

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F611866

NATHAN WOODRUFF, Employee	CLAIMANT
SHAVER FOODS, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED MAY 29, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 9, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 28, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties on July 19, 2006.
3. The claimant was earning sufficient wages to entitle him to the maximum rate of compensation.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to lumbar spine on July 19, 2006.
2. Temporary total disability benefits from July 19, 2006 through November 8, 2006.

3. Related medical.
4. Permanent partial disability benefits; including, impairment and wage loss.
5. A.C.A. §11-9-505(a) benefits.
6. Attorney fee.

The claimant contends that he suffered a compensable injury to his low back while working for respondent on June 19, 2006. He requests temporary total disability benefits beginning July 19, 2006 and continuing through November 8, 2006, as well as related medical treatment, permanent partial disability benefits, A.C.A. §11-9-505(a) benefits, and a controverted attorney fee.

The respondents contend that claimant did not suffer a work-related injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 28, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his lumbar spine while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 31-year-old man with an eleventh grade education who went to work for the respondent on May 22, 2006. Claimant went to work in inventory control for the respondent. Claimant's job duties primarily included driving various types of forklifts.

Claimant would use the forklifts to move product from the receiving dock to a particular location in the respondent's warehouse. Claimant would also load and unload trucks with the forklift. Claimant also helped pull various products for shipping and performed inventory counting.

The respondent is a company which primarily provides food products to prisons. Its products range from small boxes of sweetener weighing less than a pound to 100-pound bags of rice and beans.

Claimant testified that on occasion he would help other employees pull various products and place them on a pallet in order for them to be shrink-wrapped and loaded onto a truck. Claimant testified that he was performing these duties on July 19, 2006. Claimant testified that on that night he was helping an employee named C.J. Kilpatrick pull cases of spaghetti sauce which had to be placed on a pallet. Claimant testified that he had one case of sauce on each shoulder when Kilpatrick placed another case on his right arm just below his shoulder "and when he shoved it up there to push it back to level it out, when I stepped back, my right heel hit a pallet, an empty pallet on the floor, and I fell to a seated position on a pallet that is maybe four inches tall."

Claimant went on to testify that when he fell he felt as if he had jammed his tailbone. Claimant acknowledged that he continued to work the remainder of his shift on July 19. Claimant also testified that he telephoned Brannon Nix, the respondent's distribution manager, on his cell phone and reported this incident on the night of July 19.

Claimant testified that after his shift he went home and when he awoke the next morning had noticeable pain in his low back area. Claimant testified that he called Nix on the morning of July 20 and informed him that he was not coming to work, but instead was going to see the doctor. Claimant saw Dr. Kendrick on July 20, 2006, and was diagnosed as suffering from low back pain with a possible herniated disc. Dr. Kendrick ordered an MRI scan which revealed a herniated disc at the L4-5 and L5-1 levels. Dr. Kendrick

referred claimant to a neurosurgeon, Dr. Gallaher, who performed surgery on claimant's low back on September 15, 2006.

Claimant has filed this claim contending that he suffered a compensable injury to his low back while working for respondent on July 19, 2006. He seeks payment of temporary total disability benefits, medical benefits, permanent partial disability benefits, A.C.A. §11-9-505(a) benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his low back when he tripped and fell over a pallet while working for the respondent on July 19, 2006. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (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 Ark. Code Ann. §11-9-102(16), establishing the injury;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he suffered an injury which arose out of and in the course of his employment with the respondent.

As previously noted, claimant testified that he suffered the injury while working with an employee named C.J. Kilpatrick. According to claimant's testimony, he had a case of spaghetti sauce on each of his shoulders when Kilpatrick placed another case on his right shoulder. This apparently threw claimant off balance and as a result he took a step back and struck an empty pallet with his right foot and fell onto his tailbone.

Testifying at the hearing was Kilpatrick. Kilpatrick testified that he does not recall the claimant having an accident and falling at work as described by the claimant. Kilpatrick went on to testify that if claimant had fallen with the cases of spaghetti sauce he believes he would have heard this incident. Kilpatrick went on to state that he did not hear any accident and claimant did not mention an injury to him.

Claimant admitted that he did not know if Kilpatrick actually saw the incident occur, but acknowledged that Kilpatrick was present when it happened. Given claimant's description of the incident it is difficult to imagine that Kilpatrick could have moved so far away from claimant that he would not have seen or heard this incident where claimant tripped and fell and three cases of spaghetti sauce weighing 90 pounds fell.

Claimant also testified that he reported the injury on the night of July 19 by calling Brannon Nix, respondent's distribution manager, on his cell phone. In addition to his testimony, claimant offered documentary evidence in the form of his own cell phone records showing calls to Nix on the night of July 19. Nix testified at the hearing that claimant did not report an injury to him on July 19 or July 20. Nix testified that if claimant had reported an injury he would have taken necessary action. Furthermore, I do not find the cell phone records overly supportive of claimant's testimony that he reported an injury to Nix given evidence presented that employees at the warehouse frequently phoned Nix on his cell phone about a variety of issues. In fact, the records indicate that claimant telephoned Nix at 11:55 a.m. on July 19, several hours before the alleged incident.

More importantly, the initial medical report does not support a work-related injury.

As previously noted, claimant sought medical treatment from Dr. Kendrick on July 20, 2006, the day after this incident. A review of Dr. Kendrick's medical report of that date indicates that claimant made a chief complaint of low back pain with a history of onset of "14 days ago". Dr. Kendrick's medical report makes no mention of a work-related injury or any other type of injury having occurred at work the day before. While Dr. Kendrick did subsequently complete an insurance form indicating that claimant had been injured at work, this form was not completed until July 31, 2006, several days later, after claimant had been diagnosed as suffering from two herniated discs.

In summary, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent on July 19, 2006. Here, claimant testified that his injury occurred after a third case of spaghetti sauce was placed on his shoulder by an employee named Kilpatrick. According to claimant's testimony this extra weight resulted in claimant taking a step back and tripping over an empty pallet and landing on his tailbone. However, Kilpatrick testified that he was not aware of any injury to the claimant. Furthermore, according to Kilpatrick's testimony as well as the testimony of claimant, claimant did not mention an injury to Kilpatrick that night. Finally, claimant sought medical treatment the next day from Dr. Kendrick. Dr. Kendrick's medical report contains a history of claimant's back pain having begun 14 days earlier and there is no mention of a work-related injury or any type of injury as a result of falling. A history of a work-related injury is not contained in the documentary evidence until July 31, 2006. Based upon the testimony of Kilpatrick, which I find to be credible and entitled to great weight, as well as the initial medical report from Dr. Kendrick reflecting a history of back pain for 14 days and no mention of a work-related injury, I find that claimant has simply failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his lumbar spine while employed by respondent on July 19, 2006. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE