

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700862

ROBERT WESTON

CLAIMANT

MR. CANOPY, INC.

RESPONDENT EMPLOYER

CONTINENTAL WESTERN INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 18, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on September 26, 2007. A prehearing conference was held on July 11, 2007 and a prehearing order was filed the same date.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on January 31, 2005.
2. The compensation rate would be the maximum rate for a 2005 injury.

The claimant contends that he sustained a compensable neck injury on January 31, 2005, and is entitled to medical benefits, both reimbursement for medical already incurred and for future medical.

Respondents contend there may have been an incident on January 31, 2005, but not a work-related injury. Respondents contend that treatment for the claimant did

not begin until December 2005 and the medical described a long standing problem. Respondents further hold that the January 31, 2005, incident may have caused a temporary aggravation that did not require any medical treatment. The claim has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on January 31, 2005.
2. The compensation rate would be the maximum rate for a 2005 injury.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable neck injury arising out of and in the course of his employment on January 31, 2005.

DISCUSSION

The claimant, 40 years old, is a painter and sheet metal worker for the respondent employer where he began in 2003, and continues to be employed. The

claimant described his incident happening on January 31, 2005, where he, Coy and Herb were installing a sign. They were using a scissor lift and, as the claimant was repositioning the lift, the wind caught the sign and it fell, hitting the claimant in the back of the head. The claimant testified that he was in pain and down for a short time. They did finish hanging the sign and he reported the incident. The claimant saw a chiropractor sometime after the incident; however, his neck pain did not subside and he sought treatment at the Beebe Family Clinic. The claimant next went to another chiropractor but again did not get relief so he changed clinics in Cabot, near his residence. Dr. Jeffrey Stamp, at the Cabot Medical Clinic, recommended he get a MRI so he discussed this with his employer. The employer helped him with the MRI expense and finally a claim was filed for a work injury.

Under cross examination, the claimant verified that his employer was his brother, the owner of the business. The claimant verified that the sign fell about six or seven feet and weighed approximately 400 pounds.

ADJUDICATION

The claimant contends that he sustained a specific incident injury on January 31, 2005, when a sign hit him in the neck. The claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W. 3d 167 (2000). In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a

preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

After reviewing the evidence impartially, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on January 31, 2005. While the claimant testified that he was hit in the back of the head with an approximately 400-pound sign, he did not seek any medical attention that day. He testified that he sought some chiropractic care although the contemporaneous medical was not in evidence. The medical in evidence reveals that the claimant went to the doctor on July 6, 2005, December 13, 2005 and December 21, 2005, and there was no mention of neck pain or a work injury back in January 2005. The claimant confirmed that in December 2005, he began going to the Bryant Chiropractic Clinic and a December 16, 2005, report noted that his symptoms were muscle spasms in the back and neck. This report noted that the symptoms began one week ago. The claimant again confirmed this was the first time that the neck symptoms are noted on medical since the January 31, 2005, incident. This report also noted “NO” following the question of “Any type of accidents or falls?”

The claimant attempted to explain that his neck pain comes in episodes that can

last a week to two weeks to a month. On March 20, 2006, the claimant saw Dr. Wilkes Branch for muscle spasms in his neck and again in April 2006 for neck pain and burning. In May 2006, the claimant complained that his arms were starting to go numb. A MRI on May 9, 2006, revealed a small left paracentral herniated pulposus at C6-7. Dr. John Fox stated in his July 20, 2006, report that the MRI presented relatively benign findings and that surgery was not recommended. Dr. Jeffrey Stamp, on December 13, 2006, opined that he could not comment on whether the claimant's January 31, 2005, incident contributed to his current symptoms as he was not the primary physician back in January 2005.

Finally, Dr. Marcus Ware from UAMS wrote a report on January 25, 2007, and indicated that the claimant suffered from degenerative disk disease in his cervical spine including a disk osteophyte at the C5-C6 level. Dr. Ware did not recommend the claimant for any surgery, since he contends the pain is related to degenerative disease. Dr. Ware did not note findings on the MRI to suggest any nerve root compression and suggested a further review by the Physical Medicine and Rehabilitation physicians to see if the claimant was a candidate for trigger point injections or physical therapy for pain management.

Compelling factors in this claim include the following. There is no contemporaneous medical evidence following the January 31, 2005, incident. The first notation of neck problems is some 11 months following the incident. The medical in evidence provides that the claimant already had cervical problems before the January 31, 2005, incident and the latest medical evidence indicates the claimant has degenerative problems, to include a bone spur. No surgical intervention has been

recommended. I am not persuaded that the January 31, 2005, incident was the precursor for the claimant's current problems. There was simply no medical records to support the claimant's contention that his neck problems began with the January 31, 2005, incident when there was medical to support the claimant had pre-existing problems along with his pre-existing lumbar problems. The claimant also confirmed that he did not file a claim until January 19, 2007, shortly before the statute of limitations ran on his claim.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable neck injury arising out of and in the course of his employment on January 31, 2005. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**