

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F311773**

**ROGER A. REVELLE, EMPLOYEE**

**CLAIMANT**

**TOMMY HOSKYN D/B/A AN TOM  
FARMS, UNINSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 18, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on June 20, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, 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 anatomical impairment.

At issue is whether or not this claim is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702; and whether or not the employer is exempt from workers' compensation based on an agricultural exemption pursuant to Ark. Code Ann. §11-9-102(A)(11)(iii).

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 during April 1995 and May, 2001. An AR-C was filed by the claimant for a 1995 injury on October 27, 2003. No AR-C has ever been filed for a 2001 injury. The respondent has paid no benefits on either claim. Farm Bureau, the employer's liability carrier, paid some medical expenses associated with the 1995 injury.

The claimant contends he injured his back, ribs, and knee on April 9, 1995 when he fell while operating equipment to level the ground. The claimant also contends he injured his back on May 15, 2001 when he hit a drain. He seeks payment of medical expenses, and temporary total disability benefits for 56 days.

The respondents contend they are not required to have workers' compensation insurance because of the agricultural exemption. The respondents further contend this claim is barred by the statute of limitations.

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 and his former employer, Tommy Hoskyn.

The claimant, age 48 (D.O.B. August 23, 1959) has a G.E.D. and vo-tech training as a carpenter. He has served in the military and his work experience includes jobs as a carpenter, mechanic and factory worker. He began work for the respondent-employer in 1994 operating heavy machinery.

The claimant's job duties required him to level land for golf courses, rice fields, roads, etc. using a tractor with dirt pans. Occasionally, the claimant helped with farming operations (Tr. p. 6-8, 31/32). The claimant was hired by Tommy Hoskyn and earned \$280.00 a week in 1995 plus rent (\$414.00 mo.) and telephone expenses. In 2001 he earned \$375.00 per week plus rent and a bonus of \$2,038.50. In addition, he was given the use of a vehicle (Tr. p. 9-11/17).

In 1995, the claimant worked with one other employee, Cecil Gilley. Occasionally his employer, Tommy Hoskyn, his son and some farm hands would help operate the equipment, (Tr. p.

7-8). In 2001, the claimant worked with three other employees, Kenny Cline, Chris Bryant, and Brad Alderson (Tr. p. 17).

In 1995, the claimant fell head first 10-11 feet from a tractor while adjusting the laser rack. He was treated at the Stuttgart Emergency Room (ER) for three fractured ribs based on x-rays of his head, neck and chest. Mr. Hoskyn told the claimant he would pay the medical expenses and the claimant was off work 3-4 days. Mr. Hoskyn submitted the bills on his employer's liability coverage with Farm, Bureau and those bills were paid (Tr. p. 14-15).

The claimant's condition worsened and he saw general practitioner, Dr. Gustavus for diagnostic testing. It was the claimant's understanding that he needed to lose weight to improve his condition. Mr. Hoskyn would not accept anymore bills without proof that the claimant's condition was caused by the 1995 fall and the claimant could not afford to pursue medical treatment.

The claimant continued working and in 2001 he injured his back when the tractor he was driving hit a ditch covered by grass, jarring his back (Tr. p. 16-17). The claimant notified his employer of the accident and went to UAMS in Little Rock where an MRI was performed. The claimant came under the care of Dr. Krisht who performed surgery on August 28, 2001. The claimant stated that it wasn't until September 12, 2002 that he received a medical report relating his back problem to his work-related injuries. Mr. Hoskyn told him he would turn in the information to Farm Bureau but there was no follow-up.

The claimant then contacted the Workers' Compensation Commission and completed an AR-C received on October 27, 2003, listing back, rib and knee injuries on April 9, 1995 from falling 10-14 feet from the tractor. The Commission assigned claim number F311713 to this case. The claimant then sought private counsel and a second AR-C was filled out on March 1, 2004 listing

back, arm, ribs, and leg injuries on April 9, 1995 and a back injury on May 15, 2001. This AR-C, however, was never filed with the Commission.

The claimant has not worked since June, 2005. He had to quit work because of bladder problems requiring self catheterization and leg spasms (Tr. p19). The claimant estimates he missed 56 days of work, (Tr. p. 22-23/28-31). He began drawing Social Security Disability benefits for his back condition in 2006.

Tommy Hoskyn, the owner of Anton Farms testified he did not have workers' compensation insurance in 1995 or 2001 but he did carry liability insurance with Farm Bureau. By 2005, his business was separated into Anton Farms, the farming operation, and Hoskyn Enterprises, the land leveling business (Tr. p. 33-34).

Mr. Hoskyn testified he does not recall the claimant reporting the 2001 incident (Tr. 42).

#### **MEDICAL EVIDENCE**

UAMS records dated May 22, 2001, August 16, 2001, September 20, 2001, June 27, 2002 and May 31, 2006 show the claimant reported his symptoms started years earlier after two work-related injuries. He developed back and lower extremity pain with spasticity and numbness. He saw his family physician who prescribed diet pills. Over time his symptoms worsened to include bladder control problems, weakness and difficulty walking. An MRI scan in 2001 revealed a lesion in the thoracic spine which was biopsied.

The claimant had MRI scans of the back performed on May 16, 2001 (report not in evidence) and September 12, 2002 at UAMS. The September 12, 2002 report indicates the claimant was diagnosed with an intra medullary lesion at T7-8. By 2002 there was no longer an abnormal signal at T6, T7, and T8. A small central disc herniation at T9-10 was unchanged. There was no evidence

of stenosis or foraminal narrowing. The claimant was diagnosed with “interval resolution of abnormal signal of the spinal cord from T6 to T8 indicating recovery which indicated possible cord myelitis such as adem(a).”

On August 28, 2001, Dr. Ali Krisht performed a biopsy on the spinal lesion at T7-T-8 for progressive problems of the lower extremity with bladder control problems. The lesion was diagnosed as mild gliosis.

Dr. Kumar’s report of March 19, 2003 shows “a history of progressive neurological problems of bowel and bladder control and ... lower extremity problems for the last 4-5 years.”

Follow-up reports show treatment for recurrent bladder infections. A UAMS report signed by a nurse and dated May 31, 2005 shows “myelopathy - intramedullary lesion etiology unknown mild L E (lower extremity) weakness, severe spasticity and B & B incont.,” (bladder and bowel incontinence).

Dr. Lucy’s report of May 31, 2005 shows a diagnosis of “spastic paraplegia with loss of urinary bladder and bowel control due to a thoracic cord lesion of unidentified pathology... I cannot relate this to a work injury in 1995.”

### **FINDINGS & CONCLUSIONS**

Respondents have defended this case in part by claiming an agricultural exemption. Under the Workers’ Compensation Act, “employment” does not include agricultural farm labor, Ark. Code Ann. §11-9-102(11)(A)(iii). Although Mr. Hoskyn did run a farm, leveling land for other business concerns was not a necessary part of Anton Farms. Leveling land for other parties does not cultivate the soil for Anton Farms’ production of plants, harvesting of crops, or raising of livestock. Dockery v. Thomas, 226 Ark. 946, 295 S.W.2d 319 (1956), American Indemnity Co. v. Bailey, 221 Ark. 469,

254 S.W.2d 322 (1953). Mr. Hoskyn's land leveling business was a sideline enterprise to his farm.

Accordingly, I find the respondents were not entitled to an agricultural exemption on the land leveling business.

Respondents have also defended this claim as barred by the statute of limitations. Under the Workers' Compensation Act, an injured employee must file his claim within two years of the date of injury or within one year of the last payment of benefits, §11-9-702. The claimant testified he injured himself in April 1995 and May 2001, however, no claim (Form AR-C) was filed until October 27, 2003. No formal claim for the 2001 injury was ever filed but the claimant did assert this issue at the 2007 prehearing conference.

Accordingly I find these claims fall outside the statutory deadline and are barred by the statute of limitations.

The claimant argues that he did not understand the extent of his condition until September 12, 2002 (Tr. p. 19). However, the claimant also testified he had been symptomatic since 1995 (Tr. p. 39). Therefore, I find his condition was not latent. I would also point out that even if the claim were not barred by the statute of limitations, the claimant could not prove a causal connection between his condition and his injuries based on Dr. Lucy's report of May 31, 2005.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during April 1995 and May 2001.
2. The claimant did not file a claim for benefits until October 2003 for a 1995 injury. His claim for a 2001 injury was not made known until the May 2007 prehearing conference. These claims are barred by the statute of limitations.

3. Respondent's land leveling business is not entitled to an agricultural exemption.
4. Respondents are directed to pay court reporter, Kay Jones' fees and expenses within thirty (30) days pursuant to Commission Rule 20.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge