

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F601523

BRIAN COOK, Employee	CLAIMANT
CASTLE RENTALS, Employer	RESPONDENT
AIG CLAIM SERVICE, Carrier	RESPONDENT

OPINION FILED FEBRUARY 1, 2008

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

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 10, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 27, 2007, and a pre-hearing order was filed on that same date. 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 January 20, 2006.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$390.00 which would entitle him to compensation at the rates of \$260.00 for total disability benefits and \$195.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's neck on January 20, 2006.
2. Temporary total disability benefits from February 1, 2006 through March of 2007.

3. Medical.

There were several clarifications to the issues to be litigated at the time of the hearing. First, claimant contends that his date of injury is January 11, 2006, not January 20, 2006. In addition, claimant also contends that in addition to an injury to his neck on January 11, 2006, he also suffered an injury to his teeth on that date. Claimant also clarified the requested temporary total disability period to include February 1, 2006 through March 1, 2007. Finally, since claimant is now represented by an attorney, a controverted attorney fee is also requested.

The claimant contends that he suffered a compensable injury to his neck and teeth while employed by the respondent on January 11, 2006. Claimant continued to work through Friday, January 20, 2006, with increasing discomfort caused by lifting and moving furniture. Claimant sought medical treatment for the January 11 injury on January 21, 2006. Claimant contends that he is entitled to temporary total disability benefits beginning February 1, 2006, the date he was taken off work by Dr. Munson, and continuing through March 1, 2007 when he returned to work for another employer.

The respondents contend that claimant did not suffer a compensable injury.

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 September 27, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$390.00

which would entitle him to compensation at the rate of \$260.00 for total disability benefits and \$195.00 for permanent partial disability benefits is also hereby accepted as fact.

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

FACTUAL BACKGROUND

The claimant began working for the respondent in November 2005. The respondent operated a business which rented and sold furniture and appliances. Claimant's primary job with the respondent was to work on the sales floor, but he also had to occasionally help load furniture and appliances into trucks.

Claimant testified that on January 11, 2006 he was helping load a sofa into the back of a truck with Mark Shriver, a co-employee. Claimant testified that while they were attempting to load the sofa into the truck Shriver lost control of the sofa causing the sofa to strike claimant in the side of the face and also the forehead. Claimant testified that this resulted in the chipping of his tooth, bruising and swelling of his face, and pain in his neck. Claimant testified that he finished working that day and went to church that night. Over the course of approximately the next one and a half weeks the claimant continued to work for the respondent and his condition continued to worsen. Claimant testified that during this time period the store was being painted and it was necessary for the employees to move the furniture and appliances.

On Saturday, January 21, 2006, the claimant was not scheduled to work. The claimant testified that he woke up with a severe headache and that his arm felt as if it was asleep and not functioning properly. The claimant was the coach of his church's quiz bowl team and drove the team to a competition in Alma on January 21. Claimant testified that his pain progressively worsened that day to the point that he was not able to drive the church van home. After returning from the competition the claimant went to the

respondent's place of business for the purpose of reporting a work-related injury. While claimant was there, he testified that he helped some friends who had previously purchased furniture load that furniture.

Claimant sought medical treatment at the emergency room on the night of January 22, 2006. Claimant subsequently sought medical treatment on January 26, 2006 from Dr. Munson, a chiropractic physician. The medical records indicate that claimant received medical treatment from Dr. Munson for an extended period of time. The claimant continued working for respondent until February 1, 2006.

Claimant has filed this claim contending that he suffered a compensable injury to his neck and teeth as a result of a work-related injury occurring on January 11, 2006. He seeks payment of temporary total disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his neck and teeth when he was struck in the face and head by a sofa while working for respondent on January 11, 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 which arose out of and in the course of his employment with the respondent.

As previously noted, claimant testified that he suffered a compensable injury when he was struck in the face by a sofa he was helping load on January 11, 2006. Claimant testified that over the course of the next week his condition progressively worsened and he sought medical treatment from the emergency room on January 22. Testifying on behalf of claimant were several witnesses. The first of these witnesses was Duane Anthony who has known claimant from church for approximately seven years. Anthony testified that at some point before the quiz bowl competition on January 21 claimant informed him that he had injured his neck while carrying a couch at work. Anthony also confirmed claimant's testimony that he was unable to drive home from the quiz bowl competition on January 21. Finally, Anthony testified that claimant did not participate in any type of sport competition on January 21.

Also called on claimant's behalf was Pastor Timothy Waterman who has known claimant for approximately twelve years. Waterman previously pastored the church which claimant attended. Waterman testified that claimant informed him that he had injured himself at work and that his arms were numb. Waterman testified that because of claimant's pain claimant had difficulty playing the piano at their church.

Shirley Anthony was also called as a witness by claimant. Anthony testified that she has known claimant for three to four years as a member of the same church. Anthony testified that she recalled an incident on a Wednesday night when she noticed a big red

“splotch” on claimant’s head. When she asked claimant what had happened he informed her that he had gotten hurt while lifting a couch at work that day.

Finally, claimant called Tammy Moore as a witness. Moore is a friend of claimant’s who has known him since 2001. She and claimant have been members of a church singing group. Moore testified that claimant had informed her that he had injured his neck while trying to load a couch while working for the respondent. Moore testified that she purchased furniture from the claimant on January 20, 2006 and noticed at that time that claimant could hardly move his neck. The next day on January 21, 2006 the claimant arrived from the quiz bowl competition and helped another employee load the couch purchased by Moore. Moore testified that her husband had to help claimant and the other employee load the couch because it was almost dropped.

The testimony of all of the witnesses called on claimant’s behalf indicate that claimant informed them that he had suffered an injury to his neck as a result of an accident at work. Significantly, their testimony is dependent upon statements made to them by the claimant. None of these witnesses were present at the time of the alleged injury on January 11.

In contrast to the testimony of claimant’s witnesses is the testimony of witnesses called on behalf of respondent. First, claimant testified that when he was struck in the face with the sofa he was working with Mark Shriver. Shriver was called as a witness for the respondent and testified that he did not witness any accident involving the claimant. Shriver testified that he does not recall dropping a sofa on January 11 and it striking claimant in the face. Shriver also testified that he did not recall seeing a mark or bruise on claimant’s face. According to Shriver, the claimant informed him that he had injured himself while helping his pastor move “stuff”.

Bonnie Williamson was also called as a witness for the respondent. Williamson testified that on January 20, 2006 she observed the claimant and he was laughing, joking,

and “cutting up”. Williamson testified that claimant did not appear to be in any distress and that he never mentioned a work-related injury to her before January 21, 2006.

Also testifying at the hearing was James Dray. Dray was previously employed by the respondent in January and February 2006 as an assistant manager/manager in training. Dray testified that he did not witness any work-related injury on either January 11 or January 20. Dray no longer works for the respondent.

Raylena King was also called as a witness. According to King the claimant’s wife occasionally babysat her four kids. King testified that claimant informed her that he had injured himself while playing with some kids at a “Bible function” and pulled a muscle. Finally, respondent called as a witness David Harlin, the respondent’s store manager. According to Harlin’s testimony, the claimant never reported a work-related injury to him prior to February 1, 2006 when he read a letter that claimant had dropped off in an inbox next to Harlin’s office.

In contrast to the testimony of the witnesses called by claimant, the witnesses called by the respondent testified that claimant did not report a work-related injury. Significantly, even the claimant admitted that he did not report a work-related injury to Harlin, his store manager. In fact, claimant admittedly did not report a work-related injury to Harlin until at least January 21, 2006. Furthermore, I believe it is also significant that the employee with whom claimant was working at the time of his alleged incident, Mark Shriver, testified that he did not witness any accident wherein claimant was struck in the face with a sofa. Given claimant’s testimony that he chipped a tooth and that his face was bruised and swollen at the time of this incident, it apparently would have been a significant event.

I believe it is also important to note that claimant’s testimony regarding Harlin’s presence on the day of the alleged injury is contradictory. At the hearing claimant testified that Harlin was not present at the time of his injury on January 11, 2006. However, at claimant’s deposition he testified that Harlin was present and laughed at him.

A. They were laughing. The leather had burned the side of my face where it had hit me and slid down. My face instantly began to swell. I had a bruise and they were calling me Quasimoto.

Q. Who is that?

A. Mark Schriver. The store manager laughed and - - -

Q. Who was the store manager?

A. Dave Harlin. He asked me if I was okay, and I was like, 'I think so.'

Thus, according to claimant's testimony at his deposition Harlin was present at the time of claimant's injury, witnessed the injury, and laughed. However, at the hearing claimant testified that Harlin was not present at the time of the accident and that he did not report the incident to Harlin until January 21, 2006.

I believe it is also important to note the medical evidence introduced at the hearing. Claimant testified that he sought medical treatment from the emergency room on January 21, 2006. However, the emergency room records are dated January 22, 2006. Furthermore, my review of the records indicates that there is no mention of a work-related injury or even a specific diagnosis or complaint in those reports.

When claimant sought medical treatment from Dr. Munson, the chiropractic physician, on January 26, 2006, claimant did not attribute his problems to an injury which occurred on January 11, 2006, but instead attributed his condition to moving furniture on January 20, 2006. Claimant completed a patient information sheet on that date indicating that he got hurt moving and lifting furniture on a Friday. Claimant did not complete the patient information sheet to indicate that he had been injured on Wednesday, January 11, when he was struck in the face by a couch. Likewise, Dr. Munson's medical report contains the following history:

The symptoms became apparent Friday, January 20,

2006 after lifting and moving furniture at his work and became severe in the early morning hours of Saturday, January 21, 2006.

While the medical records from Dr. Munson do indicate that claimant attributed his problems to his work with respondent, they do not reflect a history of injury consistent with claimant's testimony that the injury occurred on January 11, 2006 when he was struck in the face by a sofa. Instead, the medical records reflect a different history of lifting and moving furniture on January 20, 2006. The first medical report containing a history of injury on January 11, 2006 is the emergency room report dated March 31, 2006.

Finally, with respect to this issue, I also note that claimant filed with the Commission Form AR-C dated February 7, 2006 at which time he indicated that his date of injury was January 20, 2006. Claimant attributed his injury to moving furniture on that date and did not mention January 11 or an incident of a sofa striking him in the face. Finally, claimant also completed a *pro se* pre-hearing questionnaire indicating that his injury had occurred on approximately January 20, 2006.

In summary, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury to his neck and teeth. Claimant contends that this injury occurred when he was struck in the face and head by a sofa on January 11, 2006. While claimant offered the testimony of witnesses who testified that claimant reported a work-related injury to them, those witnesses were friends of claimant and members of his church to whom claimant reported the injury. Their testimony is totally dependent upon statements made to them by the claimant. On the other hand, respondent offered the testimony of Shriver, the employee who allegedly dropped the couch which struck claimant in the face and caused his injury. Shriver specifically testified that he did not recall this incident occurring. Other witnesses called on respondent's behalf who saw claimant on a daily basis subsequent to January 11 also indicated that claimant did not report a work-related injury to them. Significantly, claimant testified that he did not report a work-related

injury to his store manager, David Harlin, until at least January 21, 2006. Finally, the initial medical records from the emergency room do not mention a work-related injury and subsequent medical records from Dr. Munson relate claimant's complaints not to an incident where he was struck in the face by a couch on January 11, but rather to lifting furniture on January 20, 2006. Based upon all of this evidence, I find that claimant has simply failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his neck and teeth while employed by the respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his neck and teeth 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 \$976.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE