

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F711611

LARRY BROOKS, Employee	CLAIMANT
RIVER CITY MATERIALS, INC., Employer	RESPONDENT
AIG CLAIMS SERVICES, INC., Carrier	RESPONDENT

OPINION FILED MARCH 27, 2008

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CYNTHIA ROGERS, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 26, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 18, 2007, and a pre-hearing order was filed on December 19, 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 this claim.
2. On October 5, 2007, the relationship of employee-employer-carrier existed between the parties.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle him to the maximum compensation rate.

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

1. Compensability of the claimant's low back injury of October 5, 2007.
2. Temporary total disability from the date of last employment to a date yet to be determined.
3. Claimant's entitlement to related medical.

4. Attorney fee.

At the time of the hearing the claimant agreed to withdraw and reserve the issue of his entitlement to temporary total disability benefits.

The claimant contends that he suffered a compensable injury to his low back on October 5, 2007 while pulling Sheetrock off of a cart. He requests medical treatment associated with that compensable injury.

The respondents contend that claimant did not suffer a compensable injury while employed on October 5, 2007.

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 December 18, 2007, and contained in a pre-hearing order filed December 19, 2007, are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle him to the maximum compensation rate is also hereby accepted as fact.

3. The claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back while employed by respondent on October 5, 2007.

4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable low back injury.

DISCUSSION

The claimant is a 36-year-old man who has worked for the respondent on three separate occasions since 2001. On October 5, 2007, the claimant along with other employees of the respondent were responsible for delivering Sheetrock to Wal-Mart in Bentonville. The Sheetrock was driven to the work site on a truck and then loaded onto a dolly which was then pushed to the proper location in a building and unloaded. Claimant testified that on October 5, 2007 he was pulling the Sheetrock onto the dolly when he felt a sharp pain in his low back and numbness in his left leg. Claimant testified that following this incident he laid down for a few minutes before attempting to return to work. Claimant testified that throughout the remainder of that day he performed other job duties but did not unload the Sheetrock.

Claimant testified that after the delivery was completed he along with the other employees returned to the respondent's place of business in order to get another load. Claimant testified that he reported his injury to Jarrod Driscoll, who was acting supervisor that day. According to claimant's testimony Driscoll indicated that claimant needed to complete his delivery. Claimant testified that at that point he informed Driscoll that he was leaving because his back was hurting.

The next day, October 6, 2007, claimant sought medical treatment from the emergency room at the hospital in Neosho, Missouri. Claimant was complaining of low back and leg pain after injuring his back at work the day before. Claimant was diagnosed as suffering from acute low back pain, was prescribed medication, and instructed to follow up with OccuMed on October 8, 2007. Claimant was also instructed to undergo an MRI scan.

Since that time claimant has undergone the MRI scan which revealed protrusions and central canal stenosis. Claimant has been evaluated by several physicians and has been treated with medication, physical therapy, and a lumbar epidural steroid injection.

Claimant has filed this claim contending that he suffered a compensable injury to his low back while working for respondent on October 5, 2007. He seeks payment of related medical benefits associated with that compensable injury.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his low back while moving Sheetrock while working for respondent on October 5, 2007. 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 met his burden of proof.

As previously noted, claimant testified that he felt pain in his low back and numbness in his left leg while moving Sheetrock on October 5, 2007. Claimant testified that he was working with other employees at that time and that he was unable to move the Sheetrock for the remainder of the day. Claimant testified that when he returned to the

respondent's place of business he reported the injury to Jarrod Driscoll, who was acting as a supervisor on that day. Respondent's normal supervisors, Steven Russell and Sam Muffoletto, Junior, were both out of town. When Driscoll indicated that claimant would need to make the next delivery, claimant informed him that his back was hurting and that he was leaving to obtain medical treatment.

Isom Chotkey and Jarrod Driscoll were called on behalf of the respondent and they admitted that claimant reported back pain on October 5, 2007. However, those witnesses deny that claimant attributed his back complaints to an on-the-job injury.

While both Chotkey and Driscoll are still employed by the respondent, claimant called as a corroborating witness Michael Brooks. Michael Brooks is not related to the claimant and he is no longer employed by the respondent. Brooks was one of the employees present while the Sheetrock was being unloaded on October 5, 2007. Brooks testified:

I was with Isom and we had come back from bringing back an empty cart, and he'd said he'd hurt his back and, you know, it was pretty evident that he was - - his back was hurting, and - -

Brooks also confirmed claimant's testimony that after this incident the claimant laid down for a while before continuing work. It is also significant to note that Brooks testified that when they returned to the respondent's place of business he overheard the claimant informing Driscoll that he had injured his back on the last job and could hardly move. I find Brooks' testimony to be credible and significant given the fact that he is an unbiased witness.

I also note that the medical records contain a history of injury consistent with claimant's testimony regarding the onset of his back pain.

Based upon the claimant's testimony, the corroborating testimony of Brooks, and the medical records which contain a history of injury consistent with claimant's testimony,

I find that claimant has met his burden of proving by a preponderance of the evidence that his injury was caused by a specific incident identifiable by time and place of occurrence and that his injury arose out of and in the course of his employment with the respondent.

I also find that claimant has met his burden of proving by a preponderance of the evidence that the injury caused internal physical harm to his body which required medical services and that he has offered medical evidence supported by objective findings establishing an injury. In this particular case, claimant sought medical treatment from the emergency room on October 6, 2007. A review of the emergency room records indicates that claimant was noted to have muscle spasms present at the time of that examination. Muscle spasms are considered an objective finding. *Continental Express v. Freeman*, 339 Ark. 142, 4 S.W. 3d 124 (1999); *UAMS v. Hart*, 60 Ark. App. 13, 958 S.W. 2d 546 (1997).

Finally, the medical records support a finding that claimant was in need of medical treatment for his compensable back injury. Claimant has been treated with physical therapy, medication, and a lumbar epidural steroid injection.

Based upon the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back while employed by the respondent on October 5, 2007.

In reaching this decision, I do note that there was some evidence offered on behalf of the respondent in support of its belief that the claimant simply walked off the job on October 5, 2007 and complained of back pain without reporting a work-related injury because he was upset at having been reprimanded earlier that day. However, claimant's testimony regarding a work-related injury has been corroborated by the testimony of Brooks. Furthermore, in this regard, it is important to note that the emergency room report of the next day notes muscle spasms in the claimant's low back. The presence of muscle spasms would not support a finding that claimant fabricated a back injury in order to avoid work or because he was upset at having been reprimanded.

Finally, I do note that Sam Muffoletto, Junior, the center manager for the respondent's Rogers' facility in October 2007, attempted to refer claimant for medical treatment on October 8, 2007. Muffoletto did so after being informed of a potential work-related injury. Claimant testified that he was unable to follow through with the offered medical treatment due to an inability to travel for a great distance because of his back pain. If claimant had been more cooperative with Muffoletto, it is possible that this claim might have been accepted as compensable without the necessity of a hearing. On the other hand, respondent might not have accepted the claim as compensable.

Having found that claimant suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with that compensable injury.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no

indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$649.25.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE