

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705697

DAMON BRIAN FLANAGAN, EMPLOYEE	CLAIMANT
AUTOMATED CONVEYOR SYSTEMS, INC., EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 22, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on December 21, 2007, at Marion, Crittenden County, Arkansas.

Claimant represented by Mr. Marc I. Baretz, Attorney-at-Law, West Memphis, Arkansas.

Respondents represented by Mr. Robert H. Montgomery, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 21, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on October 31, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the limited stipulations, the issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to an additional stipulation concerning the claimant's average weekly wage. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including May 24, 2007; and that the respondents had

controverted the claim in its entirety. At the hearing, the parties agreed that the claimant's average weekly wage was \$500.00 which would entitle him to compensation rates of \$333.00 per week for temporary total disability and \$250.00 per week for permanent partial disability in the event the claim was found compensable.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable back injury arising out of and during the course of his employment with Automated Conveyor Systems, Inc., which as the result of a specific event identifiable in time and place of occurrence on May 24, 2007; that he was entitled to temporary total disability for the period beginning May 25, 2007, and continuing through the present, maintaining that his healing period had not ended; that respondents should be held responsible for all outstanding medical and related expenses, together with continued reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant did not sustain a compensable injury within the meaning of the Arkansas workers' compensation laws; that the claimant had prior back injuries; and that the medical evidence did not support any injury related to the claimant's employment with Automated Conveyor Systems.

In addition to the claimant, his wife, Linda, was called as a corroborating witness. Blake Hunter Jackson was called as a witness by the respondents. The record is composed solely of the transcript of the December 21, 2007, hearing containing a medical exhibit consisting of twenty-nine (29) pages introduced as "Claimant's Exhibit A."

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that he sustained a compensable back injury arising out of and during the course of his employment with Automated Conveyor Systems, Inc., as the result of a specific event identifiable in time and place of occurrence on May 24, 2007, entitling him to workers' compensation benefits.
4. Respondents are responsible for all outstanding medical and related expenses as the result of claimant's compensable injury, and respondents

remain responsible for continued reasonably necessary medical treatment, including, but no limited to additional diagnostic studies, as well as further treatment.

5. The claimant has proven that he is entitled to temporary total disability benefits for the period beginning May 25, 2007, and continuing through the date of the within hearing and until such time that his healing period is determined to have ended. The claimant's healing period had not ended as of the date of the hearing.
6. All additional issues are, by necessity, specifically reserved pending further development of the medical evidence.

#### DISCUSSION

The facts in this claim are basically undisputed. The claimant, Damon Brian Flanagan, is forty-five (45) years old. He completed high school and has attended some college. The claimant began working for Automated Conveyor Systems on or about October 10, 2003. The claimant worked continuously for the employer herein through on or about May 25, 2007. He has not been gainfully employed since that date. The claimant worked as a painter. His job duties required him to paint various parts sent by a conveyor belt. His job required lifting and moving parts, as well as picking up and mixing paints. It is undisputed that the claimant sustained a prior back injury in 2001 which required back surgery. The record reflects that the claimant made a full recovery from the 2001 surgery. The claimant

stated that he was able to perform his job duties from October, 2003, when he went to work for the employer herein until May 24, 2007, without any difficulties. The claimant's description of the injury is set out below:

A On that day we was painting large frames, probably 10, 12 feet long. They are pretty big in size. Early in the morning we were doing those. We had to flip and spray one side with wet paint, a siphon feed gun, and flip them over, load, dry and flip them over. And then later on that afternoon we did powder coating, which is a new system we just started a year ago. And my back was hurting a little bit flipping the frames, but, you know, I was – for the time being, I was okay. I thought I would be all right, and then about 1:00 something in the afternoon, I was loading some powder, a 55-pound box of powder into our reclaimers in the green powder booth. We have a major one color that we always stay on one color. So we reclaimed the powder. So I had to fill it back up, and my back just kind of gave away, and I just kept kind of just trying to go on and –

Q Let me stop you for a second. You said your back just kind of gave away. Give us the sensation or the symptoms you felt at that time.

A I felt like – almost like it locked out. I don't know how to fully describe it. It just – all of a sudden it just felt like it separated or something. I couldn't just really understand what it was, you know, just like, you know, like I had – years ago it felt like when I ruptured my disk before. I felt the same, almost the same way.

Q Okay. Now, were you – you had must been lifting a 55-pound some sort of drum?

A It was a powder – it was a box of powder. It comes in a square cardboard box and two plastic bags, and you have to pull the bags back, lift over, and – you have to literally pick them up, bend over, and dump them into the reclaimer.

Q Okay. So were they at table height or were they at ground level when you lifted them?

A Well, actually below. The top of them are a foot level, the bottom of your foot level. So you literally have to bend over and try to bend them over and pour them in there.

Q Okay. And in the course of doing that you noticed this sensation, is that correct?

A Yes, sir.

Q All right. Did you continue to work that day?

A I continued on for – it was about another hour, and I just kept on until the end of the day.

Q Did you continue to feel any symptoms?

A Yeah, I was hurting. I was hurting, but, you know, I had to try to finish out my day.

Q Okay.

A I wanted to make my hours.

Q Okay. And did you do that?

A Yes, I did.

Q Okay. Did you report that injury to anybody at that time?

A I told our lead of our department – (Tr.8-10)

There is no genuine dispute that the claimant reported his physical problems to Blake Hunter Jackson, his immediate supervisor. Although Mr. Jackson maintained that the claimant did not report a specific incident, it is undisputed that the claimant reported experiencing significant back pain near the end of his shift on May 24, 2007. Mr. Jackson confirmed that the claimant had never previously complained of any back problems during the period of his employment. It is further undisputed that the claimant's job duties required significant physical activities.

The record reflects that the claimant returned to work the following day and attempted to perform his regular job duties; however, left early because of

continued difficulties with his back. The claimant subsequently contacted one of the owners, Jeff Doty, the Tuesday after Labor Day, and requested medical treatment. The claimant was required to then come in, fill out an incident report, at which time the claimant was sent to the company doctor, Dr. Trent P. Pierce, a general practitioner. The claimant was first examined and treated by Dr. Pierce on May 29, 2007, for an admitted workers' compensation injury sustained the previous week. Dr. Pierce treated the claimant with medications, specifically, Flexeril for muscle spasms and Vicodin for pain. The claimant returned to Dr. Pierce on June 4, 2004, with little improvement, at which time Dr. Pierce continued the claimant on Vicodin and Flexeril, as well as a Medrol Dosepak. Dr. Pierce recommended physical therapy, as well as referral to an orthopedic surgeon.

The claimant was next referred to Dr. Francis Camillo, an orthopedic surgeon with the Campbell Clinic in Germantown, Tennessee. Dr. Camillo first examined the claimant on June 13, 2007. The history given to Dr. Camillo was consistent with the claimant's testimony. Dr. Camillo's diagnosis and recommendations are set out below:

**IMPRESSION: PATIENT WITH BACK PAIN, 45 YEARS OLD, AFTER LIFTING SOMETHING.** This has been going on for two weeks. He does report some difficulty with urination. I do not think he has a cauda equina, however he is having some difficulty with urination so we will send him for a MRI just to confirm this. However, given that his symptoms have been going on for two weeks, I do not think this is an emergency at this time being that studies have shown that people with cauda equina need emergent intervention and being that most people with cauda equina actually have a numbness in the groin region and dysesthesia which he does not have. We will get the MRI with gadolinium being that he has been operated on in the past. Currently, at this point I think the patient is suffering more

from back pain but we will see him back after the MRI. If there is no disc herniation then we will start him on an aggressive course of physical therapy. (dk) Transcribed date: 06/18/07. (Cl. Ex. A, p.23)

The claimant underwent a lumbar MRI. An MRI was performed on July 5, 2007, which revealed post-operative changes on the right at L4-5, as well as mild disc bulges at L4-5 and L5-S1. The claimant returned to Dr. Camillo following the MRI at which time it was recommended that the claimant go through a course of physical therapy. Because the employer did not have light-duty available, Dr. Camillo kept the claimant off work, to return in four (4) weeks. Dr. Camillo also recommended additional diagnostic studies; however, for some unexplained reason, the respondent insurance carrier terminated all medical treatment and controverted the claim in its entirety.

Again, the claimant has not returned to gainful employment since May 25, 2007. He stated that at the time of his injury, he had health insurance, but that his health insurance had also been terminated and that he had no means of obtaining any medical treatment after respondents controverted compensability of the claim.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of 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 medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit

of the doubt to either party, I find that the claimant has satisfied each and every element necessary to establish compensability of this claim. Accordingly, I hereby make the following:

AWARD

Respondent, St. Paul Travelers Insurance Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$333.00 per week beginning May 25, 2007, and continuing through the present and until such date as claimant's healing period is determined to have ended.

All accrued benefits shall be paid in lump sum and without discount.

Respondents are further directed and ordered to pay all outstanding medical and related treatment including, but not limited to all diagnostic testing, and respondents remain responsible for continued reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. Marc I. Baretz, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to, and limited by, Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge