

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609152

ADAN SANTAMARIA	CLAIMANT
OK INDUSTRIES, INC.	RESPONDENT
SELF INSURED	RESPONDENT

OPINION FILED MAY 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES FILYAW, Attorney, Fort Smith, Arkansas.

Respondent represented by SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 22, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on November 6, 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 February 23, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$219.00 for temporary total disability and \$164.00 for permanent partial disability.

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

1. Compensability of the claimant's back problems of February 23, 2006.
2. Related medical.
3. Temporary total disability from March 1, 2006, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that the injuries to his back were incurred in the course of his employment.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury as that term is defined by Act 796. See response under subsection a.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondent submitted documentary evidence marked Respondent's Exhibit No. 1 and the deposition of the claimant marked Respondent's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified through an interpreter that he was 29 years old and had been working for the respondent for approximately five and a half years as a machine operator. The claimant testified that prior to February 2006 he has not been off work for

any length of time. The claimant testified that on February 23, 2006, he was operating his machine which packages and weighs boxes. The claimant stated, "I threw some of the boxes up there and when I raised my hand I felt something in my shoulder blades." The claimant testified that these boxes weighed approximately thirty pounds and he was stacking them around ten inches above his head. The claimant testified that he felt a pain when he raised his arms. The claimant then demonstrated that this pain was at the back of his neck. The claimant agreed that February 23 was a Thursday and he had worked Monday, Tuesday, and Wednesday without any problems. The claimant testified that after he realized he was hurt he reported to his supervisor that he was going to the nurse. The claimant testified that he told the nurse what he felt and she put Ben Gay on his neck, gave him some pills and sent him back to work. The claimant testified that he worked the remainder of his shift although he was hurting. The claimant testified that he hurt that night but did report to work the next day which was a Friday. The claimant testified that on Friday he went back to the nurse and she did exactly what she had done the day before and told him to come back the following day.

The claimant testified that he was off the next two days because it was the weekend. The claimant stated that he lay in bed most of the weekend. The claimant testified that his shoulders hurt so bad he could not drive to work on Monday so he had someone drive him. The claimant testified that when he got to work on Monday he told the nurse what his problems were and she sent him to

the doctor. The claimant testified that the doctor did not put him on light duty but returned him to work. The claimant testified that he returned to work and worked two or three days and after that he just could not do it anymore. The claimant testified that he reported to the plant nurse that he could not work anymore. The claimant testified that the nurse recommended that he take FMLA and he was off for four months. The claimant testified that he did not receive any type of compensation during this period of time. The claimant testified that while he was off the respondents sent him to St. Edwards and after they did a scan he was sent to Dr. Johnson. The claimant testified that he thinks that he returned to work in July 2006 doing the exact same job he had been doing and he is still doing that same job. The claimant testified that currently he is having no difficulty doing his job. The claimant testified that his group health insurance has paid for Dr. Johnson's bill and that he did not receive any short term disability benefits while he was off work.

The claimant testified that since he has returned to work he has had some problems with his back and shoulders. The claimant testified that he cannot move as fast because he is afraid to move fast and that he has some pain sometimes. The claimant testified that Dr. Johnson released him to return to work and he does not have a return appointment with Dr. Johnson. The claimant testified that he has not tried to go back to see the doctor about his back. The claimant testified that he would like to see a doctor because he would like to know what is wrong with his back.

On cross examination, the claimant agreed that he does have group health insurance through the respondent and that this insurance has paid for some of his medical bills. The claimant testified that he does not know what day he started missing work nor does he know what day he returned to work. The claimant agreed that he was seen at Cooper Clinic by Dr. Holder. The claimant stated that he is unaware of what Dr. Holder's opinion concerning his condition is. The claimant testified that he is unaware what diagnosis Dr. Johnson had given him. The claimant testified that although he has not missed work as a result of his neck or back or shoulder conditions, he has received treatment for his neck, back, and shoulder problems in the past. The claimant testified that he would not deny having treatment by the plant nurse in August 2002 for his shoulder blades and in his back side. The claimant testified that this treatment was not for his neck. The claimant testified that he would agree that in October 2002 he also received treatment from the plant nurse for shoulder pain. The claimant testified that he would not admit nor deny that he received treatment by the plant nurse in November 2002 for his shoulder and neck. The claimant agreed that the boxes he was lifting were approximately two feet by one foot by one and a half feet and were approximately twenty to twenty-five flattened boxes stacked together in a cub. The claimant testified that he last saw Dr. Johnson in November 2006.

On redirect examination, the claimant again testified that the package of boxes are boxes that are flattened out or not made up.

when asked the claimant testified that he does not know if he has cancer or not but that Dr. Holder had told him he did.

The medical records set forth that the claimant was seen at the Cooper Clinic on February 27, 2006, by Dr. Holder. The claimant reported to Dr. Holder that he was lifting a pallet over his head and felt a sharp pain that has gotten worse resulting in him being unable to rotate his neck. The claimant reports to the doctor that this pallet was approximately twenty to twenty-five pounds. Dr. Holder recommended physical therapy, prescribed medications and restricted the claimant's work to lifting no more than twenty pounds and no climbing ladders or overhead work. Dr. Holder diagnosed the claimant with having either a right trapezius strain or disc protrusion to the right at C5-C6. The claimant was seen by Dr. Holder on March 8, 2006, for his continued complaints of neck and upper back pain. Dr. Holder continued the claimant's medications as well as restrictions and scheduled an MRI. The claimant underwent an MRI of his cervical spine on March 13, 2006. This test reveals abnormal signal intensity within the C6 vertebrae with a mild inferior inplate impression/schmorl's type node. This test further sets forth that this could represent acute compression fracture but a pathologic fracture is to be considered in view of the abnormal signal intensity diffusely within the vertebral body. A bone scan and/or a CT scan were recommended to determine if there are lytic changes. The claimant was seen by Dr. Holder on March 17, 2006, at which time the doctor scheduled a bone scan, continued his medications as well as physical restrictions. Dr. Holder

writes on March 23, 2006, that he has seen the claimant after his bone scan. Dr. Holder notes that the claimant continues to have pain which is decreased with his medication. Dr. Holder notes that the claimant's bone scan did have a hot spot in the vertebral body of C6 where compression fracture was noted on the MRI. Dr. Holder writes that the radiologist suspected that it is a possible metastatic disease, possibly from a thyroid cancer. Dr. Holder referred the claimant to Dr. Johnson and recommended that he return to work with his previous restrictions. Dr. Holder writes that the claimant's causation is secondary to his report of injury and the investigation by the respondent reveals that the claimant did not have a significant axial load which would have aggravated his underlying condition. Dr. Holder writes that he does not feel that this led to his compression fracture of C6 vertebral body nor the positive bone scan findings. Dr. Johnson took the claimant off work from March 30, 2006, to April 27, 2006, in order for him to have his MRI and lab work for his cervical fracture. The claimant underwent an MRI of his cervical spine on April 10, 2006, which revealed no significant change in the signal intensity within the vertebral body of C6 with a Schmorl's nodule in its inferior interplate. Dr. Arthur Johnson writes on April 27, 2006, that the claimant is doing reasonably well although he is still having some neck pain but not a significant amount. Dr. Johnson refers to a couple of tests run on the claimant which were both normal and further notes that the claimant's repeat MRI was unchanged from the previous MRI noting further that the claimant's bone scan did show

an increased uptake in the area of C6 which is most consistent with a compression fracture type lesion. Dr. Johnson assessed the claimant with having a compression fracture at C6 noting that there is no evidence of tumor or other abnormalities identified. Dr. Johnson recommended the claimant come back to the clinic in approximately three months for a repeat MRI in order to see if there has been any particular change in this lesion. Dr. Johnson prescribed medications for the claimant.

The medical records do set forth that back in 2002 beginning in August going through November the claimant was seen by the plant nurse for complaints of pain in the left side of his neck and back area.

The claimant, in his deposition, again testified that on February 23, 2006, he was picking up about twenty to twenty-five empty boxes weighing approximately thirty to thirty-five pounds and when he tried to lift them over his head he felt something pull or snap in his back. The claimant testified that he reported this to his supervisor and then went to see the plant nurse who checked him over and eventually sent him to the company doctor. The claimant testified that at the time he was lifting the boxes it felt like there was a stretch or pulling and then he felt pain in the back of his neck. The claimant testified that he reported that he was feeling pain and then he told the nurse how his injury happened. The claimant testified that the nurse did not immediately send him to the doctor but the next day he again reported pain to her and then the next day at which time she then sent him to the doctor.

The claimant testified that Dr. Holder sent him to physical therapy three or four times but this therapy made him feel worse. The claimant testified that after an MRI as well as bone scan, he was sent by the respondent to see Dr. Johnson. The claimant testified that Dr. Johnson took him off work approximately four months as well as did several MRIs. The claimant testified that he took his off work slips to the respondent. The claimant testified that the respondent advised him to take FMLA. The claimant testified that prior to February 23, 2006, he has never been treated in any way for his neck or shoulders. The claimant testified that the restrictions which Dr. Johnson had previously had him under have now been removed and are not permanent restrictions. The claimant testified that he has health insurance through the respondent and his group health has paid for a part of his medical bills.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on February 23, 2006, while working for the respondent. The claimant has testified that he was lifting a box of boxes weighing approximately twenty-five to thirty pounds over his head when he felt a pull or a snap in his neck and immediate pain which he reported to his supervisor and received conservative treatment from the plant nurse on that day. The claimant testified that he reported back to the nurse the next day with his continuing complaints of pain and again was treated by the plant nurse. The claimant's testimony is that when he came into work on Monday, he again reported to the plant nurse his neck

problems at which time he was sent to the company doctor, Dr. Holder. Tests were run and it was eventually discovered that the claimant had a compression fracture at the C6 level. Although Dr. Holder clearly sets forth in his opinion this compression fracture was not as a result of his working for the respondent but due to a preexisting condition, it is also noted that Dr. Holder diagnosed the claimant with having cancer which Dr. Johnson has clearly said he does not have. I find, therefore, that the respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable cervical problems as well as pay him TTD from March 30, 2006, to April 27, 2006, which are the dates Dr. Johnson had him off work awaiting lab work and an MRI.

FINDINGS & CONCLUSIONS

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

2. On February 23, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$219.00 for temporary total disability and \$164.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on February 23, 2006, while working for the respondent. See discussion above.

5. The claimant is entitled to all reasonable and necessary medical treatment for his compensable injury at the respondents' expense.

6. The claimant is entitled to temporary total disability from March 30, 2006, to April 27, 2006, which is the period of time Dr. Johnson took him off work. Also see discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on February 23, 2006, while working for the respondent.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury.

The respondents should pay temporary total disability to this claimant from March 30, 2006, to April 27, 2006.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE