

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F607766

HALLIE BLAKE, Employee	CLAIMANT
OZARK ELECTRONICS REPAIR, Employer	RESPONDENT
ST. PAUL TRAVELERS, Carrier	RESPONDENT

OPINION FILED APRIL 1, 2008

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

Claimant represented by MATTHEW LINDSAY, Attorney, Fayetteville, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 12, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 23, 2008, and a pre-hearing order was filed on January 24, 2008. 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/carrier relationship existed among the parties on April 18, 2006.
3. The claimant was earning an average weekly wage of \$500.00.

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

1. Compensability of injury to claimant's back on April 18, 2006.
2. Related medical.
3. Temporary total disability benefits.
4. Attorney fee.

The claimant contends he sustained an injury to his low back while in the course and scope of his employment on April 18, 2006 when he was lifting rollers and other equipment going up stairs. He contends he is entitled to related medical, temporary total disability benefits, and an attorney fee.

The respondents contend the claimant did not sustain a compensable injury within the course and scope of his employment and have denied this claim in its entirety.

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 January 23, 2008, and contained in a pre-hearing order filed January 24, 2008, are hereby accepted as fact.

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

FACTUAL BACKGROUND

The claimant is a 61-year-old man who began working for the respondent on January 15, 2001. Claimant began his employment as a refrigeration technician and subsequently worked in the maintenance department for his last one and a half years of employment. Claimant testified that his job duties varied depending on the work which needed to be performed.

Claimant testified that in April 2006 the respondent was in the process of adding some additional lines to its facility and this included the addition of some four-foot wide

rollers. Claimant testified that on April 18, 2006, he and his immediate supervisor, Donaldson Kumm, had to carry these rollers which weighed approximately 500 pounds up a flight of stairs. Claimant testified that at approximately 9:00 a.m. as they were carrying the rollers up the stairs his back popped and they had to set the rollers down and take a short break before continuing. Claimant testified that he informed Kumm that he had injured his back. Claimant testified that after the rollers were taken up the stairs his back felt a little better and he continued to work the remainder of his shift until approximately 3:00 p.m. Claimant also testified that he reported this incident to Dennis Martin, the supervisor of the maintenance department.

On April 18, 2006 claimant sought medical treatment from Dr. Dale Clemens, his family physician. An MRI was ordered and claimant was referred to Dr. Danks who recommended surgery. Claimant did not wish to undergo surgery but instead underwent a series of epidural steroid injections. Claimant was eventually referred to Dr. Runnels at the VA Hospital in Fayetteville who also recommended surgery. Claimant underwent surgery to repair a herniated disc at the VA Hospital in Little Rock on January 30, 2007.

Claimant has filed this claim contending that he suffered a compensable injury to his back while working for respondent on April 18, 2006. He seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his back while moving a heavy roller while working for respondent on April 18, 2006. Claimant's claim is for an injury caused by a specific incident 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 meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

As previously noted, claimant testified that he suffered a compensable injury while moving a 500 pound roller with Donaldson Kumm up a set of stairs on April 18, 2006. Claimant testified that his back popped during this activity and as a result it was necessary for them to set the roller down and take a break before continuing. Claimant further testified that he continued to work the remainder of his shift, that he reported the incident to Dennis Martin, the maintenance department supervisor, and that he sought medical treatment from Dr. Dale Clemens, his family physician.

Testifying at the hearing was Donaldson Kumm. Kumm admitted carrying rollers up the stairs while working for the respondent. However, Kumm testified that he did not perform this job activity with only the claimant; instead, Kumm stated that he and the claimant were two of six employees who carried the roller. Most importantly, Kumm testified that the claimant did not mention injuring his back or by his actions suggest that he had injured his back. Furthermore, Kumm did not recall the claimant having to put the rollers down and rest while on the stairs. Kumm did testify that claimant mentioned having injured his back while helping a relative move a piano.

Dennis Martin was the respondent's maintenance manager in April 2006. Martin also testified that he was involved in the process of moving the rollers. He corroborated Kumm's testimony that there were six people including the claimant moving the rollers, not two. Martin testified that claimant did not complain of back pain while moving the rollers or stop to rest for five minutes because of back pain. Martin also testified that he overheard the claimant indicating that he had injured his back while moving a piano.

Also testifying on behalf of respondent was Deb Standley, the safety manager and assistant director of human resources, and Jane Greuel, the director of human resources. Standley testified that she reviewed the claimant's time records for April 18 which indicated that while claimant clocked in at approximately 6:30 a.m., he clocked out at approximately 7:52 a.m., almost one hour before he testified the injury occurred. Standley's testimony regarding the claimant clocking out and not working a full day on April 18 is corroborated by the medical report of Dr. Clemens indicating that claimant was seen in his office at 9:59 a.m. Standley also testified that she was responsible for handling workers' compensation claims. She testified that claimant did not inform her of an alleged work-related injury until July 14, 2006.

Greuel testified that on April 18, 2006 the claimant did not mention any work-related injury. However, he did come to her and apply for FMLA benefits that day. Claimant was granted those benefits and was off work for the next twelve weeks. When the twelve-week period expired, claimant indicated that he wanted to file a workers' compensation claim and he was referred by Greuel to Standley.

The most significant evidence in this case contradicting claimant's contention is the medical evidence. Claimant testified that he suffered the compensable injury to his back on April 18, 2006 while lifting a roller at work. However, the medical records indicate that claimant had sought medical treatment for back complaints with radiation to his left lower extremity one week earlier from Dr. Clemens on April 10, 2006. Significantly, Dr. Clemens

noted that claimant's back complaints had an onset of eight months earlier. He also notes that claimant has "had chronic back pain and now worsening pain in hip and left knee." No mention is made in Dr. Clemens' report of a potential work-related injury.

The next medical record is Dr. Clemens' report of April 18, 2006, the date claimant alleges he injured his back. Claimant testified at the hearing that the injury occurred at approximately 9:00 a.m. Claimant also testified that he continued to work the remainder of the day. However, Dr. Clemens' medical report indicates that he examined claimant at 9:59 a.m., only one hour after the alleged injury. This is significant because Dr. Clemens' medical report does not mention any work-related injury. If claimant's testimony that he had injured his back approximately one hour earlier were correct, one would expect him to have mentioned it to Dr. Clemens. However, Dr. Clemens' medical report does not mention a work-related injury but instead indicates that claimant was seen for a follow-up of complaints of low back, left leg, and hip pain.

Claimant was next evaluated by Dr. Danks, neurosurgeon. Dr. Danks' medical report does not mention a work-related injury. Instead, his medical report indicates that claimant's complaints have been present for six to nine months.

She [sic] is a 59-year-old, who complains of low-back pain and left hip pain that radiates down his left leg, to his foot. This has been going on for six to nine months. He has a long history of low-back pain, but his radicular pain has become progressively worse. (Emphasis added.)

While it might be argued that Dr. Danks' reference to the claimant's radicular pain having become progressively worse refers to an injury of April 18, Dr. Danks' medical report does not mention a work-related injury.

Claimant subsequently came under the care of Dr. Runnels at the VA Hospital on July 13, 2006. Dr. Runnels in his report of that date did indicate that he suspected that claimant had pre-existing stenosis and that he suffered an injury at work which led to a

herniated disc. It appears that Dr. Runnels' opinion is based upon an incorrect history. Dr. Runnels indicates that claimant's complaints have existed since he was injured at work on April 10, 2006. However, as previously noted, claimant was making complaints of low back pain radiating into his left extremity with an onset of eight months prior to April 10, 2006. The medical report of that date makes no mention of a work-related injury. Likewise, Dr. Danks' medical report indicates that claimant's symptoms had existed for six to nine months prior to April 25, 2006. Thus, Dr. Runnels' belief that claimant's complaints had an onset of April 10, 2006 is incorrect. It should also be noted that Dr. Runnels' medical report does not contain a history of a specific injury occurring on April 10, 2006, but rather mentions claimant performing his usual job and his back beginning to hurt.

In summary, claimant has the burden of proving by a preponderance of the credible evidence of record that he suffered a compensable injury to his back while employed by respondent on April 18, 2006. Here, claimant's testimony regarding the circumstances of his injury is contradicted by two witnesses called on behalf of respondent. Kumm and Martin both testified that there were six people moving the rollers. More importantly, both of those individuals testified that claimant did not make any complaints of back pain or indicate in any way that he had injured his back while moving the roller. Both of those witnesses did testify that claimant mentioned having injured his back while moving a piano. Jane Greuel, the respondent's human resource director, testified that claimant did not mention a work-related injury on April 18 but did file for FMLA benefits on that day. It was not until claimant's twelve weeks of benefits expired that claimant returned to the respondent and requested workers' compensation benefits.

Finally, the medical evidence indicates that claimant had sought medical treatment for complaints of low back pain radiating into his left lower extremity on April 10, 2006, more than one week prior to the alleged date of injury. The history in the medical report of that date indicates that claimant's back pain has been chronic with an onset of eight

months earlier. Subsequent medical records from Dr. Danks also indicate an onset of complaints for some six to nine months prior to April 2006. A potential work-related injury is not mentioned until Dr. Runnels' report of July 13, 2006, some three months later. Dr. Runnels indicates that claimant's complaints began following an injury at work on April 10, 2006. This history is not supported by the remaining evidence of record.

Accordingly, based upon the foregoing evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

ORDER

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

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$525.75.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE