

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702239

BRYAN ULMER	CLAIMANT
CITY OF SILOAM SPRINGS	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 27, 2007

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 22, 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 April 26, 2007. 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 January 23, 2007, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his right arm and right forearm.

4. The claimant is entitled to a weekly compensation rate of \$245.00 for temporary total disability.

5. Some medical has been paid.

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

1. Compensability of the claimant's injuries to his low back and right side.

2. The claimant's entitlement to medical treatment on or after January 24, 2007.

In regard to the foregoing issues the claimant contends that he was injured on January 23, 2007. His right side and lower back were injured when he fell off a work truck and was dragged approximately twenty feet.

In regard to the foregoing issues the respondents contend that they have paid all appropriate benefits.

The documentary evidence presented in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and non medical marked Claimant's Exhibit No. 2. The respondents submitted medical records marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was thirty-five years old and began working for the respondent in January 2007 in the sanitation department. The claimant testified that his specific job was to load trash into the back of a trash truck. The claimant testified that on January 23, 2007, he was riding on the back of the trash

truck picking up trash. The claimant testified that the driver of the truck was turning the truck around in a parking lot, going approximately twenty-five miles an hour when he hit a dip in the parking lot. The claimant testified that this threw him up in the air and when he came down his foot slipped on the bar where he normally stood and he lost his footing, fell forward, and then coming off the truck. The claimant testified that his glove got hung and he was drug for a time. The claimant testified that his glove finally came loose and he fell free of the truck onto the ground. The claimant testified that there was another man working with him on the back of the truck but he was so busy trying to free himself from the truck he did not notice what his partner was doing. The claimant testified that his partner, Keith, was hollering at the driver. The claimant stated that the truck stopped approximately twenty to thirty feet in front of him. The claimant testified that he was aggravated because this was not the first time that something like this had happened and he got up and threw his hat on the ground and had words with the driver. The claimant testified that the driver said he would call Clifford Thompson, their supervisor, but he was not sure if the driver actually made the call.

The claimant testified that he had scraps on his arms and his ribs were hurting as well as his back was hurting a little bit. The claimant testified that he worked the rest of the day which was approximately three hours. The claimant testified that he was not moving as fast because he was pretty sore. The claimant testified

that at the end of his shift he went back to the office but Clifford was not there and he did not fill out any paperwork. The claimant testified that he did not report his accident to anyone because he figured that the driver had called Clifford. The claimant testified that he went to work the next day but did not work a full day because he was sick at his stomach. The claimant testified that his ribs and back were real sore and he was hurting. The claimant testified that he saw Clifford that next day but did not fill out any paperwork or ask to be sent to a doctor. The claimant remembers that he did not go to the Siloam Springs Hospital on January 24 because he was nauseated and vomiting. The claimant testified that he told the ER personnel that he had had an accident the day before when he fell off a trash truck and that they looked at the scrapes on his arms and said that he had scrapes but gave him no treatment. The claimant testified that he was given medication at the ER but it was for his nausea. The claimant testified that he had left work early on the 24th so he could go to the doctor and he had reported this to Clifford. The claimant testified that on January 24, 2007, when he told Clifford he needed to go to the doctor for his nausea, he also told him about falling off the truck the day before but Clifford did not offer to fill out any paperwork. The claimant testified that he went to the ER at Washington Regional the next day because of his back and ribs. The claimant testified that he was hurting real bad and he had bruises on his right side and pain down his right leg. The claimant testified that no medication was prescribed and an injection was

recommended but since he did not have a driver with him they could not administer the mediation. The claimant testified that he worked the next day and at the end of the day he was terminated. The claimant testified that at that time he asked Clifford who was going to pay for the doctor's bills and Clifford told him that he would have to take it up with Randy who is the main supervisor over the sanitation department. The claimant testified that he went to the main office to talk with Randy in hopes of getting his job back but was not successful.

The claimant testified that he found another job in about three weeks but was only able to work about two weeks before he quit due to not being able to perform the job. The claimant testified that this new job required a lot of heavy lifting, running a chain saw, and walking a lot and he was not able to do these things. The claimant testified that he has never had problems doing heavy lifting or walking prior to his injury while working for the respondent nor has he had back problems before that injury. The claimant testified that finally he was seen by a chiropractor in Rogers about two weeks prior to this hearing. The claimant testified that he currently is not having problems with his ribs but he is still having back problems. The claimant testified that the lower part of his back throbs all the time. He cannot get comfortable and that this discomfort goes down his right leg.

On cross examination, the claimant agreed that the driver of the truck was Alfonso and that his partner on the back of the truck

was Keith. The claimant testified that he was positioned on the back of the truck because it was suppose to be a more secure position when they hit dips and bumps. The claimant testified that the bar on which they stood was approximately three to four inches around and that there was a hand hold for them to grip onto at the back of the truck. The claimant testified that when the driver hit the bump the whole truck bounced. The claimant testified that when he came down both of his feet hit the bar but he lost his footing and fell forward. The claimant testified that he fell forward into the hopper or trash bin part of the truck and that his feet were dangling. The claimant testified that he tried to get back on the truck but he lost his hand hold so it just drug him off. The claimant testified that he hit his ribs against the truck. The claimant testified that the driver of the truck could not see him when he was riding on the back of the truck. The claimant remembers that Keith was hanging over the side of the truck waiving at the driver telling him to stop. The claimant testified that when he went to the emergency room the next day in Siloam Springs for his diarrhea problem he also told them that he had been involved in an accident the day before. The claimant testified that when the doctor came in he pushed on his stomach and that was all he did. The claimant testified that the doctor at the ER gave him medication for his nausea but not for pain or discomfort. The claimant agreed that he was given an off work slip for January 24, 25, and 26 due to illness. The claimant testified that when he returned to work after the 26th he worked every day that week. The

claimant testified that when he was seen at the ER at Washington Regional Hospital he was given a prescription for pain medications but did not have the money to fill it. The claimant testified that when he was seen at the Washington Regional ER the doctors did not have him take his shirt off but he raised his shirt up and showed them the bruises on his side. The claimant testified that the reason he has not had medical treatment until he was seen by a chiropractor just prior to this hearing was because he did not have the money. The claimant agreed that on the day of the accident he told Alfonso, the driver of the truck, that he needed to call Cliff because he needed medical help. The claimant testified that Alfonso told him that he would call Cliff to come and get him but he must not have called because Clifford never came. The claimant testified that Keith, his co-employee, was standing right there when he told Alfonso he wanted some medical help. The claimant testified that the couple of times he spoke with Clifford about his accident, Clifford never did anything in response.

On redirect examination, the claimant testified that prior to his accident he had words with Alfonso about his careless driving. The claimant testified that he spoke with Clifford about Alfonso's careless driving. The claimant testified that after his accident his arm was not gushing blood but it was skinned pretty good. The claimant testified that when he went to work for the respondent there was no instructions given as to filling out paperwork for a workers' compensation claim. The claimant testified that the driver of the truck has control of the truck as well as the cell

phone provided to them by the respondent. The claimant agreed that the truck driver, Alfonso, was kind of his supervisor on the truck. The claimant testified that after Keith flagged the driver down to get him to stop, he became aware of the accident. The claimant testified that the driver of the truck did not fill out any paperwork concerning his accident.

On recross examination, the claimant testified that after he spoke to Clifford about Alfonso's bad driving, Alfonso's attitude towards him changed. The claimant testified that before Alfonso had been friendly with him and after he reported his driving to Clifford, Alfonso was more sarcastic. The claimant testified that at the time he was hired by the respondent he was given a packet of information which included information about comp claims. The claimant agreed that even if he had problems with Alfonso he knew that he could go directly to Clifford.

Alfonso Salcedo testified that he was twenty-nine years old and had been employed by the respondent for approximately two years in the sanitation department. Mr. Salcedo testified that his main job is to pick up trash but there have been times when he has been a driver. Mr. Salcedo testified that on January 23, 2007, he was working with Keith and the claimant. This witness testified that when he is driving the truck and the two other people are on the back he cannot see them. Mr. Salcedo testified that the person riding on the back who has the most seniority will signal to the driver when both people are on the truck and ready to move forward. When asked about the accident, Mr. Salcedo testified that when he

was turning around in the parking lot he hit a dip and all of a sudden before he knew it the claimant was down on one side of the truck as which time he stopped. This witness testified that the accident happened around 3:00 in the afternoon and that they completed their shift which ended around 4:30 or 5:00. Mr. Salcedo testified that there is no radio in the truck because the respondent provides a cell phone which is already preprogramed with Clifford's number in it. This witness testified that the employees riding on the back of the truck are not authorized to use the cell phone. Mr. Salcedo testified that on the day of the accident he looked in his mirror and that is when he saw the claimant on the ground. Mr. Salcedo testified that after he stopped the truck, he and the claimant had some words. This witness testified that he did not get out of the truck because he did not want to get into any type of confrontation because that would be grounds for automatic termination and he did not want to lose his job. Mr. Salcedo testified that he tried to call Clifford but could not get an answer and he left it at that. Mr. Salcedo testified that the claimant did not tell him that he was hurt but just indicated that he was mad and wanted him to be a more careful driver. Mr. Salcedo testified that if the claimant had indicated that he was hurt he would have taken him back to the shop. Mr. Salcedo testified that Keith stood back away from them when they were having their discussion but he was not more than ten feet away and could clearly hear what was being said. Mr. Salcedo testified that the claimant worked with him the following week and does not remember the

claimant complaining of pain or discomfort as a result of his accident.

On cross examination, Mr. Salcedo testified that he worked with the claimant the next day and remembers that they went back in early because the claimant was having problems with diarrhea. Mr. Salcedo testified that when he tried to call Clifford on the cell phone he did not get an answer and did not leave a message. This witness testified that when he got back in at the end of his shift he explained everything to his supervisor, Clifford. Mr. Salcedo testified that to his knowledge no paperwork was filled out after he talked to Clifford about what had happened that day.

On redirect examination, Mr. Salcedo was again asked if he could specifically remember working with the claimant the day after the incident and the witness responded, "I worked with him the following week." Mr. Salcedo testified that he does not initiate paperwork to be filled out on a workers' compensation claim.

Keith Arnold testified that he had been working for the respondent approximately one year as a trash collector. Mr. Arnold testified that he was working in January 2007 and recalls the incident involving the claimant. Mr. Arnold testified that he was riding on the right side of the back of the truck standing on the lift bar. Mr. Arnold testified that he has collected trash at other times when Alfonso was driving the truck and never felt a need to complain about his unsafe driving. Mr. Arnold was asked if he had ever fallen off a truck and he responded, "A few times in my day." Mr. Arnold testified that on the day of the accident they

were turning around in a parking lot and were holding on really tight with both hands. Mr. Arnold testified that he remembers the claimant going up and coming down and missing the bar with his feet. Mr. Arnold testified that the claimant hit the ground but he was hanging on with his arm and then he slid and rolled off to the left of the truck. Mr. Arnold testified that he was approximately four feet away from the claimant when this accident happened. Mr. Arnold testified that he started leaning out from the side of the truck waving to try and get the driver's attention, noting that it would be no use to yell because they could not hear anything. Mr. Arnold stated that when the truck came to a stop he got off the truck and started talking to the claimant. Mr. Arnold testified that the claimant was upset and was saying that Alfonso needed to be more careful. Mr. Arnold testified that he does not recall Alfonso getting out of the truck but does remember that the claimant said that he had skinned his elbow. Mr. Arnold stated that he asked the claimant if he was wanting to go back to the shop and the claimant told him he would finish out the day. This witness testified that after this event he thinks he remembers the claimant complaining a little bit about being sore. Mr. Arnold testified that they were required to report any injury on the job to their supervisor, either Clifford or Randy.

On cross examination, Mr. Arnold testified that he did not hear Alfonso telling the claimant he was going to call Clifford. Mr. Arnold testified that at the times he had fallen off the truck he did not ever make a written report. Mr. Arnold testified that

it would be his responsibility to report his accident but that he has never reported a time when he has fallen off the truck.

Clifford Thompson testified that he has worked for the respondent for twenty-six years and has been a supervisor in the sanitation department for the past six years. Mr. Thompson testified that on January 23, 2007, Alfonso reported that the claimant fell off the truck. This witness stated that he asked if the claimant was hurt and was told that the claimant was not and then he asked Alfonso where the claimant was and he was told that he had already left. Mr. Thompson testified that Alfonso reported that the claimant was threatening to him. Mr. Thompson testified that the claimant did not come in for the next three days, therefore he could not confirm anything with him and that every phone number he had for the claimant was not working. Mr. Thompson testified that the claimant did return to work the following Monday but does not remember visiting with him at that time. Mr. Thompson testified that the claimant had left an off work slip on his desk indicating that he needed to be off for three days. Mr. Thompson testified that the following week the claimant was asking him about how he was going to get some of his hospital bills taken care of and this witness testified that he told the claimant he needed to check with City Hall. Mr. Thompson testified that he believes that this conversation was held before the claimant was terminated. Mr. Thompson testified that if an employee is injured on the job he is to get paperwork from either himself or Christy who works in that office. Mr. Thompson testified that he personally delivered the

claimant's termination letter to him on February 8, 9, or 10. At the time the claimant was presented with the termination letter, Mr. Thompson stated that he again asked about his hospital bills wanting to know who was going to pay for them. Mr. Thompson testified that the claimant did not mention anything about his ribs hurting or his arms hurting. He assumed it was for his illness. Mr. Thompson testified that on March 14, 2007, he was called by City Hall to come fill out workers' compensation papers on the claimant. Mr. Thompson testified that the respondents then called everyone in to gather information.

On cross examination, Mr. Thompson testified that when the claimant returned to work after being off a few days he did not say anything about the accident. Mr. Thompson was asked if he did not think that it was odd that an accident was reported to him on January 23 about a man falling off the back of a truck and rolling and then the next day he not show up for work and Mr. Thompson respondent, "I didn't have all the complete facts." Mr. Thompson testified that it is not uncommon for the employees to joke with him so he was not sure what to take seriously. Mr. Thompson testified that when the claimant came back to work the following week he figured that everything was all right and that he did not ask. Mr. Thompson testified that anything dealing with insurance goes through City Hall that it is not his responsibility. Mr. Thompson testified that he knew the claimant had been to the doctor because of the off work slip but he did not know what for. Mr. Thompson was asked if he knew that on January 23, 2007, that there

had been an accident with the truck and he responded, "Yes, I guess." Mr. Thompson was then asked if he talked to the claimant about this accident after he learned about it and this witness responded, "No."

On redirect examination, Mr. Thompson testified that if an employee falls off a truck and they are not hurt paperwork is not filled out. This witness testified that paperwork is not filled out unless someone is hurt. Mr. Thompson agreed that he knew that the claimant had been off work three days due to diarrhea or illness. Mr. Thompson testified that he was unaware that the claimant had been seen by a doctor due to his fall off the truck. Mr. Thompson stated that the claimant never came up to him and said that he was hurt when he fell off the truck.

The medical records set forth that the claimant was seen at the Siloam Springs Hospital on January 24, 2007, with symptoms of nausea, vomiting, and diarrhea times four days. The claimant was released from the emergency room with medication, to take in fluids, and to be off work for three days. The claimant was seen at Washington Regional Medical Center on January 25, 2007, for complaints of low abdominal pain and low back pain. These triage notes set forth that the claimant was on the back of a garbage truck when the driver hit a dip in the road and the patient went up in the air about two feet and came down on his feet, lost his footing, fell, and hit his abdomen on the trash truck. These notes further set forth that the claimant states that he was drug twenty feet on the pavement and he also has road rash and low back pain.

The claimant reports that this happened two days ago. After examination, the doctor notes that the claimant reports falling off a truck two days ago and is complaining of pain along his right side and some pain in his right arm as well as in his mid low back. The doctor notes that the claimant's right shoulder and elbow have a full range of motion but there is an abrasion noticed on the right arm and right forearm consistent with his report of injury. The claimant was diagnosed with minor contusions and muscle strain. The claimant was prescribed medication and released. There is a roentgenological report dated May 8, 2007, which indicates that the claimant has severe cervical myospasm, that his kyphotic curve appears slightly flattened at T3, 4 and 5 with severe myospasms in the thoracic area. This report also sets out that the claimant has severe myospasms in the lumbar spine area and that there is a left wedge at the level of L3 and 4 and a right wedge at the level of L1 and 2 indicative of a disc bulge in these areas. Dr. Elizabeth Rhodes, a chiropractor, writes on May 8 that she has seen the claimant for his job related injury which occurred on January 23, 2007. Dr. Rhodes reports complaints of pain in the base and top of his neck, pain in lower back extending down right leg as well as pain in his rib cage. The claimant was again seen by Dr. Rhodes on May 10 where he sets forth a pain level at nine.

In the non medical information there is a memorandum from Trevor Bowman, the public works director for the respondent, to Randy Atkinson, the public service manager, dated February 8, 2007, in regard to the claimant. This memorandum sets out that the

claimant has worked only one full week for the respondent, noting that the week of January 15 he missed sixteen hours due to illness and the week of January 22 he missed twenty-four hours. This memorandum sets forth that the week of January 29 he missed six hours, noting that his attendance record is rather poor. This memorandum sets forth that the claimant has had two incidents of conflict with two different employees since he was hired, therefore he is being terminated as of February 8, 2007.

After a complete review of this matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back and right side on January 23, 2007, while working for the respondent. The claimant and his co-worker, Keith, had both testified that while collecting trash the truck hit a dip and caused the claimant to lose his footing. The testimony indicates that the claimant fell forward into the truck and then slid down and was drug for a short period of time until his glove released and he then rolled on the pavement. The driver of the truck, Alfonso, has also testified that on January 23, 2007, while turning around in a parking lot, he was looking in his rearview mirrors and saw the claimant rolling out to the side of the truck on the ground. This event was reported to the claimant's supervisor that day by Alfonso Salcedo but no report was filled out nor was the claimant questioned about the event on his return to work three days later. The claimant was seen at Washington Regional Medical Center with complaints of right side and low back pain where it is noted that he has abrasions on

his arm and forearm. The Washington Regional ER notes set forth a history as given by the claimant of his truck accident. When the claimant was seen by the chiropractor in May, it is noted that the claimant has severe muscle spasms from his neck all the way down to his low back. The respondents have accepted a compensable injury to the claimant's right arm and right forearm and have indicated that they have paid some medical, however I find that the claimant is entitled to treatment for his low back and right side as a result of the accident on January 23, 2007, therefore the respondents should pay for all reasonable and necessary medical treatment for this claimant's back and right side complaints.

FINDINGS & CONCLUSIONS

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

2. On January 23, 2007, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his right arm and right forearm.

4. The claimant is entitled to a weekly compensation rate of \$245.00 for temporary total disability.

5. Some medical has been paid.

6. The claimant has proven by a preponderance of the evidence that he sustained a low back and right side injury while working for the respondent on January 23, 2007. See discussion above.

7. The respondents should pay for all reasonable and necessary medical treatment for this claimant's low back and right side problems.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back and right side while working for the respondent on January 23, 2007.

The respondents shall pay for all reasonable and necessary medical treatment for this claimant's low back and right side problems.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE