

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705707

JAMES M. CROW, EMPLOYEE	CLAIMANT
RICHARD COX, d/b/a COX CONSTRUCTION, EMPLOYER	RESPONDENT #1
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED JANUARY 25, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 16, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

_____A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefits. On September 25, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issue to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. Respondent #2 was joined as a party to the claim subsequent to the pre-hearing conference, and, as a consequence, was not a

party to the stipulations entered between the claimant and respondents #1, nor did respondent # 2 participate in the hearing on the issue of additional benefits pursuant to Ark. Code Ann. §11-9-505 (a).

The testimony of James M. Crow, the claimant; Tracy Crow, and Leslie Cox, coupled with the October 26, 2007, deposition of Richard Cox, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

James M. Crow, the claimant, with a date of birth of July 19, 1968, has a GED. Claimant commenced his employment with respondents #1 on March 20, 2007, as a framer. Claimant explained that his job duties as a framer in the employment of respondent #1 entailed building houses, putting all the wood together, putting the roofing and siding on the building.

The testimony of the claimant reflect that during his employment with respondent his starting time was generally 7:00 a.m and he would usually leave at 3:00 or 4:00 p.m. Claimant testified that he earned \$10.00, per hour and usually worked a 30-37 hour work-week. Claimant denies having any complaints, limitation, or restriction relative to either his hands or legs prior to the injury of May 21, 2007, which serves as the basis for this claim.

In describing the May 21,2007, accident which resulted in his injury, the testimony of the claimant reflects:

I was up on a ladder. It was early in the morning. And I was taking a piece of plywood up the ladder, and I had a nail gun in my other hand. And ladder come out from under me. I was about 15 foot up.

When I got my senses back, my left side was hurting, and I was having problems breathing, and my pinky knuckle was shoved through

the palm of my hand. The bone was sticking out. (T. 17).

The claimant's injuries were confined to the left side of his body, which included he left hand and ribs on his left side. Claimant added, with respect to his rib injuries:

I think they were fractured. I was down for a whole month. I couldn't hardly, I had problems with it. I got a hold of workman's comp. They wouldn't do nothing about it. They wouldn't send me to a doctor for it. (T. 17).

The testimony of the claimant reflects that he received medical treatment on the date of the accident, May 21, 2007, at the hospital in Paragould. Claimant acknowledged that in addition to receiving medical treatment relative to his left hand, while at the hospital during the May 21, 2007, visit he underwent a CT scan of his abdomen and pelvis as well as a brain scan. The claimant was discharged home following the initial treatment at the Paragould hospital on May 21, 2007.

The claimant testified that following the hospital visit of May 21, 2007, he next received medical treatment for his complaints growing out of the May 21, 2007, accident under the care of Dr. Spence Guinn, a Jonesboro orthopedic physician, pursuant to the directions of workers' compensation insurance carrier. Claimant testified that his treatment under the care of Dr. Guinn included a x-ray of his hand and a referral to physical therapy. Claimant was released to return to work by Dr. Guinn on August 1, 2007. Claimant acknowledged that he received temporary total disability benefits during the period he was off work recovering from his injury from May 22, 2007 through August 1, 2007.

Claimant asserts that when he was released to return to work by Dr. Guinn on August 1, 2007, he did not have any restriction relative to either his hand or his ribs. While the claimant's

testimony reflects that he was provided a written release to return to work by Dr. Guinn he did not present it to respondent-employer. Claimant explained:

No, sir. When I called my boss that's when he fired me. I called him. I was going to take it to him the next day whenever I was going to go to work. (T. 20).

Claimant testified that he called respondent-employer when he arrived home from the doctor visit to relay that he had been released to return to work. Regarding the contents of the afore conversation, claimant's testimony reflects:

I called him. I told him that I was released to go back to work today. And he told me that I was - - that he told me that I had already been replaced. I no longer had a job with them, then he started cussing me out because workman's comp was charging him another \$7,000.00, \$8,000.00. And he started cussing me. Then I asked him about my tools, my hand tools. And he told me I didn't have no hand tools. I must have took them with me to the hospital. And I reminded him he was the one that took me to the hospital. All I had was my tape measure. All my hand tools I didn't know where they were. (T. 21).

Claimant testified that his wife was present at the time of the telephone conversation with respondent-employer as well as his witness Gene Kern and his wife. Claimant was using a regular telephone from his residence at the time of his telephone conversation with Mr. Richard Cox, respondent-employer.

Claimant testified that he ultimately had his hand tools returned to him. Claimant explained:

Yes, sir. I called the police right after I got through talking with him. After he told me I didn't have a job no more, I called the police and had the Sheriff's Department come out and follow me over there to his house to try to get my tools. But I did not get no tools that night. It was about a week later I walked outside in the morning and they were all laying on the ground, all but my tape measure. (T. 22).

The claimant, who is right hand dominate, testified that at the time of his August 1,2007, release he was not under any medical restrictions or physical limitation in connection with his May 21,2007, compensable injuries. Claimant maintains that at the time of the August 1, 2007, release he was ready to return to work however the respondent unreasonably refused to allow him to return to work. As of the date of the hearing claimant testified that while he had been attempting to find work he had been unsuccessful in doing so.

Claimant asserts that at the time he was hired by respondent-employer in March 2007 there was no indication regarding the duration of the job. The testimony of the claimant reflects that at the time of his employment with respondent he was not working on a specific job. Claimant added that he worked four (4) different job sites during his employment with respondents. Claimant testified that prior to the May 21, 2007, accident he and Mr. Cox got along fine.

Claimant disputes the accuracy of the earning records as presented by respondents.

Claimant explained:

During the few weeks I'd borrow \$20.00, \$30.00 during the week, and when they write the check out at the end of the week, they just hold them hours out of the check and just write the check out for the amount that I borrowed. So if I worked 33 hours, I borrowed \$30.00, I only got paid for 30 hours. They don't write the hours down on your check. They just write the amount. (T. 23-24).

Claimant produced a check stub from one of his temporary total disability check reflecting the payment of \$534.00, which he received every two (2) weeks for a period. The amount of the claimant's temporary total disability payment was reduced when he was informed by respondent-carrier that there had been an overpayment.

During cross-examination, claimant testified that at the time of his May 21, 2007, injury he was working on a fellowship hall of a church in Marmaduke. The testimony of the claimant reflects that job was 3/4 of the way to being completed. At the time of the claimant's accident the frame was up and the roof was completed on the structure.

Claimant acknowledged that his injury included dislocating his pinky. Claimant also had x-rays ribs done at the hospital. The x-rays did not disclose an fractures.

Claimant is confident that he called respondent Rick Cox on August 1, 2007, at 8:30 or 9:00 p.m. Regarding the hour of the telephone call, claimant explained:

No, ma'am. It's a construction company. They take phone calls all hours. (T. 27).

Claimant's testimony reflects that while he was told by Mr. Cox that his employment position had been filled, he added regarding the identity of his replacement:

I have no idea. He just told me over the phone that I had already been replaced. (T. 27).

Claimant acknowledged that during his deposition he testified that another guy had started working with Cox Construction on the date of his injury. The new employee was working with the claimant and not his replacement.

Regarding his observation of the work activity of respondent-employer since August 1, 2008, claimant's testimony reflects:

All I've seen is the truck with the tool trailer going around. I ain't seen nobody working. I didn't go finding the job sites. (T. 28).

While the claimant remains unemployed he continues to receive unemployment compensation benefits of \$218.00, per week. Claimant concedes that during his deposition that he relayed that

he has been applying for jobs in factories because construction work is not very stable.

Mrs. Tracy Crow, the claimant's wife of nine (9) years, testified regarding her knowledge of the claimant's telephone conversation with Mr. Rick Cox on August 1, 2007. Mrs. Crow's testimony reflects that on the evening of August 1, 2007, they had some friends at their residence for dinner. Mrs. Crow testified that the claimant made a telephone call, using a cell phone, to Mr. Cox. Mrs. Crow's testimony reflects that she heard the conversation between the claimant and Mr. Cox, noting that the claimant was sitting next to her and the volume of the cell phone was loud. Mrs. Crow testified regarding the telephone conversation:

My husband called Rick and told Rick that he had just got released that day.

James told Rick that he had gotten released from the doctor to go back to work that day, and Rick told James that his job had already been replaced, that he no longer had a job.

He wanted to know why, James wanted to know why he was getting fired, and Rick told James that because of his little episode that happened at work he was having to pay the workman's comp so much money, he might lose his business. So James asked if he could have his tools back. Rick told him that he had gotten his tools back the day that James got hurt, at the hospital. And James told him he didn't. So Rick ended up getting mad and cussing and everything. And James just asked him again if he could please have his tools back and that was, then they hung up. (T. 33-34).

During cross-examination Mrs. Crow acknowledged that since August 1, 2007, she has not seen respondent-employer, Cox Construction, working anywhere.

Mrs. Leslie Ann Cox testified that she and her husband are partners in Cox Construction. Mrs. Cox also works in sales for Flower Shop Network selling marketing. Regarding the ownership of respondent-employer, Mrs. Cox's testimony reflects:

Rick has had the business for about 10 years, 12 years, somewhere in there. And I've been with him for two of that.

I do payroll, I do all the business records, I work with the crew, I run a crew when we have extra work going and we need to have a crew supervised. I do the personnel. I do most of the interaction with the personnel, hiring, firing, all that kind of stuff. (T. 38-39).

Mrs. Cox testified that while Mr. Cox will occasionally hire an employee, he usually does not do the firing because he does not have the patience.

Mrs. Cox testified regarding the contract that respondent-employer had with the Marmaduke Church of Christ to begin the work and complete the fellowship hall, the site of the claimant's May 21, 2007, accident. The testimony of Mrs. Cox reflects that the contract was completed on July 19, 2007. Regarding the work activity of respondent-employer since the completion of the church contract, Mrs. Cox testified:

We've not had any other contracts. We've done small little jobs just to keep our, you know, we have regular customers that we do little things for like a deck here or there. That's been stuff that my husband has handled. We haven't had a crew working. (T. 40).

Mrs. Cox's testimony reflects that the work that has been done by respondent-employer since July 19, 2007, was performed by either Mr. Cox or Phil Bob, an employee who has been with respondent for years and years. Mrs. Cox noted that when there's extra work Phil Bob is the person that respondent always call.

Mrs. Cox testified that at the time of the contract working on the fellowship of the church respondent-employer's crew consisted of four (4) individuals, Phil Davis, the claimant, Sam Street and Bo. Mrs. Cox confirmed that at about the time of the claimant's May 21, 2007, injury respondent hired another individual:

Yes. Well, Sam's very good at siding which is the point where we were at when James hurt himself. And we hired him to help complete that part of the, and he's also good with finish work, where we didn't have another carpenter that is. James really isn't qualified to do a lot. (T. 41).

Mrs. Cox denies that respondent-employer hired anyone else following the claimant's May 21, 2007, injury. Mrs. Cox added:

No, ma'am. As a matter of fact I let people go after that because we just, we were at the end of that contract and didn't have work. So I actually, Bo was let go after that date. And then it was just Phil Bob and Sam and my husband working. (T. 41-42).

Mrs. Cox explained the nature of the construction business in the area:

Yes. I mean we typically are very busy in the spring and summer obviously, and then through the fall it slows down, not like - - this year's been extremely bad. And we have not had any work at all, period. And my husband is a guide for a duck service. And so in the winter time we don't take on jobs that I can't oversee myself. So we don't take on any major projects usually during the winter anyway. (T. 42).

Mrs. Cox noted that her husband performing work as a guide for a duck service:

Yes. he starts his duck season. So we have hunters coming in from all over the country, and he starts hunting in the morning.

No. Not unless it's something that I just absolutely need him to go look at it because we can't get it. But this year there's nothing going on at all, period. I've even took another job outside of the business because we have no income without it. (T. 42-43).

Mrs. Cox denies that her husband, Rick Cox, fired the claimant. The testimony of Mrs.

Cox reflects:

Not to my knowledge because I didn't hear the whole conversation on the phone. And that's not something he would do. That's something he would have me do. He doesn't like people to not like him. So I do the firing. I don't know that he was fired. No. (T. 43).

Mrs. Cox's testimony reflects, regarding the August 1, 2007, night that the claimant called her husband:

I remember that Rick was at the neighbor's house. They were having a get together. They were all partying, drinking beer, it was late in the evening. Rick had gone over, he was still on the phone, and he's like, he was very upset and very agitated over a ladder. And he said that James had told him that he stole his tools, and it had him very agitated so he was taking the ladder, come over to get a ladder to take back. And that's the extent that I know about.

Yes. But I couldn't tell you other than that yelling at each other what, you know he's like, I'll bring you that ladder. And that was about the end of it. Then he's like, I'm taking the ladder back. (T. 43-44).

Mrs. Cox testified that she did not hear Mr. Cox fire the claimant at any point during the portion of the telephone conversation that she heard. Mrs. Cox further testified:

There was no work. I mean I don't know, there was nothing to do. We didn't have anybody working. There was no crews working. There was no work. Everybody was fired. My husband, everybody. We didn't have any work. It wasn't we were fired, we were just out of work. (T. 44).

Mrs. Cox disputes the claimant's assertion regarding the accuracy of the payroll records with respect to his wages while employed by respondents. Mrs. Cox explained

The way I do the payroll because we don't take, I don't hold out taxes. Everybody's 1099'd at the end of the year, you know, it's just piece work is basically what the guys do. So they get paid on that, so they give me their hours at the end of the week, and then I write them a check. If they've borrowed any money through the week, I always note that on the bottom of the check. And so when I total up the hours, I can go back to my paperwork and easily see the amount of hours so this is actually correct.

Just to clarify, if there were hours given to me and say they were 23 hours, and they had borrowed \$20.00, I write down on the bottom of the check in the memo, I always write minus 20 so I can go back and figure out the exact total of what the hours were. Because they still get

1099'd on the actual dollar amount that were paid. That \$20.00 that he was paid is actually wages that he would have earned. So he is responsible for that on the 1099. So I have to have an accurate way of tracking that. And that's how I do that. (T. 44-46).

Mrs. Cox denies that the premium of the workers' compensation insurance coverage increased because of the claimant's injury, explaining:

No. As a matter of fact because we were completely out of work and didn't have any people on, it went down because it's based on amount of payroll you pay. You know that's how they figure how much you owe. And I actually got, you know, when we're out of work, they actually change your wage amount. So it actually went down. (T. 46).

Likewise, Mrs. Cox testified that she never experienced any fear of losing the business because of workers' compensation insurance due to the claimant's accident. (T. 46-47).

Mrs. Cox confirmed that she only heard the tail end of the telephone conversation between her husband and the caller. Mrs. Cox added that she could not swear that the person on the other end of the telephone was the claimant. Regarding the date of the telephone conversation, Mrs. Cox offered:

I believe I do, but it's just from looking at our cell phone records on incoming calls and outgoing calls. So to the best of my recollection it would have been around the 5th of August, which would have been a Sunday, I think.

I was late at night. I can tell you that. It was after hours. I can tell you that. I can tell you we do not conduct business, my husband rarely answers his telephone after 6:00 at night. And that's a proven fact with anybody. (T. 48).

The testimony of Mr. Richard Troy Cox, the owner of respondent-employer, was obtained by deposition on October 26, 2007. (RX. #3). Mr. Cox testified that he is an independent contractor who has owned respondent-employer for approximately thirteen (13) years. Mr.

Cox's recollection was that he hired the claimant "somewhere around the first part of April".

Mr. Cox acknowledged that the claimant sustained an injury on May 21, 2007, while working at Marmaduke church location, a job which had commenced in mid-March 2007. Mr. Cox's testimony reflects that the work at the church was pursuant to construction contract which ended with the completion of the job on July 19, 2007.

Regarding the circumstances surrounding the employment of the claimant by respondent-employer, the testimony of Mr. Cox reflects:

When he came and asked for a job I asked him about experience in framing, and I told him we could use an extra hand getting the framing on the building because it was a good sized building, and there was just three of us, or so, at that time working on it.

Well, I just told him that we would see how it goes and depending on his experience in the other, you know, finishing, or siding, or whatever, you know, whether we needed him or not from then. (RX. #3, p. 6).

Mr. Cox noted that he was actually working at the job site himself and that the framing the majority of the job. The testimony of Mr. Cox reflects that all of the employees on the job site did framing. Mr. Cox testified that while he had bid on other construction contracts he has not had any others since the church contract was completed in mid-July 2007.

Mr. Cox testified that he was on the job site at the time of the claimant's May 21, 2007, accident. Further, the testimony of Mr. Cox reflects that took the claimant to the hospital following the accident.

Mr. Cox denies that he told the claimant that he was fired. Regarding the circumstances surrounding the termination of the employment relationship between the claimant and respondent-employer, Mr. Cox testified:

He called me August 5, somewhere in there, said he was released to go to work, and I told him we didn't have any work and I couldn't use him. Then that's when he told me that I couldn't fire him.

I said that we all got fired because we don't have any work. Not of us are working right now. (RX. #3, p. 7).

During cross-examination Mr. Cox conceded that the claimant work for respondent prior to working on the church job site. Specifically, Mr. Cox maintains that the claimant worked on "my personal house", and possibly at another residential location. (RX. #3, p. 8-9). Regarding the date of the telephone call from the claimant advising him that he had been released to return to work, Mr. Cox acknowledged that he was not certain of the same allowing that it could have August 1, 2007. Mr. Cox denies that he informed the claimant during the telephone call that he had already been replaced and that he did not have a job anymore.

Mr. Cox maintains that the claimant had not been replaced, noting that respondent-employer had no employees due to a lack of work. Regarding any work performed by respondent-employer between mid-July 2007, when the church project was completed, and August 2007, Mr. Cox testified:

Me personally, I have done little jobs. I've done decks and closed in a carport, but as far as having, you know, needing a crew to work, we have not had any contracts of any kind, you know, where I would need any help. It's strictly independent work. (RX. #3, p. 10).

The testimony of Mr. Cox is corroborative of that of his wife with to the hiring and firing of employees of respondent-employer. Regarding the accusation regarding the claimant's tools, Mr. Cox testified:

As far as I know. I didn't know what all tools he had and Phil told me after we got off the phone with him, I told him that

James said I stole his tools, and I asked him what he was talking about, and Phil Bob said “They’re all locked in the trailer.” He said, “I’ll gather them up and take them to him,” and then he told me what he had. (RX. #4, p. 44).

The medical in the record reflects that the claimant was seen on May 21, 2007, at Arkansas Methodist Medical Center for treatment relative to injuries sustained in a work-related accident. (RX. #1, p. 1-3). Finally, a August 1, 2007, office note of Dr. Spencer H. Guinn, a Jonesboro orthopedic physician, reflects that the claimant, on physical examination, had full active range of motion and 5 out of 5 strength, had no pain and his wounds were all healed. (RX. #1, p. 5-6). Dr. Guinn released the claimant to return to work effective August 1, 2007. (RX. #1, p. 4).

A construction contract dated March 16, 2007, was entered by respondent-employer and the Marmaduke Church of Christ for construction of a fellowship hall. The contract reflects the start-up of the work to be March 16, 2007 and completion date of July 19, 2007. It is undisputed that the claimant commenced his employment with respondents on March 20, 2007, and last worked for same on May 21, 2007, the date of his compensable accident. (RX. #2, p.1). Claimant sustained his injury while working on the site of the Marmaduke Church of Christ fellowship hall, which was 3/4 completed at the time.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnessed, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.

2. On May 21, 2007, the relationship of employee-employer-carrier existed among the parties when the claimant sustained a compensable injury, from which he was released to return to work on August 1, 2007.

3. On May 21, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$173.00/\$154.00, for temporary total/permanent partial disability, based on an average weekly wage of \$260.00.

4. Appropriate temporary total disability and medical benefits have been paid by respondents to and on behalf of the claimant as a result of the May 21, 2007, compensable injury.

5. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he is entitled to any workers' compensation benefits pursuant to Ark. Code Ann. §11-9-505 (a).

CONCLUSIONS

The claimant sustained a compensable injury to his left hand and side on May 21, 2007, which required medical treatment and resulted in his total incapacitation until his release to return to work on August 1, 2007. Appropriate medical and temporary total disability benefits were paid by respondents. Claimant maintains that respondent-employer refused to return him to work following his August 1, 2007, release, and, as such seeks additional benefits pursuant to Ark. Code Ann. §11-9-505 (a). Respondents deny that they unreasonably refused to return the claimant to work or that the claimant's employment was terminated while he was within his healing period from the May 21, 2007, compensable injury.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having

been sustained subsequent to the effective date of the afore provision.

The compensability of the claimant's May 21, 2007, left hand injury is not disputed. Claimant received appropriate medical and temporary total disability benefits in connection with the compensable injury. Claimant maintains that when he informed respondent-employer that he had been released to return to work by his treating physician and that he was ready to return to work he was informed that he had been replaced. Further, claimant asserts that respondent-employer attributed a \$7,000.00 to \$8,000.00, increase in his workers' compensation premium to the claimant's accident for which he held the claimant responsible, and the afore threatened the continuation of his business.

Ark. Code Ann. §11-9-505 (a) provides, in pertinent part:

(1) Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year.

(2) In determining the availability of employment, the continuance in business of the employer shall be considered, and any written rules promulgated by the employer with respect to seniority or the provisions of any collective bargaining agreement with respect to seniority shall control.

Prior to the application of Ark. Code Ann. §11-9-505 (a), several conditions must be met: the employee must prove by a preponderance of the evidence that he sustained a compensable injury; that suitable employment which is within his physical and mental limitations is available with the employer; that the employer has refused to return his to work; and, that the employer's refusal to

return him to work is without reasonable cause. *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S.W.2d 237 (1996).

In the instant claim, the evidence preponderates that at the time of the claimant's August 1, 2007, release to return to work by his treating physician respondent-employer did not have employment, suitable or otherwise, available. The job on which the claimant sustained his injury was pursuant to a construct contract which called for completion by July 19, 2007. The job was 3/4 completed at the time of the May 21, 2007, accident. Since completion of the construction job at the Marmaduke Church of Christ respondent has been unable to secure any further construction contracts. As a consequence of the afore respondent-employer has been forced to lay-off its crew of employees. The afore occurred prior to the claimant's August 1, 2007, release to return to work.

The credible evidence in the record reflects that respondent-employer did not fill the claimant's employment position following the claimant's May 21, 2007, compensable accident. The evidence preponderates that respondent-employer is a small construction business whose continued viability is dictated by building industry, which has suffered a downturn. Because respondent-employer effective laid-off its employees and reduced or eliminated its payroll it received a return on the premiums paid, contrary to the assertion of the claimant.

The credible evidence in this record reflects that respondent-employer did not have any employment available when the claimant was released by his treating physician to return to work from his May 21, 2007, compensable injury on August 1, 2007. Accordingly, the refusal of respondent to return the claimant to work when informed of the August 1, 2007, medical release was with reasonable - - there was no work available. The claimant has failed to sustain his

burden of proof by a preponderance of the credible evidence that respondent refused to return to him with out reasonable cause. This claim for additional workers' compensation benefits pursuant to Ark. Code Ann. §11-9-505 (a) is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE