

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505045

FRED WILLIAMS, EMPLOYEE

CLAIMANT

**PILGRIM'S PRIDE, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**SEDGWICK CLAIMS MANAGEMENT,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED OCTOBER 15, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in El Dorado, Union County, Arkansas.

The claimant was unrepresented and appeared ProSe.

The respondents were represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 18, 2007, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A prehearing conference was held in this matter on June 14, 2007, and a Prehearing Order was entered on that same date. Subject to the modifications made at the full hearing, the Prehearing Order was introduced into the record as "Commission Exhibit 1" without objection. Subsequent to the full hearing held in this case on July 18, 2007, a tape titled Fred Williams, F505045, hearing held 7/18/07, was also marked as an exhibit and made a part of the record.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

FRED WILLIAMS - F505045

- 2) The employee-employer relationship existed at all relevant times, including May 3, 2005.
- 3) Claimant's average weekly wage at the time of the alleged compensable event was \$467.00 per week and the claimant's TTD rate is \$311.00 per week.

As agreed to by the parties, the issues to be presented for determination are as follows:

- 1) Compensability.
- 2) If compensability is overcome, whether claimant is entitled to TTD benefits from May 3, 2005, through May 31, 2006, and all associated medical expenses.
- 3) Intoxication defense.
- 4) The admissibility of Dr. Light's deposition of July 16, 2007, introduced as Respondents' Proffered Exhibit No. 1.

At the full hearing, the claimant contended that on May 3, 2005, he sustained a compensable injury to his right arm and right shoulder. Claimant contended that due to his compensable injury he is entitled to temporary total disability benefits from May 3, 2005, through May 31, 2006, and all associated medical expenses. Claimant further contended that he was not intoxicated on May 3, 2005, while in the respondents' employ and that any drugs in his system on May 3, 2005, were prescribed to him by Dr. D'Orsey Bryant.

At the full hearing, the respondents contended that the claimant did have an

FRED WILLIAMS - F505045

incident in which he was helping spray ceiling in a chiller and fell. As part of Pilgrim's Pride program, the claimant was sent for a drug test, and the drug screen came back positive. Respondents contend that this claim for compensation is barred pursuant to A.C.A. § 11-9-102. Respondents further contended that if the Commission found the claim to be compensable, that the latest possible date that claimant would be entitled to TTD benefits would be July 13, 2005. Respondents contend that any injury would have been to the claimant's body as a whole and that light duty would have been made available to Mr. Williams but for the fact that he was terminated for a positive drug screen. Respondents further contended that claimant cannot meet his burden of proof for a compensable injury due to the lack of medical evidence supported by objective findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of the record of the 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 hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

FRED WILLIAMS - F505045

- 2) The stipulations agreed to by the parties on the record at the full hearing are hereby accepted as fact.
- 3) The claimant has failed to establish an injury with medical evidence supported by objective findings.
- 4) The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on or about May 3, 2005.
- 5) The other issues outlined herein are rendered moot.

DISCUSSION

The claimant worked for the respondents in the sanitation department. The record indicates that the claimant was working for the respondents on May 3, 2005, at about 3:50 a.m. The claimant testified that he was assigned to work in the chiller department. The claimant testified that when he was attempting to clean the chiller ceiling area that he slipped and fell causing injuries to his right arm and shoulder. The claimant testified as follows with regard to his alleged compensable event:

- A I feel that the reason I fell was because of the cleaning practices that you – the way that you’re trained to clean, there’s a possibility for everybody to fall. When I was cleaning my area, I slipped; and when I come down, I didn’t land on the catwalk. I continued to fall through the scaffolding and to the floor; and where I fell at, they did not have a gate there.

(R. Ex. 4, p. 23, lines 13-18).

- A What caused me to fall was I was cleaning on my area, and you have to stand on top of the chiller. I was cleaning it and I had on rubber boots, and I was working with hot water and chicken

FRED WILLIAMS - F505045

grease. So when you're working, you've got to watch your step and try not to fall.

(R. Ex. 4, p. 25, lines 1-8).

The claimant testified that he suffered significant injuries to his right arm and right shoulder due to his fall, and that as a result is entitled to temporary total disability benefits and medical expenses.

For the claimant to establish a compensable injury as a result of a specific incident, the following must be shown:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment ;
2. proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective findings, as defined in A.C.A. § 11-9-102(16), establishing the existence and extent of the injury; and,
4. proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995 (Claim No. E400800).

It is well established that the claimant has the burden of proof regarding compensability. At the prehearing conference and at the hearing itself, this

FRED WILLIAMS - F505045

administrative law judge made it abundantly clear to the claimant that as a ProSe litigant he would be held to the same standard as an attorney. This administrative law judge also went over the various options that were available to the claimant as a ProSe litigant; however, the claimant continued to express the desire to represent himself.

THE COURT: Okay. Mr. Williams, at that time, I talked to you about certain rights you have under the Arkansas Workers' Compensation Act since you're representing yourself?

MR. WILLIAMS: Okay.

THE COURT: You understand that one of those things I talked to you about was the Legal Advisors Division that is available through the Commission at no charge to you.

MR. WILLIAMS: Yes, sir.

THE COURT: Do you remember talking about that?

MR. WILLIAMS: Yes, sir. I do.

THE COURT: Okay. And did you take advantage of that service?

MR. WILLIAMS: Yes, sir. I did.

THE COURT: Okay. And, Mr. Williams, I think I also explained to you at that time that, of course, you don't have to retain an attorney, but if you decide to represent yourself, you would be held to the same standards as anyone else coming before the Commission.

MR. WILLIAMS: I understand, sir.

THE COURT: You understand that?

FRED WILLIAMS - F505045

MR. WILLIAMS: Yes, sir.

THE COURT: Okay. Being an attorney or non-attorney, you understand?

MR. WILLIAMS: I understand, sir.

THE COURT: Okay. And you understand that Mr. Frye does not represent you?

MR. WILLIAMS: Oh, I understand.

THE COURT: And you understand that I'm not representing you this morning?

MR. WILLIAMS: I understand.

THE COURT: Okay. And, I believe, when we had out Pre-Hearing, Ms. Cindy Rogers was representing the Respondents, and you understand Ms. Rogers does not represent you?

MR. WILLIAMS: Oh, I understand.

THE COURT: Okay. All right. I've just got to go over these things with you for our record. Okay?

MR. WILLIAMS: Okay. Yes, sir.

THE COURT: Now, also, I think I talked to you at that time about the way that the fee schedule works. If you were to retain an attorney, under Arkansas Workers' Compensation Law, if you were to get an attorney and that attorney decided they wanted to take your case, you wouldn't have to pay them a fee up front. They could only recover benefits if they . . . or recover attorney's fees if they recover benefits for you.

MR. WILLIAMS: Yes, sir. I understood that.

FRED WILLIAMS - F505045

THE COURT: You understand. That means you wouldn't have to pay them any money up front as a retainer.

MR. WILLIAMS: I'll try to do the best I can . . .

THE COURT: Okay. But you understand? We went over the rules . . .

MR. WILLIAMS: Yes, sir. I understand.

THE COURT: Okay. All right. And knowing these things again, you still wish to go forward today representing yourself, is that right?

MR. WILLIAMS: Yes, sir. I do.

(T. pp. 6-9, lines 16-25, 1-25, 1-25, 1-2).

In addition to explaining to the claimant that this administrative law judge could not represent him at the hearing, I also advised the claimant that only the documents that were introduced into the record at the full hearing would be considered in my decision.

THE COURT: . . . the documents that you've handed me, these will be the only documents that I'll be able to consider as a part of your case in my decision. Okay?

MR. WILLIAMS: Okay.

THE COURT: All right. So if there's anything that you've submitted previously to me . . .

MR. FRYE: Your Honor, the first document is . . .

THE COURT: . . . you'll need to make sure you get it in again

FRED WILLIAMS - F505045

right now, okay?

MR. WILLIAMS: Okay.

(T. p. 16, lines 11-21).

As stated previously, it was explained to the claimant as a ProSe litigant he would be held to the same standard as anyone else coming before the Commission, of course that also means that claimant has the burden of proving his case by a preponderance of the evidence. The record indicates that after the respondents introduced all the documentary evidence they were going to introduce, the claimant was given additional opportunity to introduce evidence and declined to do so:

THE COURT: Okay. Hand them back. I'll introduce Respondents' Medical Index as Respondents' Exhibit No. 3. Any other documentary evidence from either side?

MR. FRYE: No, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: No, sir.

THE COURT: Okay.

(T. p. 42, lines 2-8).

Even with the abundance of caution given to the claimant by this administrative law judge about the evidence that would be relied upon when making a decision in this

FRED WILLIAMS - F505045

case, claimant still failed to introduce any medical evidence of injury supported by objective findings.

The claimant was told at the full hearing that only the evidence introduced at the hearing would be considered, and the claimant still failed to show medical evidence supported by objective findings as defined in A.C.A. § 11-9-102(16) establishing the existence and extent of an injury.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Mickel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The record in this case is void of any medical evidence supported by objective medical findings establishing an injury. As such, the claimant has failed to meet the requirements for establishing the compensability of the injuries he alleges. Since this crucial element of compensability was not met, there is no alternative but to deny the claimant's claim.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his right arm and/or right shoulder while employed by the respondents on May 3, 2005, with medical evidence supported by objective

FRED WILLIAMS - F505045

findings. Therefore, this claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb