

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706993

CONLEY J. JOHNSON, EMPLOYEE **CLAIMANT**

**GEORGIA PACIFIC CORP.,
EMPLOYER** **RESPONDENT**

**SEDGWICK CLAIMS MGMT. SVCS., INC.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED JANUARY 30, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

The respondents were represented by Ms. Susan M. Fowler, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 6, 2007, the above captioned claim came on for a hearing to determine whether the claimant sustained compensable injuries within the meaning of the Arkansas Workers' Compensation Law.

A prehearing conference was conducted in this claim on September 18, 2007, and a Prehearing Order was filed on September 19, 2007. A copy of the Prehearing Order was marked as Commission Exhibit "1" and made a part of the record herein, subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has

CONLEY J. JOHNSON - F706993

jurisdiction of this claim.

- 2) The employee-employer-carrier relationship existed at all relevant times, including June 26, 2007.
- 3) All issues related to permanent impairment are reserved.
- 4) Claimant's average weekly wage was \$584.00 per week which would entitle the claimant to a TTD rate of \$389.00 per week and a PPD rate of \$292.00 per week.
- 5) The claimant has not worked for the respondent-employer since June 29, 2007.

The parties agreed the following issues would be presented for determination:

- 1) Whether the claimant sustained compensable injuries to his low back, left elbow and left shoulder on June 26, 2007, by specific incident.
- 2) If compensability is overcome, whether the claimant is entitled to TTD benefits from June 30, 2007, to a date yet to be determined, all associated medical treatment, and attorney's fees.

At the full hearing, the claimant contended he sustained compensable low back, left elbow, and left shoulder injuries on June 26, 2007. Claimant contended that he was initially seen by Dr. Hugh Nutt, in Fordyce, Arkansas, and was instructed to follow up with his family physician. Claimant contends he went to see Dr. David Foscue, in Warren, Arkansas, who put the claimant on off work status from July 23, 2007, to a date to be determined upon reevaluation. Claimant contended that he was also referred by Dr. Foscue to Dr. Lytle, an orthopedist, and that the respondents have

CONLEY J. JOHNSON - F706993

not accepted that treatment. The claimant also went to see Dr. Torrance Walker, an orthopedist, and claimant contends that all treatment from Dr. Walker was reasonable, necessary, and related to his compensable injuries. Claimant contends that all benefits have been controverted. Claimant contends entitlement to TTD benefits from June 30, 2007, to a date yet to be determined, all associated medical treatment, and attorney's fees.

At the full hearing, respondents contended that they have controverted this claim in its entirety. Respondents contend that there are no objective findings of injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his back, left

elbow, or left shoulder on June 26, 2007.

DISCUSSION

The claimant, age 40, began working for the respondent-employer in approximately 1996. On June 26, 2007, claimant testified his job duty was sweeping floors. The claimant testified as follows regarding the alleged accident that took place on June 26, 2007:

A Well, I went to do like I normally do every morning; I start sweeping, then I go down the green train. And when I got down there and I got ready to turn around to sweep the stuff back the other way, my leg buckles up – buckled up on me, and I fell. Well, I grabbed ahold of the railing to try to hold myself up, but I went down to the floor – fell on down to the floor.

(T. pg. 22, lines 6-12).

Q What parts of your body struck the floor?

A Well, my right knee and my – both my elbows.

Q Okay. When you – did you bleed or anything like that?

A No. I didn't have no bleeding.

(T. pg. 23, lines 4-7).

The claimant testified that after the alleged incident he reported the situation to a Mr. Ronnie Labette. The claimant testified that he did not ask for medical treatment at that time and reported back to work the following two days.

The medical records show that the claimant first reported for medical treatment

CONLEY J. JOHNSON - F706993

at the Dallas County Medical Center Emergency Room on June 29, 2007. The claimant was prescribed Lorcet at the emergency room and instructed to follow up with Dr. Foscue the following Monday. (Cl. Ex. 1, pg. 4). At the emergency room, the claimant was treated by Dr. Hugh Nutt, who gave the claimant an off work notice from June 29, 2007, through July 2, 2007. (Cl. Ex. 1, pg. 5). Also at the Dallas County Medical Center, the claimant was given an X-ray of his left shoulder which came back normal. An X-ray was also taken of the claimant's left wrist which showed "No acute bone or soft tissue abnormality demonstrated." At that time, claimant also had an X-ray conducted on his lumbar spine which showed "Mild hypertrophic spurring is seen at L3 anteriorly. No fracture or dislocation is demonstrated." (Cl. Ex. 1, pg. 6).

