

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F712767

THELTON P. SMITH, EMPLOYEE

CLAIMANT

**C B MASONRY, INC.,
EMPLOYER**

RESPONDENT

**SECURITY NATIONAL INS. CO.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 11, 2008

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

The claimant was unrepresented and appeared pro se.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 17, 2008, the above captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted in this matter on February 12, 2008, and a Prehearing Order was filed on that same date. A copy of the Prehearing Order was marked as Commission Exhibit "1", and made a part of the record herein without objection, 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 jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including August 22, 2007.

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- 3) Claimant's average weekly wage was \$388.00 per week which would entitle the claimant to a weekly temporary total disability rate of \$259.00 and a weekly permanent partial disability rate of \$194.00.
- 4) The parties agreed to reserve all issues related to permanent impairment.

At the full hearing, the parties agreed to litigate the following issues:

- 1) Whether the claimant sustained a compensable specific incident back injury on August 22, 2007.
- 2) If compensability is overcome, whether claimant is entitled to all associated medical benefits and temporary total disability benefits from November 9, 2007, to a date yet to be determined.
- 3) Notice defense.

At the full hearing, the claimant contended that on August 22, 2007, while performing employment services for C B Masonry that he sustained compensable injuries to his back after being struck by a lifter. The claimant contended that as a result of the compensable back injury that he is entitled to all associated medical treatment and TTD benefits from November 9, 2007, to a date yet to be determined.

At the full hearing, respondents contended that the claimant did not sustain a compensable injury and that claimant does not have any objective medical findings. Respondents also contended that claimant's alleged injury was not reported until November 28, 2007.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his 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 and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable back injury while employed by the respondents on August 22, 2007. Specifically, the claimant has failed to provide medical evidence supported by objective findings establishing a back injury.

DISCUSSION

The claimant testified that on August 22, 2007, while working for C B Masonry, he was on a scaffold over a hundred feet off the ground when a basket of bricks struck him in the back. The claimant testified that after the basket of bricks struck him in the back he was in "shock". The claimant testified that after being struck he reported it to his supervisors and other employees but never received a report of injury from his employer. The claimant testified he did not work the rest of

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the day on August 22, 2007, after being struck in the back with the basket of bricks; however, the claimant testified that he did continue to work for days and weeks after the incident but with continuing and increasing pain in his back.

The claimant testified that after the alleged incident of August 22, 2007, his back continued to get worse and ultimately he reported to the UAMS emergency room on November 9, 2007. The claimant introduced medical bills and other documents at the full hearing that showed the claimant sought medical treatment on several different occasions after November 9, 2007. The claimant testified that he has been unable to work since his back condition became intolerable in November 2007 and requests medical treatment for his back, as well as the medical treatment he has incurred to date, and temporary total disability benefits from November 9, 2007, to a date yet to be determined.

The claimant contends that he suffered a compensable injury to his back while working for the respondents on or about August 22, 2007. The claimant's claim is for an injury which was caused by a specific incident and is 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:

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- 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 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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his back on August 22, 2007. As stated above, for the claimant to prove a compensable injury, medical evidence supported by objective findings is a necessity for the claimant to establish a compensable back injury. The claimant has failed to meet his burden of proof in that the record is void of any medical evidence supported by objective findings establishing the claimant's alleged back injury. If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of an alleged injury, he fails to establish the compensability of the claim and compensation must be denied.

Accordingly, since the claimant has failed to prove by a preponderance of the

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evidence a back injury with medical evidence supported by objective findings, claimant's claim must be denied and dismissed. Therefore, since the claimant has failed to meet his burden of proving a compensable back injury on August 22, 2007, the other issues outlined herein are rendered moot.

ORDER

Claimant has failed to meet his burden by a preponderance of the evidence of proving a compensable back injury by specific incident on August 22, 2007.

Therefore, this claim must be and hereby is, respectfully, denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb