

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607372

MICHAEL R. WILLIAMS, JR., EMPLOYEE	CLAIMANT
LABOR READY CENTRAL, INC., EMPLOYER	RESPONDENT
ESIS, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 24, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on October 5, 2007, at Luxora, Mississippi County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Melissa Wood, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 5, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on July 25, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties stated that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It must further be noted that the claimant has been advised, on multiple occasions, of his right to legal representation; that an attorney could not charge him a fee for representing him in a workers' compensation claim without approval of this

Commission; that fees were normally awarded only out of benefits obtained in his behalf, and that he would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for him. In addition, the claimant was advised that he had the burden of proving his claim; that he was only entitled to one hearing; and that, for any reason, if he was unsuccessful, he could not request a second hearing maintaining that the reason for the failure to prove his claim was lack of legal representation. The claimant elected to proceed in his own behalf.

It was stipulated that the employment relationship existed between the parties at all relevant times, including June 12, 2006; that the claimant's average weekly wage was \$184.83, entitling him to a compensation rate of \$123.00 per week for temporary total disability and permanent partial disability in the event compensability was overcome; and that respondents had controverted the claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that he sustained an injury to his left knee which arose out of and during the course of his employment with Labor Ready Central, as the result of a specific incident identifiable in time and place of occurrence on June 12, 2006; that respondents should be held responsible for all medical and related treatment, together with continued reasonably necessary

medical treatment; that his healing period had not yet ended; that he was entitled to either temporary total disability or temporary partial disability for the period beginning June 13, 2006, and continuing through the present while reserving entitlement to permanent disability benefits, if applicable.

The respondents contended that the claimant did not sustain a compensable injury within the meaning of the Arkansas workers' compensation laws. Respondents further maintained that no notice of injury was reported until June 30, 2006. Respondents further raised a drug defense, maintaining that the claimant failed a drug screen on the date that he reported the alleged injury. Alternatively, in the event compensability was overcome, respondents maintained that the claimant had worked at various times since the alleged injury and that temporary total disability was not appropriate. Finally, respondents claimed a credit for any unemployment compensation that the claimant may have received and a credit for periods of employment.

In addition to the claimant, his mother, Linda Williams, was called as a corroborating witness. The record is composed solely of the transcript of the October 5, 2007, hearing containing numerous exhibits, both medical exhibits, as well as non-medical documentation..

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with Labor Ready Central, Inc., on June 12, 2006.
4. The claimant has failed to prove that any physical problems related to his left knee, need for medical treatment, and disability, if any, was in any way related to a work-related incident with the employer herein.

DISCUSSION

As will be set out further below, the record in this claim is replete with inconsistencies and contradictions. The claim turns entirely upon the claimant's credibility. A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

I did not find the claimant to be a credible witness. The claimant was often

unresponsive to questions from this Administrative Law Judge. Further, his responses were extremely vague and ambiguous. The claimant could not recall any dates of medical treatment. Although failure to recall specific dates can be excused, the claimant's course of conduct, work history following the alleged injury, inconsistencies in the medical histories, as well as claimant's untruthful testimony given in his evidentiary deposition and brought out in cross-examination, reflect extremely poorly on his credibility. Clearly, the claimant's work history is inconsistent with a claim for disability benefits.

The claimant, Michael R. Williams, Jr., testified in his own behalf. The claimant is twenty-two (22) years old. He dropped out of school in the twelfth grade. The record reflects that the claimant began working for the respondent herein on or about June 9, 2006, as a general laborer. The claimant maintained that he sustained an injury to his left knee on June 12, 2006, when he slipped and fell while going down some steep steps, carrying a cooler of Gatorade. The claimant stated that a team leader, Ben (last name unknown), was present at the time of the injury. The record reflects that the claimant continued working until on or about June 25, 2006, at which time a second work-related incident occurred when the claimant got a piece of metal in his eye while grinding some steel beams. Apparently, the claimant received treatment for the eye injury promptly after its occurrence but never returned to work for Labor Ready. The claimant subsequently reported the alleged June 12, 2006, incident on June 30, 2006, after receiving treatment for both

the eye injury and the alleged left knee injury. (Tr.17)(Resp. Ex. B, pp.11-15)

The claimant was an extremely poor historian. He was unresponsive to a number of direct and easy questions. He could not recall either the date or how many days after the alleged occurrence that he first sought medical treatment. The claimant failed to submit any medical evidence in support of his claim despite specific instructions that he submit a copy of any medical reports and records to both this Commission and respondents' attorney at least seven (7) days prior to the hearing. At the hearing, the claimant attempted to introduced sixteen (16) pages of medical records in support of his claim which was received as a proffer only. (Cl. Ex. A) After further consideration, despite respondents' objection to the reports for failure to comply with the seven (7) day rule, I have decided to accept the reports and give them their appropriate weight. I feel compelled to point out that the claimant's medical evidence begins with a date of service of July 7, 2006, and thereafter, and is not helpful to the claimant's case.

On cross-examination, it was pointed out that the first medical report addressing a complaint of left knee pain was June 26, 2006, a day after the claimant left respondent's employment. The history contained in said report, which was from the NEA Clinic in Osceola, Arkansas, reflects that the claimant had been having left knee pain for a while from playing basketball, stating that he twisted it the previous night and that it was now very painful to walk on. (Resp. Ex. A, p.2)

On further cross-examination, it was pointed out that the claimant reported

an eye injury to the same employer herein on June 25, 2006; was promptly provided with medical treatment and failed to report any alleged knee injury at that time. Further cross-examination indicated that the claimant had been untruthful in his evidentiary deposition taken on July 20, 2006. Specifically, the claimant denied any prior accidents, including motor vehicle accidents. At the hearing, it was pointed out that the claimant was involved in a prior motor vehicle accident which resulted in an x-ray of his left knee. Additionally, respondents submitted a June 29, 2006, emergency room record reflecting a prior injury to the left knee, three (3) months earlier. (Resp. Ex. A, pp.2-3)

The claimant contends that he has been temporarily totally disabled at all times since June 12, 2006. However, respondents pointed out that the claimant has worked for a number of employers since leaving respondent's employment on June 25, 2006. In fact, the claimant has either worked or drawn unemployment benefits, indicating that he was ready, willing, and able to work at all times. In fact, the claimant was working at the time of the within hearing. The claimant candidly acknowledged that he was working for Razorback Concrete, earning \$10.00 per hour while working full-time. The claimant's course of conduct and work history is totally inconsistent with his claim. After the claimant left respondent's employment, he worked for various employers despite his alleged injury and disability. He subsequently experienced additional problems with his left knee requiring medical treatment on May 8, 2007. However, again, the history of injury related to playing

basketball. (Resp. Ex. A, p.15)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

As previously pointed out, the record in this case is replete with inconsistencies and contradictions. The claimant was not a credible witness. The credible evidence reflects that the claimant's knee injury relates to activities outside the workplace, specifically, playing basketball. There is no corroborating evidence that the claimant sustained a work-related injury. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a left knee injury arising out of

and during the course of his employment with Labor Ready Central, Inc.
Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge