

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704469/F710002

JOSE HERNANDEZ	CLAIMANT
KENT DOBBS HYUNDAI SELF INSURED THROUGH CENTRAL ARKANSAS AUTO DEALERS TRUST	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED JANUARY 31, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claims on November 19, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in this case on October 2, 2007. The pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the parties announced that they had agreed on the appropriate weekly compensation rates. At that time, the claimant also withdrew his request for temporary total disability benefits and this matter was eliminated from the issues identified in the pre-hearing order. A copy of the pre-hearing order, with these amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On September 16, 2006 and February 12, 2007, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$293.00 for total disability and \$220.00 for permanent partial disability.
3. The claims are controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained a compensable injury to his back on either or both September 16, 2006 and/or February 12, 2007.
2. The claimant's entitlement to medical services.

In regard to these issues, the claimant contends:

"Claimant sustained a compensable injury while working for respondent on or about February 12, 2007. At that time, claimant slipped in grease, twisting his back resulting in lower back radiating down into left leg with numbness from left knee down to his foot. Claimant's treating physician recommended an MRI of the lumbar spine on February 23, 2007, which has been denied by the respondent."

In regard to these issues, the respondents contend:

"A. The claimant first reported an injury on 9-16-06 when he fell in the break room while getting a soft drink. The claim was denied because the claimant was not performing employment services. The claimant reported another incident on 2-12-07. There are no objective medical findings to support either date of incident. The second incident is a recurrence of the first."

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained “compensable injuries” to his back on either or both September 16, 2006 and/or February 12, 2007. The burden rests upon the claimant to prove all of the elements established by the Act for an injury to represent a “compensable injury”.

Under Ark. Code Ann. §11-9-102(4)(D), the claimant must “establish” by medical evidence the actual existence of the physical injury alleged to be compensable. Further, the actual existence of such a physical injury must be supported by “objective findings”, as that term is defined in Ark. Code Ann. §11-9-102(16)(A)(i).

The medical evidence in the present claim consists of various records of Dr. William B. Wilson, a general or family practitioner at the Westside Clinic. These records are dated September 19, 2006, February 13, 2007, and February 23, 2007. In each of these reports, Dr. Wilson and his nurse record complaints involving the claimant’s lower back and occasionally left lower extremity. These records further show that Dr. Wilson has diagnosed these complaints as a lumbar strain, low back pain/lumbago, and radicular pain.

However, it is apparent that Dr. Wilson’s opinion that the claimant is suffering from these various diagnosed injuries or conditions are based solely on the claimant’s subjective complaints and symptoms. The records of Dr. Wilson reveal that physical examinations or assessments were made at the time of each visit by Dr. Wilson and apparently also by his nurse. The entries in these

various medical records, concerning the results of the physical evaluation, fail to record a single "objective finding", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i). There are notes of subjective symptoms of pain, numbness, and tingling that involves the claimant's low back and left lower extremity. There was also a note of "tenderness" in the paraspinal muscles of the low back upon palpitation (i.e. the claimant complained of pain or flinched when pressure was applied by the fingers to various portions of the paraspinous muscles in his lower back). Clearly, all of these findings would come within the claimant's voluntary control.

On the other hand, there is no mention of the observation of any objective findings that are commonly associated with the existence of a physical injury to the claimant's low back or lumbar spine, particularly of the type of the one diagnosed. There is no record of the observation of muscle spasms, discoloration of the skin, temperature change, swelling or edema, abnormal reflexes, muscle atrophy, etc. While medication was apparently prescribed for muscle spasms, if "needed", there is no mention that any such spasms were independently observed. In fact, the only abnormality noted was a tenderness in the paraspinous muscles in the lumbosacral spine region, upon palpitation. It further appears that this medication was only briefly prescribed following the incident on September 16, 2006.

After considering all of the evidence presented, I find that the claimant has "established" by medical evidence, the actual

existence of physical injuries to his back on September 19, 2006, and/or February 13, 2007. However, I find that the claimant has failed to prove that the actual existence of these physical injuries is “supported by objective findings”. Rather, the evidence presented shows that the actual existence of these physical injuries is based solely upon the claimant’s subjective complaints.

Therefore, the claimant has failed to prove that his alleged employment related injury satisfied the statutory requirements for a “compensable injury” that are set out in Ark. Code Ann. §11-9-102(4)(D). This failure is fatal to his claim.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On September 16, 2006 and February 12, 2007, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On September 16, 2006 and February 12, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$293.00 for total disability and \$220.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove that he sustained “compensable” injuries to his low back or lumbar spine on either September 16, 2006 or February 12, 2007. Specifically, the claimant has failed to satisfy the statutory requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(D). He has failed to prove the presence of any “objective

findings” to support the actual existence of any physical injuries involving his low back or lumbar spine.

5. The respondents have denied that the claimant sustained compensable injuries to his back on either September 16, 2006 and/or February 12, 2007, and have controverted both claims in their entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss both the present claims in their entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE