

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610795

ELBERT H. WOOLDRIDGE, CLAIMANT	CLAIMANT
R. A. BROOKS TRUCKING COMPANY, INC., SELF-INSURED EMPLOYER	RESPONDENT
RETENTION MANAGEMENT SERVICES, INC., TPA	RESPONDENT

OPINION FILED MAY 7, 2007

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 7, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. JAMES STANLEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HON. JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above captioned claim on February 7, 2007, in Little Rock, Arkansas, 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 November 29, 2006, and a Prehearing Order was filed on November 30, 2006. A copy of the Prehearing Order was marked Commission Exhibit "1" and made a part of the record without objection.

At the full hearing, the parties stipulated to the following:

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

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- 2) The employee/employer/carrier relationship existed at all relevant times, including September 6, 2006.
- 3) The claimant's compensation rates are \$366.00 per week for temporary total disability and \$275.00 per week for permanent partial disability.
- 4) The claimant returned to work on October 18, 2006.

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

- 1) Whether the claimant sustained a compensable injury.
- 2) If compensability is overcome, whether claimant is entitled to temporary total disability benefits from September 23, 2006, through October 17, 2006, all associated medical expenses, and attorney's fees.

The claimant contended at the full hearing that he sustained a compensable injury to his lumbar spine on September 6, 2006, while in Yakima, Washington, putting down pallets. As a result of the lumbar injury, claimant contended entitlement to TTD benefits, medical expenses and attorney's fees.

The respondents contended at the full hearing that the claimant did not suffer a compensable injury on or about September 6, 2006, and that there are no objective findings to support a compensable injury. In the event compensability is found, respondents contend the claimant continued to work through September 26, 2006, and was released to return to work on October 18, 2006.

The record consists of the February 7, 2007, hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant, age forty-five (45), worked for the respondent/employer as a truck driver. Primarily, the claimant's runs consisted of going to Yakima, Washington to pick up apples and returning to Arkansas. The claimant described his job duties as follows:

A. Okay. My job duties was driving a truck; loading and unloading it; I had to lay the pallets down and put the product on them, because if we didn't, we would have to take and sit there for eight or nine hours, waiting to get loaded; and then return with the freight and get to the other end and - -

Q. What kind of products were you carrying primarily?

A. Apples. T. pg. 9, lines. 18-24.

The claimant testified that while laying pallets onto his truck on September 6, 2006, he felt a sharp pain in his back and dropped to his knees. After the incident, claimant testified someone else finished loading the truck and he went and laid down. The claimant testified that it took him extra time to get back to Arkansas because of the pain.

The claimant testified he notified his employer of the incident while still in Yakima, Washington, but that his employer told him "to do the best I could and get back in." (T. pg. 17, lines 11-12.) The claimant testified that when he arrived back in Arkansas after the incident, he again told his employer about his pain, but that his employer sent him back

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out for another run. Upon his second return after the incident, the claimant testified he told his employer he needed to go to the doctor. The claimant then went to see a chiropractor, Dr. E. Engelhoven; and also treated with Dr. Kevin Bay.

To prove the occurrence of a compensable injury as a result of a specific incident, which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

In the present case, I find that the claimant has failed to establish by a preponderance of the evidence that he sustained a compensable injury as a result of a specific incident. I note that it is not required that the claimant prove he sustained his injury on an exact date and time; but rather that his injury resulted from a specific incident which is identifiable by time and place of occurrence. The claimant originally stated his injury occurred on September 6, 2006, in Yakima, Washington. However, at the end of the hearing the claimant stated "August is whenever I got hurt." (T. pg. 45, line 22.) "I don't remember the exact date but it was in August." (T. pg. 37, lines 11-12.)

The record contained too many contradictions for this examiner to find that the

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claimant's injury arose out of and during the scope of his employment. Additionally, the claimant's credibility came into question regarding some of his sworn testimony. For example, the claimant testified that after the incident of September 6, 2006, his employer would give him two or three weeks to get to where he was going and then two to three weeks to get back.

Q. All right. During this two-weeks' period of time between the injury and when you saw the chiropractic physician, how did you do as far as performing your job vis-a-vis your back and hip?

A. I - - I just kept taking pills and stuff and kept trying to make delivery on time.

Q. When you say "pills," you're talking about Advil?

A. Advil or Tylenol. If I took Tylenol, I went to sleep, so I didn't take too much of that.

A. Did it affect your job performance at all?

Q. It just - - they slowed down on the deliveries. They'd give me two to three weeks to get there with a load and two to three weeks to get back with a load, just - -

T. pg. 20, lines 4-16.

Respondents Exhibit 2 at page 1 shows that on September 12, 2006, the claimant went from Olive Branch, MS to Portland, OR in only four days. It also shows

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another run in September of 2006 that did not take two to three weeks. The claimant's testimony leads one to believe a run would take him nearly a month each after his September 6, 2006, incident due to the pain, but the trucking logs do not corroborate the claimant's testimony.

The claimant would have one to believe that the affidavit from Monique Miles stating that she saw him holding his back on September 6, 2006, in Yakima, WA should be believed-however, his own testimony creates doubt as to whether the affidavit is true because he stated the incident, in fact, happened in August of 2006. Even though the claimant doesn't have to prove an exact time and date of his injury, the conflicting evidence of what did happen creates doubt as to whether the claimant's back injury arose out of and in the scope of his employment.

The only person who was present at the time of the claimant's alleged injury was the claimant; and, of course, the claimant's credibility is a necessary aspect of the case. The claimant testified that after leaving R. A. Brooks Trucking Co., Inc., he applied for other employment as a truck driver. The claimant testified that when applying for a job with U. S. Express he "fibbed" to them and told them he had gotten hurt while coming up the steps.

Q. (By Mr. Parrish) Did you not tell me, in your deposition, that you said, "Fibbed" - - "oh, I fibbed to each one of them and told them I had just hurt myself coming up the steps."

A. I had - - I did fib to U. S. Express, because I wanted to get on over there.

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Q. So basically, you lied to these trucking companies to try to get - -

A. Just to one of them.

Q. - - a job?

A. Just the one trucking company.

Q. And was that U. S. Express?

A. Yes - - T. pg. 42, line 25 & T. pg. 43, lines 1-11.

A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. **Continental Express v. Harris**, 61 Ark. App. 196, S. W. 2d 84 (1998). The burden of proof lies with the claimant. The claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and during the scope of his employment with R. A. Brooks Trucking Co., Inc.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his 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.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.

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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 R. A. Brooks Trucking Co., Inc.

4) The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable specific incident back injury.

ORDER

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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