

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706597/F706500

EVERETT HALL, JR.	CLAIMANT
FIRST BAPTIST CHURCH OF OZARK	No. 1 RESPONDENT
GUIDE ONE INS. CO. INSURANCE CARRIER	NO. 1 RESPONDENT
SONIC DRIVE-IN	NO. 2 RESPONDENT
FARMERS INS. EXCHANGE INSURANCE CARRIER	NO. 2 RESPONDENT
SECOND INJURY FUND	NO. 3 RESPONDENT

OPINION FILED MAY 29, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents NO. 1 represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

Respondents No. 2 represented by JASON LEE, Attorney, Little Rock, Arkansas.

Respondent No. 3 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 13, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on December 6, 2007, and a pre-hearing order was filed on December 6, 2007. A copy of the pre-hearing order has been marked Commission's Exhibit NO. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. Compensability of the claimant's event to his low back on October 25, 2006.

2. On October 25, 2006, the relationship of employee-employer-carrier existed with Respondents No. 1.

3. On April 21, 2007, the relationship of employee-employer-carrier existed with Respondents No. 2.

4. The claimant is entitled to a weekly compensation rate of \$246 for temporary total disability and \$185 for permanent partial disability for 2006.

5. Medical expenses were paid by Respondents No. 2 to a certain date.

6. Respondents No. 2 paid temporary total disability for a period of time.

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

1. Compensability of the claimant's event to his low back on October 25, 2006.

2. Compensability of the claimant's back injury on April 21, 2007.

3. Claimant's entitlement to related medical.

4. Temporary total disability from December 22, 2006, to January 10, 2007, from Respondents No. 1.

5. Temporary total disability from May 14, 2007, to a date to be determined apportioned between Respondents No. 1 and Respondents No. 2.

6. Attorney's fees.

## CONTENTIONS

In the claimant's pre-hearing questionnaire he contends,

"In regards to First Baptist Church Claim, F706597. On Wednesday, October 25, 2006, the Claimant was engaged in his normal duties as maintenance personnel for the Respondent, First Baptist Church. The Claimant was lifting old folding tables described as brown, heavy tables for the purpose of setting up for the church's Wednesday evening social event. As the Claimant had folded out the legs to the table, he was flipping the table to upright the table in its position that caused the table to slip forward and caused his low back to pop and he felt immediate pain in the lumbar spine. The Claimant continued his employment until Wednesday, November 1, 2006, when he presented to the Mercy Hospital Turner Memorial Emergency Room for treatment. The injury was reported to Neal Satterfield, the youth minister while in the emergency room on November 1, 2006. The Claimant has continued his medical treatment with his primary treating physician, Dr. Garreth Carrick. The Claimant was unable to work for a period of time from December 22, 2006 to January 10, 2007. The Claimant returned to work, although he continued his medical treatment and continued his work with limitations. The Claimant was unable to return to work after May 11, 2007. The Claimant was terminated from his employment on June 5, 2007. The Claimant contends that he is entitled to temporary total disability benefits from December 2006 to January 10, 2007 and May 14, 2007 to a date yet to be determined, entitled to medical treatment at the direction of his primary treating physician, Dr. Garreth Carrick, and is entitled to attorney's fees for all controverted benefits. In regards to Sonic Drive-In, Claim F706500. In April of 2007, the Claimant began a second employment with Sonic Drive Inn in Ozark, Arkansas. On April 21, 2007 during and within the scope of his employment, the Claimant fell in the freezer area landing on his back and striking the back of his head. Co-employee, Zang Her, observed the injury. The Claimant reported the injury to his supervisor, Dawn (last name unknown). The Claimant aggravated the preexisting injury that he sustained at the First Baptist Church.

The Claimant last worked at the Sonic Drive Inn on May 22, 2007. The Claimant claims temporary total disability benefits from May 22, 2007 to a date yet to be determined. The Claimant is entitled to medical treatment at the direction of his primary treating physician, Dr. Garreth Carrick, and attorney's fees."

In Respondents No. 1's pre-hearing questionnaire they contend,

"The claimant was not injured on the job. No injury was reported until January 2007. There are no new objective medical findings. The claimant injured his back in a car wreck in 1997 and has had problems with it ever since. Any objective finding is the result of the previous condition. The claimant sustained a new injury on April 21, 2007, while working for a new employer and the new claim is responsible for any current problem."

Respondents No. 2 offered no contentions in their pre-hearing questionnaire.

Respondent No. 3 offered no contentions in its pre-hearing questionnaire.

#### DISCUSSION

The central issue in this case is whether the claimant sustained a compensable injury to his lower lumbar as a result of specific incidents on October 25, 2006, and on April 21, 2007. The burden rests upon the claimant to prove all of the elements necessary to establish these alleged compensable injuries.

In order to meet this burden, the claimant must show by the greater weight of credible evidence that his lower lumbar difficulties meets the requirements contained in Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

1. The injury must arise out of and in occur in the course of employment.

2. The injury must be caused by a specific incident.
3. The injury must be identifiable by time and place of occurrence.
4. The injury must result in internal or external physical harm to the claimant's body.
5. The injury must require medical services or result in disability.

The claimant's testimony is the only direct evidence presented to prove any employment related accidents and a causal relationship between any such incidents and his lower lumbar difficulties. Credible testimony may be sufficient in and of itself to prove any fact it is legally competent to address and, while never considered uncontradicted, cannot be arbitrarily disregarded.

The claimant testified that on October 25, 2006, he was setting up a heavy wooden table for the church's Wednesday night meal when the table legs slipped causing him to be yanked forward. He stated that he felt a popping sensation in his lower lumbar area and pain shooting down his leg. After a five to ten minute break, he finished setting up tables and worked the remainder of the day.

The following Wednesday, November 1, 2006, at lunch the claimant, after consulting with his wife and a chiropractor, went to the Turner Memorial Hospital emergency room in Ozark where he complained of lower back pain that began a week prior. The claimant testified that, while at the emergency room, he reported his injury to the youth minister of Respondent No. 1, Neal Satterfield. This report of injury to came nearly a week after the alleged specific incident. Except for December 22, 2006, until January 10, 2007, the

claimant continued to work for Respondent No. 1 until May 25, 2007, During that time period the claimant contends that he did not work, "because I got hurt again at work and it was just from regular daily working activities."

The claimant testified that he began working for Respondent No. 2, Sonic Drive-In, on April 12, 2007, while still in the employment of Respondent No. 1. The claimant testified that he performed job duties at the church as well as at Sonic. The later job required him to cook, clean, answer the box, fountain drinks, and stocking.

The claimant testified that on April 21, 2007, an incident occurred while employed at Sonic. The claimant testified that while walking out of the freezer both feet went up in the air and he landed on his buttock. After the incident the claimant states that he continued working. He said that he told the manager on duty about it on the day of the fall. When asked by claimant's counsel, "Did you tell that you had sustained an injury?" The claimant responded, "I didn't think it was an injury right at that time. I just figured I just hit real hard and, you know, I try to look at the outcome as a good outcome and not bad outcomes." The claimant then testified that he continued to work until May 21, 2007, at the Sonic Drive-In.

The claimant's testimony was in part corroborated by that of his wife, Crystal Hall, who testified that on October 25, 2006, they briefly talked about an injury he sustained while working at the church that day. She also testified that on November 1, 2006, the

claimant reported to the emergency room at Turner Memorial Hospital with lower back pain.

Mrs. Hall also testified that when asked about the claimant's educational background, she indicated that he had graduated with a diploma from MacArthur High in Lawton, Oklahoma, even though that was not true. When asked why she testified as such she stated, "So that he could get a job and work and make money for the family." She further testified that prior to the October 25, 2006, incident the claimant did not have any limitations of picking up the children or doing any household chores, and that, "Before that date Everett's physical condition was, I would say, perfect. There was nothing my husband could not do. I could have brought it. We cut out Superman papers. He was Superman. He was Superman. There was nothing my husband could not do."

The claimant also gave testimony about his physical condition prior to the October 25, 2006, date. The exchange between the claimant and Respondent No. 1's attorney on cross examination was as follows.

Q. "Ok. But is it your testimony that you did not have any back problems when you went to work for First Baptist Church in Ozark?"

A. "No, I didn't have no problems whatsoever."

Q. "How can you say that Mr. Hall when you went to the emergency room almost monthly prior to going to work there?"

A. "I could do anything. I could do anything. I mean janitorial work, cleaning toilets, I mean that's not very hard to do."

The claimant also testified that he injured his lower back in an automobile accident in 1997 and having undergone an MRI in 2002 due to complaints of lower back pain.

There appears to be a contradiction in the testimony of the claimant during deposition shown by an exchange by the claimant and Respondent No. 1's attorney during cross examination as follows:

Q. "Did you continue having problems with your low back after 2002 and up to 2006?"

A. "During 2006 and 2005 I was having pain, yes, in my lower lumbar area and in my thoracic area."

Q. "When I asked you about that in your deposition, you said you didn't have any problems after 2002?"

A. "Well then I started thinking about it, and I recall me going to the emergency room."

Q. "You went to the emergency room a lot; didn't you?"

A. "Yes, Sir; I sure did."

Q. "So you had a low back problem that caused you to have to go to the emergency room almost monthly?"

A. "Pretty much, yeah."

A review of medical records during the year of 2006 and prior to the alleged date of specific incident on October 25, 2006, reflect the following.

Medical records reflect a visit to Mercy Hospital Turner Memorial on January 10, 2006, to the ER for lower back pain shooting down right leg wherein the records reflect the claimant fell off a ladder.

On February 2, 2006, the claimant went to Mercy Hospital Turner Memorial to the ER for back pain. Pain was reported from fall three and a half weeks ago. Claimant also reports chronic back pain.

On February 14, 2006, the claimant went to Saint Edwards Mercy Medical Center to the ER and reports indicate his back has hurt since a fall on February 14, 2006, where he slipped and fell.

On February 20, 2006, the claimant went to Mercy Hospital Turner Memorial to the ER with lower back pain reporting that it shoots down both extremities. It is reported that this occurred after lifting a bucket of sheet rock mud.

On March 29, 2006, the claimant went to Mercy Hospital Turner Memorial to the ER with lower back pain and constant pain down right leg and lower back, reporting that he fell off a step.

On April 8, 2006, the claimant went to Mercy Hospital Turner Memorial to the ER with back pain that began a week ago when he fell off a horse. Connecting this description of a horse in the medical report to that of the claimant's testimony before this Commission, the horse appears to be some type of stepping ladder or stool. On the April 8, 2006, visit to Mercy Hospital Turner Memorial the claimant also complained of chronic back pain since 1997.

On April 18, 2006, the claimant went to St. Edward's Mercy Medical Center to the emergency room reporting lower back pain

radiating down legs, reporting that he was on stilts walking, slipped, and fell.

On June 8, 2006, the claimant went to Mercy Hospital Turner Memorial to ER reporting that his back went out and again reports chronic back problems. This specific incident reported to be from lifting sheet rock.

After consideration of all the evidence presented, I find that the claimant's testimony is not sufficiently credible to establish the existence of a causal relationship between the employment related incidents or accidents on October 25, 2006, and April 21, 2007, and any difficulties which he has experienced with his lower lumbar area. The medical evidence shows that any lower lumbar difficulties which the claimant may be experiencing would be in the form of an aggravation of a preexisting condition. The medical evidence further shows that even relatively minor stress or trauma to the claimant's lower lumbar area could have caused the claimant to have pain in that area as shown by the varied and numerous complaints of pain to that area of the lower back. Thus, any number of activities or events, employment related or otherwise, could have caused or precipitated the claimant's lower lumbar difficulties. The claimant's testimony concerning the existence of a temporal relationship is out weighed by other more credible evidence presented. Clearly, his testimony would be inconsistent with his ability to continue to perform his regular employment activities at not one but two different jobs without apparent noted complaint to any employer of difficulties following the October 25, 2006, injury

and then again following the April 21, 2007, injury. The claimant's failure to report the October 25, 2006, injury for some seven days is concerning as well as his apparent belief at the time of the April 21, 2007, incident that he was not injured. I simply do not find the claimant nor his wife, Crystal Hall, to be credible witnesses in this matter as to prove the occurrence of the specific employment related incidents of October 25, 2006, and April 21, 2007.

I simply do not believe that the incidents related by the claimant on October 25, 2006, and April 21, 2007, occurred. However, considering the claimant's testimony as factual and relating it to the medical records before the Commission, it appears that only degenerative changes have caused this current lower lumbar difficulty experienced by the claimant. The radiology report of William B. Hocott, M.D. concerning the MRI done on December 8, 2006, gives an impression of only degenerative disc changes in L5-S1. A history and physical concerning a lumbar spine myelogram with post myelographic CT dated June 4, 2007, authored by Larry Armstrong, DO, FACOS reveals "degenerative changes throughout the lumbar spine." A radiology report done by Laura G. Moore-Farrell, M.D. concerning an MRI performed on September 11, 2007, show "there is no significant change from the prior MRI on December 8, 2006. These reports indicated only degenerative changes to the claimant's lower lumbar or at best signs of a condition that predates any claimed injury in this matter. However, I do note an undated letter signed by Garreth Carrick, M.D. which states that the pain the claimant is

experiencing is confirmed by MRIs and CT scans and that it is a result of an accident that the claimant sustained while lifting a table at work.

I do not give much weight to Dr. Carrick's undated letter in that it is not corroborated by the medical evidence before the Commission and the history on which he is relying on is that which was given to him by the claimant. I give far more weight to the reports concerning the MRIs and CT scans themselves. They indicate to me along with all other evidence in this matter that even taking the claimant's testimony as factual concerning the incidents on October 25, 2006, and April 21, 2007. Those incidents are not the major cause of his current lower lumbar difficulties.

I find that the claimant has failed to prove by the greater weight of the credible evidence that any employment related incidents of October 25, 2006, and April 21, 2007, were the major cause of his lower lumbar complaints. I further find that he has failed to prove he sustained a compensable injury arising out of or occurring in the course of his employment with Respondent No. 1 and/or Respondent No. 2, caused by a specific incident or incidents, identifiable by time and place of occurrence and/or occurrences. His failure to prove these requirements for a compensable injury is fatal to his claim.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On October 25, 2006, the relationship of employee-employer-carrier existed between the claimant and Respondents No. 1.

3. On April 21, 2007, the relationship of employee-employer-carrier existed between the claimant and Respondents No. 2.

4. On October 25, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$246 for total disability and \$185 for permanent partial disability as to Respondent No. 1.

5. On April 21, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$185 for total disability and \$150 for permanent partial disability as to Respondent No. 2.

6. The claimant has failed to prove by the greater weight of credible evidence that he sustained a compensable injury to his lower lumbar area on October 25, 2006, or on April 21, 2007. Specifically, he has failed to prove the occurrence of physical injury to this portion of his anatomy that occurred on that date that arose out of and occurred in the course of his employment with Respondent No. 1 or Respondent No. 2 and that was caused by a specific incident or incidents as required by Ark. Code Ann. §11-9-102(5)(A)(i).

7. Respondent No. 1 and No. 2 have denied the occurrence of any compensable injury to the claimant's lower lumbar area and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE