

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206849

CLIFFORD W. HARRELL, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INSURANCE CARRIER	RESPONDENT
BLUE CROSS BLUE SHIELD	INTERVENOR

OPINION FILED NOVEMBER 7, 2003

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Intervenor represented by HONORABLE CHET ROBERTS, Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an opinion and order filed by the Administrative Law Judge on January 14, 2003. In that opinion and order, the Administrative Law Judge found that there was no causal connection between the claimant's disabling back condition and a job related injury that occurred on April 16, 2002. After conducting a de novo review of the entire record, we find that the claimant has

met his burden of proof and, accordingly, the Administrative Law Judge's decision is reversed.

The claimant was employed as a maintenance worker in the respondent's factory. On April 16, 2002, he was assigned the job of removing a pump from a piece of equipment. While removing this pump, the claimant experienced a pain in his lower back. He notified his immediate supervisor of this injury but he continued working. The claimant stated that after the accident, he began suffering some pain in his lower back. However, he attributed this pain to a minor muscle strain or pull.

For the month following his injury, the claimant continued performing his regular job duties and nonwork-related recreational activities. Specifically, he played in at least three slow pitch softball games in April and May of 2002. The claimant testified that by the middle of May, his symptoms had worsened and that he was suffering radiating pain into his hip and leg.

On May 21, 2002, the claimant saw Dr. Jerry Harvey. A progress note of that date diagnosed the claimant as suffering from low back pain with L5 radiculopathy. Dr. Harvey prescribed the claimant medication and bed rest and arranged for him to undergo an MRI examination. The MRI

scan was performed on June 7, 2002, and the radiology report noted that the claimant suffered from a possible lateral disc herniation at L4-L5 and diskal dehydration at L4-L5 and L5-S1. As a result of this MRI and the claimant's continued complaints of radicular pain, Dr. Harvey referred the claimant to see Dr. P. B. Simpson, a Pine Bluff neurosurgeon.

Dr. Simpson saw the claimant on June 24, 2002. At Dr. Simpson's request, the claimant underwent a CT scan on June 26, 2002 which confirmed a left paracentral herniation at L4-L5. Dr. Simpson operated on the claimant's back on July 9, 2002 and released him to return to work in a light-duty capacity on August 19, 2002.

Most of the relevant facts in this case are not in dispute. The claimant's testimony that he was working on a pump on April 16, 2002 has been documented by the respondent's records. Likewise, there is no question the pump the claimant was working on was heavy and awkward and that the type of lifting involved in removing the pump is the type of activity which can, and frequently does, cause low back injuries. Additionally, the respondent's own documents once again establish that the claimant promptly reported an injury while working on the pump.

Objective medical tests also undeniably establish that the claimant suffered a herniated disc at L4-L5 and that the herniation was such as to require surgical repair. The claimant, who was well motivated to return to work, did so in slightly over a month following major back surgery and was still employed with the respondent on the date of the hearing.

The respondent has denied this claim because of what the claimant said to the respondent's claims adjuster in a telephone conversation in June of 2002. In what purports to be a transcript of that conversation, the claimant was questioned about the onset of his symptoms and why he continued working for over a month following the injury in spite of the increasing symptoms. The claimant explained to the claims adjuster that he had attributed his problems to what he thought was a "pinched nerve." When asked what he meant by that term, the claimant likened his problem with the temporary discomfort experienced when someone sleeps in an odd position and wakes up with back or neck pain.

The respondent and the Administrative Law Judge interpreted this explanation to mean that the claimant had injured his back while he was sleeping. The Administrative

Law Judge stated that the conflict between the claimant's testimony and the recorded statement was the ". . . most damaging evidence against the claimant's case that adversely affected my assessment of the claimant's credibility."

We believe that the Administrative Law Judge's evaluation of the claimant's credibility is flawed, and that the claimant's testimony as to the accident and his symptoms is credible. All of the claimant's statements regarding his injury, the type of work he was performing, and his prompt reporting of the incident are all recorded and documented by the respondent's records. Further, the medical evidence regarding the nature and extent of the claimant's injury demonstrates that it is the type of injury associated with the work the claimant was performing on April 16, 2002. The only challenge to the claimant's credibility is based upon statements he allegedly made to the claims adjuster when she interviewed him in June of 2002. In evaluating this statement, we are mindful of the fact that it was an informal interview given by the claimant without the benefit of counsel. A careful reading of the claimant's statements indicate that he was merely explaining how one got a "pinched nerve," and not intending to imply that he had injured his back while sleeping.

In short, we find that the claimant provided credible testimony that he injured his back on April 16, 2002, and that the incident of that date resulted in a herniated disc at L4-L5. Any other finding would be contrary to the greater weight of the evidence. Accordingly, we reverse the opinion of the Administrative Law Judge finding that claimant failed to prove by a preponderance of the evidence that his back difficulties are causally related to his employment. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002). Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance that he sustained a compensable injury. Based upon my de novo review of record, I find that the claimant has failed to meet his burden of proof.

The claimant sustained a mild strain on April 16, 2002, which he reported to his supervisor. However, the claimant did not think much about it after that for more than a month. He went about his everyday duties and continued his other recreation and familial activities. It was not until the latter part of May 2002, after the claimant pitched a double-header softball game that his condition changed.

The claimant and his wife both testified that the claimant did not initially think that his injury was serious. The claimant's wife testified that around mid-May her husband started complaining about pain down his leg.

Prior to May 15, 2002, she did not recall him complaining about pain going down his legs. The claimant testified that prior to mid-May his pain was confined to his lower back, was intermittent and attached no significance to it. It was not until the claimant pitched a third ball game after May 31st that his condition progressively worsened.

It is of note that the claimant told the adjuster, Polly Sweet, in the second week of June that he thought his pain went away completely prior to mid-May. In short, I cannot find that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on April 16, 2002. Accordingly, I would affirm the decision of the Administrative Law Judge.

Therefore, I respectfully dissent from the majority's opinion.

KAREN H. MCKINNEY, Commissioner