The claimant next treated with Dr. David Foscue on July 2, 2007. The report from Dr. Foscue from July 2, 2007, states that the claimant's symptoms were that "Patient fell at work and hurt his left elbow, left shoulder and low back." Dr. Foscue's report assesses the claimant only with pain in the left shoulder, elbow, and back. (Cl. Ex. 1, pp. 9-12). The medical records show the claimant next treated with Dr. Foscue again on August 6, 2007, still with complaints of pain in the claimant's left shoulder, left elbow, left wrist, and back. Dr. Foscue's August 6, 2007, report shows that the only assessment Dr. Foscue had was "pain." (Cl. Ex. 1, pp. 13-15). Dr.

CONLEY J. JOHNSON - F706993

Foscue's report from August 6, 2007, shows that Dr. Foscue continued the claimant on Lorcet and Keftab and ordered the claimant to return to the clinic if his problems worsened.

The medical records show the claimant next treated with Dr. Michael Payne, in Fordyce, Arkansas, with complaints of left arm pain. At that time, Dr. Payne instructed the claimant to keep taking the medications as prescribed by Dr. Foscue, and an X-ray was done of the claimant's left forearm and left humerus of which both came back with "normal study." (Cl. Ex. 1, pg. 18). The claimant then treated again with Dr. Michael Payne on September 5, 2007, with complaints of pain in his left arm and shoulder. At that time, Dr. Payne recommended the claimant see an orthopedist.

Next, the claimant treated with Dr. Foscue again on September 17, 2007, with pain in his left shoulder and elbow. At that time, Dr. Foscue assessed the claimant with left shoulder pain and instructed the claimant to keep taking Lorcet. (Cl. Ex. 1, pp. 22-24). Dr. Foscue also at that time recommended the claimant see an orthopedist, and on October 1, 2007, the claimant was seen by Dr. Torrance A. Walker with Walker Orthopaedics in Pine Bluff. Dr. Walker's October 1, 2007, report states that the claimant has "positive impingement sign of his L shoulder, but there is a full ROM, except on internal rotation which is limited to posterior superior iliac spine." At that time, Dr. Walker assessed the claimant with left rotator cuff syndrome. (Cl.

CONLEY J. JOHNSON - F706993

Ex. 1, pg. 26). Dr. Walker recommended the claimant receive steroid injections which Dr. Walker administered in the claimant's left shoulder on October 1, 2007.

The claimant contends that he sustained compensable injuries to his low back, left elbow, and left shoulder on June 26, 2007; and as such is entitled to TTD benefits from June 30, 2007, to a date yet to be determined, all associated medical treatment, and attorney's fees.

Claimant's claim is for specific incident injuries 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

CONLEY J. JOHNSON - F706993

of the doubt to either party, I find that the claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered compensable injuries to his back, left elbow, or left shoulder as a result of a fall on June 26, 2007. First, I find the claimant has failed to establish injuries to his back, left shoulder, or left elbow with medical evidence supported by objective findings. It is true that Dr. Nutt's emergency room record from Dallas County Medical Center on June 29, 2007, states "Contusion to shoulder & wrist." (Cl. Ex. 1, pg. 1). However, Dr. Nutt specifically addressed the question of whether the "contusions" he refers to in his June 29, 2007, report, were based on actual observation or merely the complaints of the claimant. Dr. Nutt, in his August 31, 2007, letter contained at Claimant' Exhibit 1, page 19, states clearly, "As to question 1 of whether I made actual observations of bruising or other physical indications of a contusion, or whether it was based merely on complaints of Mr. Johnson by history. My diagnosis was based on the complaints of Mr. Johnson and not by physical indications or actual observations. I observed no bruising, swelling or lesions in my examination." Dr. Nutt made that statement within a reasonable degree of medical certainty. Dr. Nutt also stated that the claimant's lumbar spine abnormalities were degenerative. (Cl. Ex. 1, pg. 19).

The only other hint of objective medical findings contained in the record are contained at page 26 of Claimant's Exhibit 1 from Dr. Torrance A. Walker. In that

CONLEY J. JOHNSON - F706993

report, Dr. Walker states, “He has positive impingement sign of his L shoulder, but there is a full ROM, except on internal rotation which is limited to posterior superior iliac spine.” (Cl. Ex. 1, pg. 26). Dr. Walker goes on to diagnosis the claimant with left rotator cuff syndrome. Dr. Walker states that the claimant’s X-rays showed mild AC joint arthritis. I find that Dr. Walker’s findings of positive impingement sign and left rotator cuff syndrome not to be objective findings but rather subjective. Dr. Walker’s exam outlined in his October 1, 2007, report seems to be simply different range of motion tests, of which are subjective on the claimant’s part. Nothing in the record before me establishes an injury to the claimant’s back, left shoulder, or left elbow with medical evidence supported by objective findings. Therefore, I find the claimant has failed to prove by a preponderance of the evidence that he has sustained compensable injuries to his back, left elbow, or left shoulder.

I also find that the claimant has failed to prove by a preponderance of the evidence that any of his alleged injuries to his back, left shoulder, or left elbow, arose out of and in the course of his employment with the respondents. The medical records show that the claimant was treated by Dr. Eric Akin at Akin Neurosurgery Clinic on May 24, 2007; just a little over one month prior to his alleged compensable injury in June of 2007. When the claimant saw Dr. Akin approximately 32 days prior to his alleged compensable event on June 26, 2007, Dr. Akin’s report states that the claimant

CONLEY J. JOHNSON - F706993

complained of “neck pain, shoulder pain, pain in the left arm with numbness, weakness in left arm, occasional headaches, back pain, left leg pain.” (R. Ex. 1, pg. 23). When questioned about the complaints the claimant made to Dr. Akin on May 24, 2007, the claimant responded “I don’t recall that.”

Q Have you ever had problems like that – ever describe problems like that to a physician before June 26th of 2007?

A I can’t recall it.

Q You don’t recall?

A No.

Q What about a month before that, you saw Dr. Akin related to your back injury? His note indicates that you were talking to him, very specifically, about neck pain, left shoulder pain, pain in the left arm with numbness, and weakness in the left arm. That was on May 24th of ‘07. Do you recall that?

A ‘07, May?

Q Uh-huh.

A I don’t recall that. I don’t recall that.

(T. pg. 34, lines 8-20).

It is clear to this examiner, that almost within a month before the claimant’s alleged compensable event, he was complaining of back pain, left shoulder pain, and left upper extremity numbness and weakness. The claimant’s lack of memory with regard to Dr. Akin on May 24, 2007, is highly suspect.

CONLEY J. JOHNSON - F706993

The burden of proof lies with the claimant. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained any compensable injuries related to the alleged fall at his workplace on June 26, 2007. It is well settled that the claimant has the burden of proving the job relatedness of any 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). 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).

The claimant has failed to establish injuries to his back, left elbow, or left shoulder with medical evidence supported by objective findings; therefore, the claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his back, left shoulder, or left elbow. Further, the record shows the claimant exhibited signs and symptoms of pain to his back, left arm, and left shoulder shortly before his alleged compensable accident on June 26, 2007. Based upon the record before the Commission, it is additionally unclear as to whether the claimant's conditions arose out of and in the course of his employment. The record shows the claimant's symptoms he contends are causally related to his alleged June 26, 2007, fall were being exhibited and complained of by the claimant on May 24, 2007, approximately 32 days prior to this alleged incident. Therefore, the

CONLEY J. JOHNSON - F706993

claimant has also failed to prove by a preponderance of the evidence that any of his alleged injuries or symptoms arose out of and in the course of his employment with the respondents on June 26, 2007.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he suffered compensable injuries to his back, left shoulder, or left elbow as a result of a fall on June 26, 2007. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb