

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606727

JAMES STERLING, EMPLOYEE

CLAIMANT

QUALITY TRUCKING,
EMPLOYER/
FIRSTCOMP INSURANCE,
CARRIER

RESPONDENTS #1

D.B., INC., UN-INSURED

RESPONDENT #2

OPINION FILED JULY 11, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on June 23, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

Respondents #1 were represented by The Honorable William Frye, Attorney at Law, North Little Rock, Arkansas.

Respondent #2 appeared by way of its representative, Ms. Terry Bridges.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 23, 2008, in Little Rock, Pulaski, Arkansas. A Prehearing Order was previously entered in this case on May 6, 2008. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

STIPULATIONS

The following stipulations were submitted by the parties, either in the Prehearing Order or at the start of the hearing,

and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant is entitled to the maximum compensation rates for his 2006 injury.
3. The claim is controverted in its entirety.
4. Claimant was an employee of D.B., Incorporated.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Compensability of claimant's alleged low back and right leg and right ankle injury.
2. Reasonable and necessary medical care in the amount of \$90.00.
3. Ten weeks of temporary total disability benefits. The dates will be provided at the time of the hearing by the claimant.
4. Notice to respondent #2 was not given until June 21, 2006, and notice was not given to respondents #1 until August 11, 2006.
5. Whether Quality Trucking is the prime contractor.

CONTENTIONS

Claimant contends that he sustained compensable injuries to his lower back, right leg and right ankle on May 10, 2006, for which he is entitled to medical care in the amount of \$90.00, and ten (10) week of temporary total disability compensation.

Respondents #1 contend that the claimant was not an employee of Quality Trucking. The claimant was an employee of D.B., Inc. In fact, the claimant has filed a claim against D.B., Inc. After the claimant had an incident on May 10, he continued working for D.B., Inc. On or about May 25, the claimant was terminated for not having a valid license. In his deposition, the claimant admitted that he had a suspended license and, in fact, got it taken care of in August and went back to work for another company. In addition, the claimant is receiving Social Security retirement. At his deposition, the claimant refused to provide the respondents with the amount of Social Security he is receiving. Also, he failed to provide them with any documentation as to when he would have made enough money to quit working, because he was only allowed to earn \$12,600.00 per year before Social Security Retirement is affected. Further, respondents #1 contend that the claimant was an employee of D.B. Trucking and if any benefits are due, they should come from D.B., Inc., not Quality Trucking. Also, the respondents have not been provided with any medical to show that there was an objective measurable finding or compensable injury, or any time off from work.

Respondent #2, D.B., Inc., hired the claimant as a truck driver. Respondent #2 contends that they did not have notice of injury until June 21, 2006, at which time they received a form from the Arkansas Workers' Compensation Commission.

The record consists of the transcript of the June 23, 2008 hearing, and the exhibits contained therein.

The following witnesses testified at the hearing: the claimant, Donald Bridges, and Terry Bridges.

DISCUSSION

The claimant, age 65(5/7/43), had worked for D.B., Inc., as as a truck driver. He asserts that he sustained a compensable injury to his back, right leg, and right ankle on May 10, 2006. According to the claimant, his injury occurred when he suddenly had to jump from the top rack to the bottom of the truck. The claimant testified that he reported the incident to Mr. Donald Bridges shortly thereafter.

Donald Bridges also testified during the hearing. He admitted the claimant worked for him as a truck driver. Mr. Bridges could not recall whether the claimant reported the incident to him. Mr. Bridges also gave testimony concerning his contractual arrangement with Quality Trucking.

Mrs. Terry Bridges also gave testimony during the hearing. She admitted that the claimant worked for D.B., Incorporated as a truck driver. According to Mrs. Bridges, she did not receive notice of the claimant's injury until June 21, 2006, which was upon receipt of a form from the Arkansas Workers' Compensation Commission.

A review of the medical evidence of record demonstrates that

the claimant sought treatment for his work incident on June 29, 2006. At that time, the claimant was seen by Dr. Fred Wilson. He assessed the claimant with back pain and leg pain, for which he prescribed pain medication.

The claimant admitted he did not seek any further treatment for his work-related incident. He also admitted that his symptoms have resolved.

ADJUDICATION

The instant claimant asserts that he sustained a compensable injury to his back, right leg, and right ankle on May 10, 2006, while working for D.B., Incorporated.

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that there are no objective medical findings establishing an injury to the claimant's back, right leg, or right ankle. Therefore, the

claimant did not suffer a compensable injury pursuant to Arkansas Workers' Compensation law, as a result of his May 10, 2006, work-related incident.

Although, the claimant gave a credible account of the incident of having to jump from the top rack of his dump truck to the bottom bed of it, there are absolutely no medical reports of any swelling, contusion, spasms, bruising, or any other objective findings establishing a compensable injury to the claimant's back, right leg and right ankle by Dr. Wilson. In fact, it appears that on June 29, 2006, Dr. Wilson assessed the claimant with "back and leg pain" without any reference whatsoever to any measurable objective medical findings.

Hence, under the Act, absent any objective medical findings establishing an injury, the claimant cannot meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury as a result of the May 10, 2006. Therefore, based on the record before me, I am constrained to find that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury on May 10, 2006, during and within the scope of his employment with D.B., Incorporated. As a result, this claim is hereby respectfully denied and dismissed in its entirety. All other issues in this matter are hereby rendered moot and have therefore not been addressed in the herein Opinion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant is entitled to the maximum compensation rates for a 2006 injury.
3. This claim has been controverted in its entirety.
4. Claimant was an employee of D.B., Incorporated.
5. The claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury to his back, left leg, and right ankle during the May 10, 2006, work-related incident. Specifically, there are no objective medical findings establishing an injury as required by Arkansas law.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent-employer on May 10, 2006. Specifically, there are no objective medical findings establishing an said injury. Therefore, for the reasons discussed herein, this claim must be, and hereby is, respectfully denied and dismissed.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml