

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501814

JOHNNIE WARD, EMPLOYEE	CLAIMANT
THE VILLAGE INC., EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 17, 2006

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

Claimant represented by HONORABLE KEN OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE MELISSA ROSS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed November 29, 2005.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 27, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$540.00 which would entitle him to compensation at the rate of \$360.00 per week for temporary total disability benefits and \$270.00 per week for permanent partial disability benefits is also hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back while employed by the respondent.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact

made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I respectfully dissent from the Majority's decision affirming and adopting the Administrative Law Judge's November 29, 2005 opinion finding that Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable back injury while employed by the respondent. Based upon my de novo review of the claim in its

entirety, it is my opinion that Claimant has met his burden of proving a compensable injury and the Administrative Law Judge's decision should be reversed.

_____ Claimant contends that he sustained a compensable injury to his back on January 24, 2005. Claimant has claimed entitlement to temporary total disability benefits from January 24, 2005, through a date yet to be determined and related medical benefits.

_____ Respondents contend that Claimant did not sustain a compensable injury while working for the respondent employer on January 24, 2005.

_____ Claimant testified that he began working for the respondent employer sometime in October of 2000 as a maintenance supervisor. Claimant also testified that his job duties required him to be responsible for 35 acres of lawn care as well as moving individuals and their furniture in and out of the facility. Claimant testified that his job duties required heavy lifting on a daily basis.

_____ On the date of injury, January 24, 2005, Claimant was picking up tree trunks that he had cut down and was

putting them into the back of a pickup truck. Claimant testified that these tree trunks were "about 3 foot long, 24,26 inches thick ... I'd guess approximately 300 pounds." Claimant and his son John Ward had picked up a trunk and were attempting to get it on the tailgate of the pickup when Claimant suffered the injury in question. Claimant testified that the injury occurred at approximately 2:30 p.m. and he finished his day at 3:30p.m. Claimant further testified that he did not report his injury until the next morning when he reported to work. Claimant spoke with Bob Mello and Jerrien, the secretary. According to Claimant's testimony, he left work the morning of January 25, 2005, and sought treatment at Northwest Medical. Claimant returned to work that afternoon with a release to be off work. At that time Claimant spoke with Amy Fugman, the administrator, who suggested Claimant file a workers' compensation claim.

_____ Claimant testified that following his injury he suffers from right and left foot numbness, loss of control of his left toes, and back and leg problems. Following his injury, Claimant attempted to return to work at Village,

Inc. He worked for approximately two weeks before he returned to his doctor after he was unable to perform the work.

_____ Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external 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. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's

interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the claimant must show that he/she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

Claimant reported an injury to the respondent employer on January 25, 2005. Claimant was seen in the emergency room on January 25, 2005, where he complained of "mainly right shoulder pain after lifting a tree yesterday". He also complained of elbow pain and right foot pain. Claimant was then given a work release due to injury. On February 3, 2005, Claimant was assessed with mid back pain. On February 7, 2005, the assessment was a thoracic strain. In March of 2005, Claimant was thought to have a lumbrosacral strain and sciatica. Claimant was eventually given an MRI on June 29, 2005, which showed "a herniation into the left foramen at L5-S1 with impingement on neural elements."

Although there seemed to have been a great deal of communication difficulties between Claimant and the respondents, in my opinion, this has no direct bearing on the issue of compensability. Claimant has been consistent in his history of how the accident happened and has an injury supported by objective findings.

_____In my opinion, the Claimant has met his burden of proving a compensable injury. Claimant sustained an accidental injury on January 24, 2005, while moving a tree stump in the course and scope of his employment, that required medical services. The injury is supported by objective medical evidence in the form of an MRI which shows a disc herniation. For the foregoing reasons, I respectfully dissent from the Majority's decision affirming and adopting the Administrative Law Judge's November 29, 2005 opinion.

SHELBY W. TURNER, Commissioner