

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F603454

EDMOND BLOUIN, Employee

CLAIMANT

BIO TECH PHARMACAL INDUSTRIES, Employer

RESPONDENT #1

AIG CLAIMS SERVICE

RESPONDENT #2

OPINION FILED JANUARY 15, 2008

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

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by CHARLES STUTTE, Attorney, Fayetteville, Arkansas.

Respondent #2 represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 12, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 4, 2007, and a pre-hearing order was filed on June 5, 2007. 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 claimant sustained a compensable injury in June 2004.

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

1. Claimant's entitlement to permanent partial disability benefits in an amount equal to 7% to the body as a whole.
2. Whether respondent employer had workers' compensation coverage at the time of the accident.
3. Attorney fee.

Prior to the hearing the claimant withdrew as an issue his request for permanent disability benefits based upon a 7% impairment rating. Thus, the only issue for consideration at the time of the hearing is whether the employer had workers' compensation coverage at the time of claimant's accident.

The employer contends that the carrier is estopped from asserting that its workers' compensation policy had been canceled.

The carrier contends that the employer's workers' compensation policy had been canceled at the time of claimant's accident.

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 June 4, 2007, and contained in a pre-hearing order filed June 5, 2007, are hereby accepted as fact.

2. At the time of claimant's compensable injury in June 2004 the employer's workers' compensation coverage had been properly canceled by the carrier; therefore, the employer, not the carrier, is liable for payment of compensation benefits.

FACTUAL BACKGROUND

The employer is a company which manufactures pharmaceuticals and nutraceuticals. The employer is owned by Marti Benedict and her husband.

The documentary evidence indicates that the carrier provided the employer with a workers' compensation insurance policy with an effective date of December 23, 2003,

which was to continue in effect until December 23, 2004.

The parties have stipulated that in June 2004 the claimant suffered a compensable injury while working for the employer. The carrier accepted the injury as compensable and paid claimant some compensation benefits. However, the carrier subsequently ceased payment of benefits based upon cancellation of the workers' compensation policy for non-payment based upon the employer's failure to cooperate with an audit.

Documentary evidence introduced at the hearing indicates that notice of the cancellation of insurance was sent to the employer by certified mail and was received on April 1, 2004. Notice of the cancellation was also sent to the Arkansas Workers' Compensation Commission. Since claimant's injury occurred after this cancellation was effective, the carrier ceased payment of compensation benefits. This has resulted in this claim for a determination as to whether the employer had workers' compensation coverage at the time of claimant's accident.

ADJUDICATION

A.C.A. §11-9-408(b)(2)(A) and (B) indicates that a notice of cancellation from a carrier shall state the hour and date that the cancellation is effective. In addition, the cancellation shall not be effective for non-payment of premium until 10 days have elapsed after notice has been mailed to the employer and to the Commission. My review of the documentary evidence indicates that the carrier properly canceled the employer's workers' compensation coverage before claimant's injury in June 2004. Notice of the cancellation of insurance was sent to the respondent by certified mail. That notice indicates that the cancellation will be effective as of May 1, 2004 at 12:01 a.m. eastern time at the mailing address of the employer. The reason given for cancellation is non-cooperation with an audit. Notice of this cancellation was sent to the employer's address and a certified return receipt indicates that it was received by Robert Albertson.

According to the testimony of Marti Benedict, one of the owners of the respondent, Robert Albertson in the spring of 2004 was responsible for the payment of premiums and the handling of workers' compensation insurance. Benedict confirmed that the address on the notice was correct and that Albertson's signature is on the return mail receipt. Benedict testified that she had no proof that Albertson did not receive the notice for which he signed.

The documentary evidence also indicates that notice of the cancellation was provided to the Commission for non-payment of premium on May 10, 2004.

Based upon this evidence, the carrier complied with the statutory provisions regarding cancellation of a policy for non-payment. Notice was provided to the employer and to the Commission; therefore, the employer did not have workers' compensation coverage at the time of claimant's injury in June 2004. With respect to this issue, I note that there was some testimony from Benedict regarding whether she personally knew that the policy had been canceled. However, there is no requirement that a particular individual at the employer be made aware of the cancellation. In this particular case, notice was sent to the employer by certified mail and that notice was received by Albertson, the individual who was responsible for payment and the handling of the employer's workers' compensation policies. I find that the notice was sufficient and accordingly find that the employer did not have coverage at the time of claimant's injury in June 2004.

The employer contends that the carrier should be estopped from denying workers' compensation coverage. The elements of estoppel were set out by the decision in *Snow v. Alcoa*, 15 Ark. App. 205, 691 S.W. 2d 194 (1985), as follows:

- (1) The party to be estopped must know the facts;
- (2) He or she must intend his or her conduct shall be acted upon or must act so that the party asserting the estoppel has the right to believe that the other party so intended;

- (3) The party asserting the estoppel must be ignorant of the true facts; and,
- (4) The party asserting the estoppel must rely upon the other party's conduct to his or her injury.

Even if I were to find that the first three elements of estoppel had been satisfied, a finding I do not make, I would find that the employer has failed to prove that it relied upon the carrier's conduct to their injury.

Here, the employer's contention seems to be that it has been harmed by the carrier's accepting the injury as compensable and paying compensation benefits even though the policy had previously been canceled. In fact, Benedict testified at the hearing that she would have handled the claimant's claim differently from the very beginning if she had known that claimant was making a claim for a work-related injury. I find no merit to this argument. First, on cross examination and in her deposition Benedict testified that she did not know how she would have handled the claim differently if the carrier had not paid on the claim. "I don't know yet. I would have had to have found out."

Furthermore, I also believe it is important to note that the employer has stipulated that claimant suffered a compensable injury in June 2004. In fact, claimant testified at the hearing that he reported a desk falling on him at work to Benedict on the day it occurred. Claimant testified that he also informed Benedict that he was performing his job duties at the time of this accident. Claimant testified that following his report and his complaints of pain the employer sent claimant to a chiropractic physician for treatment. Benedict corroborated claimant's testimony and admitted on cross-examination that even before the claim had been filed with the carrier she knew that claimant was seeking treatment from a chiropractic physician because a desk had fallen on him at work. She also admitted that she sent the claimant to a chiropractor.

Q. But you were aware that he was treating with a chiropractor for a desk falling on him at - -

A. Yes.

Q. -- your employment?

A. Yes. I sent him -- I told him to go see the chiropractor.

Q. Okay. And this was before you received any word that
AIG -- that a claim had been filed with AIG. Right?

A. Yes. That's before.

In contrast to the employer's contention that payment by the carrier was a detriment to the employer, it would appear that payment by the carrier was actually a benefit to the employer since the carrier has paid compensation benefits.

In summary, I find that the doctrine of estoppel is not applicable to this claim. I do not find that the employer relied upon the carrier's conduct to its injury. Even before the claimant had filed a workers' compensation claim, the employer knew that claimant was alleging that he had been injured when a desk fell on him at work. In fact, the employer sent claimant to a chiropractic physician for medical treatment. Furthermore, payment of some compensation benefits by the carrier was not injurious to the employer but rather was a benefit. Based upon the foregoing reasons, I do not find that the doctrine of estoppel is applicable to this claim.

In summary, the employer's policy of workers' compensation had been canceled by the carrier prior to the claimant's injury in June 2004. Therefore, the employer, not the carrier, is liable for payment of compensation benefits.

ORDER

_____The employer did not have workers' compensation coverage in effect at the time of claimant's injury in June 2004. Therefore, the employer is liable for payment of compensation benefits.

Respondent #1 and respondent #2 are both ordered to pay the court reporter's

charges for preparing the hearing transcript in the amount of \$242.07 each.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE