

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704529

MARVIN BEASLEY, EMPLOYEE	CLAIMANT
FEDEX GROUND PACKAGE SYSTEM, EMPLOYER	RESPONDENT
BROADSPIRE SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED JUNE 12, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 14, 2008 at Little Rock, Pulaski County, Arkansas .

Claimant appeared pro se.

Respondents represented by the HONORABLE RICK SELLARS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on April 30, 2007, at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$141.00 in the event this claim is found to be compensable. Some expenses have been paid by United Healthcare, the group insurance carrier for the claimant's ex-wife, Erica White.

The claimant contends he injured his back and right knee when he fell between the loading dock and a truck. He seeks payment of medical expenses and temporary total disability benefits from May 1, 2007 to a date yet to be determined.

The respondents contend the claimant did not sustain an injury arising out of and in the

course of his employment. The claimant never reported any injury to his employer. The claimant's present condition and need for treatment is not causally related to any incident at work.

The following were submitted without objection and comprise the evidence of record: the parties prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and manager, Myron Allen, who was not a credible witness.

The claimant, age 34 (D.O.B. March 28, 1974) has work experience as an unskilled manual laborer. His jobs include making deliveries for a florist, cleaning carpets and landscaping. His health history includes a 2005 motor vehicle accident (MVA).

The claimant began work for the respondent-employer two weeks prior to an accident on April 30, 2007. He testified he injured his back and right knee when he fell between the loading dock and a truck (Tr. p. 4). He reported the accident to his supervisor, Kevin Young, but no accident report was completed.

The next day he asked his employer to send him to a doctor but they declined. The claimant sought help at the ER but is financially unable to pursue medical treatment. The claimant did not return to the respondent-employer after he was released by the doctor on May 4, 2007.

In July, 2007 the claimant worked one day for Labor Ready, an employment service. In August, 2007 he began collecting and recycling cans, earning \$150.00 every two weeks. In November, 2007, he got a job with American Greeting Card in Blytheville earning \$7.50 an hour for a 40 hour week.

Myron Allen testified about the company's workers' compensation procedure and acted like he knew nothing about the accident until he finally admitted that Kevin Young completed a "Notice of First Aid" report on May 1, 2007. Of course, Kevin Young was not called as a witness. The claimant testified he was unaware of the workers' compensation procedure.

MEDICAL EVIDENCE

An emergency room (ER) admission form dated May 1, 2007 shows the claimant reported

back and right leg pain from an injury at work. The ER Triage Form of the same date shows a history of pain in the right thigh and lower back after falling between the loading dock and a truck the day before. X-rays of the right knee and lumbar spine were deemed “unremarkable.” Although lordosis was noted, that finding is equivocal. Lordosis can be caused by spasm or just the positioning of the body during testing. The claimant was prescribed medication for a back strain and excused from work until May 4, 2007, (one report says May 5, 2007). The prescription, however, is sufficient medical evidence to substantiate an objective injury, Fred’s, Inc. v. Deborah Jefferson, 361 Ark. 258, 206 S.W.3d 238 (2005).

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence of record shows the claimant fell and injured his back and right knee on April 30, 2007. The claimant called his employer on May 1, 2007 and asked to see a physician but was denied. His supervisor filled out a company form, "Notice of First Aid," on May 1, 2007. The claimant sought medical treatment on his own but no diagnostic testing has been performed. His medical history of injury was consistent with his testimony.

There was nothing about the claimant's demeanor that suggested he was untruthful. Any delay in reporting the accident can be excused by the fact that he was not instructed in the employer's workers' compensation policy. Therefore, I find the claimant did sustain an injury in the course and scope of his employment.

The employer also defended this claim by contending there was no causal connection between his present condition and an injury. The respondents have not provided any evidence that the claimant was symptomatic prior to this incident or required medical treatment for any preexisting condition. Therefore, I find there is a causal connection between the claimant's present condition and his injury.

The respondents have also defended this claim based on a lack of notice, however, this contention is without merit. I find the claimant did notify his immediate supervisor on May 1, 2007.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on April 30, 2007, at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$141.00.
2. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

3. The respondents are directed to provide medical treatment for the claimant's back and knee injuries and pay expenses (including mileage) previously incurred within thirty days of receipt pursuant to Rule 30.
4. The claimant is not entitled to temporary total disability benefits as no physician has excused him from work for the requisite number of days.
5. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge