

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705885

DANNY SIGMON

CLAIMANT

TOP DOG MASONRY

RESPONDENT

FIRST COMP INSURANCE,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED **MAY 28, 2008**

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on March 3, 2008, in Springdale, Arkansas.

A pre-hearing order was previously entered in this case on January 10, 2008. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties agreed on the appropriate weekly compensation rates and such rates were noted on the pre-hearing order. Prior to the commencement of the hearing, the claimant modified his claim to reflect that he was only seeking temporary total disability benefits for the period of June 8, 2007 through September 18, 2007. A copy of this 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 June 7, 2007, the relationship of employee-employer-carrier existed between the parties.

2. The appropriate weekly compensation rates are \$400.00 for total disability and \$300.00 for permanent partial disability.

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 compensable injuries to his lower back and left ankle on June 7, 2007.
2. The claimant's entitlement to the payment of medical expenses and temporary total disability benefits from June 8, 2007 through September 18, 2007.
3. The appropriate weekly compensation rates.
4. Whether the claim is barred by Ark. Code Ann. §11-9-102(4)(B)(iv).

In regard to these issues, the claimant contends:

"On June 7, 2007, claimant broke his back and leg when the plank of a scaffold came out from under him."

In regard to these issues, the respondents contend:

"It is the respondents' contention that the claimant had a positive drug screen at the hospital. The cut off was 1000 ng and the test was positive. It is anticipated that the deposition of the lab personnel will be needed in this case. In addition, the initial medical records from the hospital reflected a past medical history of rather heavy drug use including marijuana and meth. Also, the claimant was admitted on August 4<sup>th</sup> and gave the medical personnel the history that he smoked meth and had last done so in June of 2007, which is the same month of the injury."

## DISCUSSION

### I. COMPENSABILITY

---

The central matter to be addressed is the question of whether or not the claimant sustained "compensable injuries" to his lower back and left ankle on

June 7, 2007. The burden rests upon the claimant to prove all of the necessary elements that are required by the Act for a "compensable injury".

There is no doubt that, on June 7, 2007, the claimant experienced a fall that resulted in serious injuries to his L2 vertebra with spinal cord impingement and his left ankle. These physical injuries are clearly "established" by medical evidence, which is supported by objective findings, as required by Ark. Code Ann. §11-9-102(D). These injuries were also clearly caused by a specific incident, are identifiable by time and place of occurrence, caused internal physical harm to the claimant's body, required medical services, and resulted in disability, as required by Ark. Code Ann. §11-9-102(4)(A)(i). The evidence presented further unquestionably reveals that this fall occurred during the claimant's regular working hours and while the claimant was performing his regularly assigned employment activities for this respondent, as a mason or brick layer. Thus, it would appear that he has satisfied all of the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(i).

However, the real dispute in this case is whether the claimant's injuries are expressly excluded from the category of "compensable injuries" by the provisions of Ark. Code Ann. §11-9-102(4)(B)(iv). Under this subsection, the burden first rests upon the respondents to prove that the claimant had alcohol, illegal drugs, or prescription drugs used in contravention with the physician's orders in his system at the time the accident and injury arose.

The medical records have multiple histories that indicate the claimant periodically used the illegal drug Methamphetamine. A preliminary drug screen performed on the claimant, on June 7, 2007, was positive for the presence of both Amphetamine and Opiates. This preliminary or initial screening test

specifically noted that it yielded only a "presumptive result" and that a more specific analytical chemical method must be used in order to obtain a confirmed analytical result. However, the further analytical test was not apparently performed. If this additional test was performed, the results have not been introduced. Preliminary drug screens can often show false positives and it could be argued that this preliminary test showed only the possibility.

The emergency room records reveal that the claimant was admitted at 11:45 hours to the hospital. He had been transported by Emergency Medical Services from the job site. Additional emergency medical treatment was provided him by personnel at the Northwest Health Center emergency room. The blood and urine samples were not taken until 21:15 hours. This was long after various painkillers containing Opiates, had been given the claimant. These prescribed drugs would have explained the positive result on the preliminary drug screen for Opiates in the claimant's system.

In his testimony, the claimant admitted that he had illicitly taken Methamphetamine approximately two days prior to his accident and injury on June 5, 2007. This testimony would be sufficient to corroborate the positive preliminary drug screen finding of Amphetamine in the claimant's system on June 7, 2007.

After consideration of all the evidence presented, it is my opinion that the evidence presented is sufficient to establish the presence of the illegal drug Methamphetamine in the claimant's body at the time of his accident and injury. Therefore, Ark. Code Ann. §11-9-102(4)(B)(iv)(b) creates the rebuttable presumption that the claimant's accident and injury were substantially occasioned by his use of this illicit drug. Thus, the burden would shift to the claimant to prove by the greater weight of the credible evidence that his

accident and resulting injury were not substantially occasioned by the presence of the drug Methamphetamine, in his system.

The claimant testified that he had used Methamphetamine for approximately ten to eleven years, that he had been through drug rehabilitation for Methamphetamine approximately ten years ago, and that he only used this drug occasionally with friends (who were also users). He stated that his current use was approximately once every month and a half. He conceded that he had smoked Methamphetamine approximately two days before his accident. However, he stated that on the day of his accident he was not feeling the effects of the drug.

The claimant described the accident as occurring when a scaffolding board, on which he was standing, came loose from one end and fell from beneath him, causing him to fall. He also stated that the board also fell, but that he was able to knock it away from him. Finally, he stated that there was another co-worker in the area (on the ground) at the time of the accident, but that this co-worker did not actually see the fall. He testified that this co-worker (Timmy McCann) had assembled the boards on the scaffolding.

Timmy McCann did not testify. However, his father, Curtis McCann, did testify on behalf of the claimant. Mr. McCann testified that he had worked for the respondent for approximately 14 years. He testified that on June 7, 2007, he and the claimant started work at approximately 7:00 a.m. He stated that the first thing that morning, he and the claimant assembled the third layer of scaffolding. He was certain that the boards on the third layer of scaffolding were placed in the normal and appropriate manner. During the periods he was around the claimant, on that date, the claimant appeared to be his usual self and did not appear to be in any way impaired. It was his testimony that his son,

Timmy, was working directly with the claimant on that date, supplying him with mud, mortar, and bricks.

There is one major discrepancy between the testimony of the claimant and that of Mr. McCann. The claimant testified that Timmy McCann, Curtis McCann's son, was the one that placed the board, which came loose from its rest on the scaffolding brace and resulted in the claimant's fall. Curtis McCann testified that only he and the claimant assembled the third level of the scaffolding on which the claimant is working. In his testimony he described handing the scaffold boards to the claimant to place on the scaffold braces. However, his subsequent testimony is somewhat confusing and indicated that he may have laid at least some of the scaffolding boards. His testimony would also indicate that he "felt comfortable" that at least all the boards he laid had the appropriate six to ten-inch overhang on the scaffolding brace. Clearly, if he observed that fact, he should have also noted any scaffolding boards on the same level that did not have the appropriate overhang.

After consideration of all the evidence presented, it is my opinion that the claimant has rebutted the presumption that his accident and resulting fall were substantially occasioned by the presence of Methamphetamine in his system. I find the claimant's testimony concerning the actual mechanics of the accident to be credible and accurate. For some inexplicable reason, the board upon which he was standing came off of the scaffolding brace and, as he described, simply "fell out from under him." Unlike Woodall v. Hunnicutt Construction Company, 340 Ark. 377, 12 S.W. 3<sup>rd</sup> 630(2000), the greater weight of the evidence indicates that the scaffolding upon which the claimant was standing was assembled in the usual and customary manner and would have appeared to be "safe". The testimony of Mr. McCann, which I find to be credible, supports

the claimant's testimony that he was in no way physically or mentally impaired at the time of the accident and fall. The record further reveals that the claimant had worked for at least four hours, standing and walking on the scaffolding and laying brick, before the accident occurred.

In summary, I find that the claimant has proven by the greater weight of the credible evidence, that on June 7, 2007, he sustained physical injuries to his low back and left ankle that are established by medical evidence and supported by objective findings, that arose out of and occurred in the course of the employment with the respondent, that are caused by a specific incident, that are identifiable by time and place of occurrence, that caused internal physical harm to his body that required medical services, and that resulted in disability. He has further proven by the greater weight of the credible evidence that this accident and injury was not substantially occasioned by the presence of Methamphetamine in his system. Therefore, he has proven that these injuries represent "compensable injuries", as that term is defined by the Act.

## II. BENEFITS

\_\_\_\_\_The claimant is clearly entitled to reasonably necessary medical services for his compensable injuries. The evidence presented establishes that the medical services rendered him by EMS, by the Northwest Medical Center, by and at the direction of Dr. Christopher Arnold and Dr. Michael Standefer represent reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Pursuant to this subsection, the expense of these services is the liability of the respondents herein, subject to the Commission's medical fee schedule.

The next matter concerns the claimant's entitlement to temporary total disability benefits for the period of June 8, 2007 through September 18, 2007.

Again, the burden rests upon the claimant to prove temporary total disability during this period.

In order to meet this burden, the claimant must prove that during this time he continued within his healing period from the effects of one or both of his compensable injuries. In addition, he must also prove that he had either not "returned to work" (if he continued within his healing period from the effects of his compensable scheduled left ankle injury) or that during this period he was totally disabled from performing all forms of regular gainful employment (if he continued within his healing period from his compensable non scheduled back injury).

The issue of the duration of the healing period was a medical question, which must be resolved on the basis of the greater weight of the credible medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the healing of the actual physical damage caused by the compensable injury.

The medical evidence presented reveals that the claimant was under active medical treatment for the actual physical damage caused by his compensable lumbar injury by Dr. Michael J. Standefer, through at least August 20, 2007. Curiously, no records or reports of Dr. Standefer, after that date, have been introduced. However, it is obvious that the claimant had not achieved maximum healing of his lumbar injury by August 20, 2007. Further, the medical evidence shows that Dr. Christopher Arnold, the orthopaedic surgeon and treating physician for his compensable left ankle injury, continued to provide active medical treatment for the damage caused by the ankle injury through September 18, 2007. On that date, Dr. Arnold released the claimant to return to employment but only in the extremely limited capacity of "sit down

job only". The claimant appears to have been provided this limited employment by the respondent the following day.

After consideration of the medical evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that he continued within his healing period from the effects of his compensable injuries through September 18, 2007. Thus, he has satisfied the first element necessary for his entitlement to temporary total disability benefits during this period.

The greater weight of the credible evidence further establishes that the claimant had not "returned to work" and was totally disabled from regular gainful employment until September 19, 2007. The medical evidence shows that the claimant had not been released to return to any type of employment by either of his treating physicians until September 7, 2007. Even then, his release to return to employment was only at extremely limited duty. Thus, the claimant has proven by the greater weight of the credible evidence the second element necessary for his entitlement to temporary total disability benefits for the period of June 8, 2007 through September 18, 2007.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On June 7, 2007, the relationship of employee-employer-carrier existed between the parties.

3. On June 7, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$400.00 for total disability and \$300.00 for permanent partial disability.

4. On June 7, 2007, the claimant sustained various compensable injuries primarily to his L2 vertebra and left ankle. Specifically, the claimant has proven by the greater weight of the credible evidence the occurrence of physical injuries to this portion of his body that are established by medical evidence which is supported by objective physical findings, that arose out of and occurred in the course of his employment, that were caused by a specific incident, that are identifiable by time and place of occurrence, that resulted in internal physical harm to his body, that required medical services, and that resulted in disability.

5. The respondents have proven that the claimant had the presence of the illegal drug Methamphetamine in his system at the time of his employment related accident and injury. However, the claimant has proven by the greater weight of the credible evidence that the presence of this illegal drug did not substantially cause his accident or injury. Thus, Ark. Code Ann. §11-9-102(4)(B)(iv) does not bar the claimant from receiving appropriate benefits under the Act.

6. The medical services rendered to the claimant for his compensable injuries by Emergency Medical Services, by personnel at the Northwest Medical Center, by and the direction of Dr. Christopher Arnold and by and at the direction of Dr. Michael Standefer represent "reasonably necessary medical services" under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services. This liability is subject to the medical fee schedule established by this Commission.

7. The claimant was rendered temporarily totally disabled by the effects of his compensable injuries from June 8, 2007 through September 18, 2007. Specifically, the claimant has proven by the greater weight of the credible

evidence that during this period he continued within his healing period from the effects of his compensable injuries, had not returned to work, and was, in fact, totally disabled from regular gainful employment.

8. The respondents have denied the occurrence of any compensable injury to the claimant on June 7, 2007, and have controverted this claim in its entirety.

9. The appropriate attorney's fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits awarded and on any indemnity benefits which may hereinafter become due and payable to the claimant.

#### ORDER

The respondents shall be liable for the expense of medical services provided to the claimant for his compensable injuries by and at the direction of Emergency Medical Services personnel (on June 7, 2007), by and the direction of the medical personnel at the Northwest Medical Center, by and the direction of Dr. Christopher Arnold, and by and the direction of Dr. Michael Standefer. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant temporary total disability benefits for the period of June 8, 2007 and continuing through September 18, 2007.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.  
IT IS SO ORDERED.

---

MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE