December 1, 2003 and gave his supervisor his work restrictions but he was never offered light duty. The claimant was told to continue his regular duties until a work slow down later in the month of December. Dr. John Wilson released the claimant to return to regular duty in February, 2004.

In September, 2004, the claimant developed groin and leg pain and saw Dr. Weber. The claimant used his vacation time until it was exhausted and then he was told to apply for short term disability benefits (from December 2003 to February 2004 totalling \$700.00).

Also in September 2004, the claimant testified he overslept one morning because of his prescription medication. The manager came to his home to find out why he wasn't at work but he was unable to find the claimant. The claimant testified he did not quit work but was fired.

The respondents' witnesses testified they were aware the claimant suffered from back problems but they were never told this was work-related. The claimant's supervisor, Kenneth Dailey, a 33 year employee, testified the claimant didn't file a workers' compensation claim for the 1997 injury because he had been drinking beer and knew he would fail the drug test. Mr. Dailey also testified he has no recollection of lifting the motor with the claimant on December 1, 2003. Mr. Dailey stated the claimant reported to him on Monday saying he hurt his back cleaning floors on the previous Friday. Mr. Dailey advised him to report the incident to the front office but the claimant declined saying he hurt his back during sex. On re-direct, the claimant explained that this was a joke started by co-workers.

The claimant's witnesses, co-workers Mr. Pruitt (retired) and Mr. Walker (fired), testified the claimant experienced back problems beginning in 1997 lifting a hopper car lid (Tr. p. 12, 52-55).

MEDICAL EVIDENCE

The claimant sought medical treatment for back pain in January 2003, eleven months before the incident at work in December 2003.

Medical records in January 2003 show the claimant complained of severe back pain, numbness in his legs and an inability to walk. An MRI scan revealed a disc herniation at L4-5 and a disc bulge at L3-4. Muscle spasm was also recorded in a report dated January 27, 2003. The claimant was prescribed medication and physical therapy and advised to consult a specialist.

On January 5, 2004 the claimant returned to his general practitioner with complaints of neck and shoulder pain as well as back and leg pain. Arm and neck pain was also mentioned in a report dated October 12, 2004.

Dr. Webber authored reports excusing the claimant from work beginning August 9, 2004. On September 13, 2004, the claimant was released to return to work lifting no more than 15-20 pounds. The claimant returned to Dr. Webber for complaints of back and leg pain on several more occasions (September 20, 2004, September 30, 2004, October 12, 2004, October 27, 2004, November 17, 2004, December 1, 2004, December 18, 2004, January 3, 2005, January 26, 2005, February 7, 2005, February 12, 2005, March 16, 2005, March 30, 2005, April 29, 2005, July 7, 2005, August 12, 2005, November 28, 2005, January 18, 2006).

Dr. Lal administered nerve root blocks on February 6, 2004. Because this treatment was not helpful, Dr. John Wilson opined that the claimant would not benefit from surgical intervention. The claimant was prescribed medication, physical therapy and advised to return to work in Dr. Wilson's letter of February 10, 2004. The claimant did not attend therapy and Dr. Wilson again released him in a letter dated February 24, 2004. Dr. Angela Lovett excused the claimant from work for two days

in a report dated January 6, 2004.

The claimant sought treatment at UAMS for back and pain, memory loss, chest and stomach pain in March 2005. The only history of a work-related injury appears in a report dated March 24, 2005 (p. 50 of the claimant's exhibits).

A second MRI scan taken April 9, 2005 was interpreted as showing degenerative disc changes (disc bulges) at L4-5 and L5-S1 without significant effect on the canal or foramen. In contrast to the 2003 MRI scan, L3-4 is described as normal and there is no mention of a herniation at L4-5. The disc bulge at the L5-S1 level is a new finding.

The claimant continued to return to UAMS on several more occasions (June 16, 2005, October 20, 2005). On October 20, 2005 the claimant reported an exacerbation of his chronic back, pain on October 16, 2005 while walking from church, causing bilateral leg pain (p. 61 of claimant's exhibits) The claimant was excused from work for three days.

Dr. Izhar opined the claimant was suffering from sciatica (since December 2003), spinal canal stenosis, prolapsed disc and muscle atrophy.

NOTICE

The claimant corresponded with his employer in August and September 2004 regarding his 2003 injury and his job duties. Because his employer failed to address his grievances, the claimant felt he had been "constructively discharged."

The claimant, who is black, seemed intimidated to "make waves" with the management, all white, for fear of losing his job. He also seemed intimidated to pursue a worker' compensation claim due to his lack of education. Nevertheless, the claimant was obviously receiving assistance from a knowledgeable person who composed letters for him.

FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant injured his back in 1997 but did not pursue the claim for fear of drug testing. Because his job duties involved heavy manual labor, his back remained symptomatic over the years.

In January, 2003, the pain was severe enough to warrant an MRI scan which showed a herniated disc at L4-5. Lay testimony suggest the claimant remained symptomatic from the 1997 injury, or that he reinjured his back in December, was lifting a motor or cleaning floors. There is no contemporaneous medical record to corroborate the history of injury. However, he was treated and released for this injury or recurrence by Dr. Wilson as of February 10, 2004.

In August 2004 the claimant filed a grievance against his employer and stopped showing up for work in September 2004. In April, 2005, a second MRI scan showed only degenerative changes and a new disc bulge at L5-S1.

Given the conflicting lay testimony and the lack of corroborating medical evidence, I find that the claimant failed to prove that he sustained a compensable back injury in December, 2003 which arose out of and in the course of his employment.

1. The parties stipulated to an employer-employee-carrier relationship on December 1, 2003 at which time the claimant was earning sufficient wages to be entitled to a ompensation rate of \$388.00/\$291.00 in the event this claim is found to be compensable. Some disability benefits (from January 16, 2004 to March 16, 2004) have been paid through Riceland.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident,

arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge