

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505235

ANTHONY BEACH, EMPLOYEE	CLAIMANT
CITY OF NORTH LITTLE ROCK, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, CARRIER	RESPONDENT

OPINION FILED JANUARY 19, 2007

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

Claimant represented by HONORABLE TERRENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondent represented by HONORABLE J. CHRIS BRADLEY, Attorney at Law, North 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 January 20, 2006.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.

3. Claimant failed to prove by a preponderance of the evidence the elements of a compensable injury under the Arkansas Workers' Compensation laws.

4. The respondents controverted the claim in its entirety.

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 Hood dissents.

DISSENTING OPINION

I respectfully dissent from the Majority's decision to affirm and adopt the Administrative Law Judge's January 20, 2006 opinion. Based on a de novo review of the record, it is my opinion that the Administrative law Judge's opinion should be reversed.

The claimant appeals the January 20, 2006 decision of the Administrative Law Judge denying compensability. Claimant has been an employee of the respondent-employer for

four(4) years. His job entails driving a boom truck and a garbage truck whenever needed. Claimant had performed his duties for the respondent-employer without any evidence of problems prior to his injury and, in fact, had passed six physicals during his four(4) years of employment. Claimant testified that on the date of his injury, he was operating a garbage truck known as a boom truck with a co-worker, Eric Smith. Claimant described "booming" as the process in which a pile of brush, refrigerators, washing machines, or other items left out on the curb, would be picked up and loaded into the truck, either with the boom or manually.

_____ Claimant described his activities on March 7, 2005, immediately preceding the injury as follows:

As I proceeded out of the truck to grab this bag, I grabbed it and snatched it and got up just about to my chest, and that's when I sprung whatever I did to my back. And I dropped the bag and Eric goes are you all right? I said, no, I just hurt myself. I said you're going to have to drag me to the barn. So he proceeded to carry me back to the barn.

_____ Claimant testified that after arriving at the barn, he reported the injury to May Gunnells, a supervisor

for the garbage crew. He did not return to work and testified that he was experiencing pain in the middle of his back to the side of his back and in his posterior on the right side. He explained that the pain proceeded from his right hip into the back of his right leg. On the following day, Claimant sought medical treatment at Argenta Health Care Services, a designated treatment center for city employees.

_____ Claimant testified that prior to going to Argenta, he had not filled out any workers' compensation forms rather, he had only reported his injury to May Gunnells. Claimant stated that one of the nurses at Argenta gave him a prescription, which he had filled at the Medicine Shoppe. Claimant then took the work release slip that he had received from Argenta the morning of March 8, 2005, and delivered the same to secretary, Nancy Eoff, and supervisor, Harold Ford, who were in the main office. Claimant reported his injury to Ms. Eoff and Mr. Ford, who told him to let them know how he was doing. Neither Ms. Eoff nor Mr. Ford testified at the hearing.

_____ Claimant returned to the Argenta Health Care Clinic on March 10, 2005, where he received another work release slip. Claimant directly took his second work release slip back to Ms. Eoff at the main office. Claimant testified that Ms. Eoff informed him not to worry and that everything would be taken care of.

The employer's first report of injury, which was completed by the respondent-employer, specifically sets forth that the employer was notified of Claimant's injury on March 7, 2005. Claimant testified that he did not fill out this form and, in fact did not know of its existence.

_____ Claimant testified that he has not returned to work and that because of his pain level he is unable to work.

_____ Co-employee, Eric Smith, testified that he worked on and off with the Claimant for about four (4) years. During this time period Mr. Smith had never noticed the Claimant showing any signs of, or complaining of back pain. Mr. Smith testified that "around March 7th" at about 1:30 p.m. claimant hurt his back and asked him to take

Claimant to the barn. Mr. Smith testified that he did in fact take the Claimant to the barn where he witnessed Claimant tell supervisor May Gunnells that he had injured his back and needed to go to the doctor. Mr. Smith stated that a couple of days after the Claimant's injury he went by Claimant's house to check on him because he had been missing work. Claimant reported to Mr. Smith that he was having back pain. Mr. Smith stated that he had observed the Claimant limping and using a cane since the injury.

Mr. Smith further testified that about two (2) weeks prior to the hearing of October 19, 2005, he had a conversation with supervisor, May Gunnells, where the two of them were discussing Claimant's injury and trying to decide the specific date of the injury. Mr. Smith testified that during this conversation Ms. Gunnells acknowledged that an injury had occurred but there was confusion as to the specific date. Additionally, Mr. Smith testified that no one with the respondents had come to him to ask about the Claimant's injury.

_____ May Gunnells testified for the respondents. May Gunnells admitted that the Claimant came to her office to take off work because of his back around March 7, 2005, however, she denied that the Claimant reported hurting his back at work. Ms. Gunnells stated that the Claimant brought some workers by her house to help her build a room sometime around the end of March or the first of April of 2005. While talking to the Claimant at that time, Ms. Gunnells testified that the Claimant stated that he was waiting to be paid by workers' compensation. Ms. Gunnells admitted on cross-examination that the Claimant would not be waiting for workers' compensation if he did not have a job related injury.

_____ Claimant's history in pertinent part from his initial visit to Argenta Health Care Clinic is as follows:

Lower back pain radiates into right leg.
Pain scale 4 to 5/10, 8 to 9/10 over
weekend. Numbness and tingling top right
thigh, started Wednesday at work, no wc
filled out.

_____ It is clear that Claimant reported on his first visit to Argenta Health Care Clinic that his pain started at

work and that he had not filled out any workers' compensation forms. This is consistent with the Claimant's testimony at the hearing.

_____ Claimant's MRI from March 10, 2005 shows "degenerative changes involving the lumbar spine with a tiny disc protrusion involving L4-5 interspace level."

_____ Claimant was seen by Dr. Ron Williams who suggested treatment of epidural steroid injections and physical therapy. Dr. Williams took Claimant off of work until such time as he received a series of three epidural injections. As of the date of the hearing the Claimant had not been able to receive any of the injections because of failure to get them authorized by either his personal insurance or workers' compensation.

_____ 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).

_____ In my opinion, Claimant has met his burden of proving by a preponderance of the evidence that he has sustained a compensable injury. Claimant described a specific event which occurred during the course and scope of his employment. Claimant produced a witness to corroborate the accident, Eric Smith, who wholly and completely confirmed the testimony of the Claimant. Claimant was seen at Argenta Health Care Clinic the day following the accident complaining of back pain. Claimant has an MRI which shows a small disc protrusion which is clearly an objective finding

of an injury. Claimant has also shown by a preponderance of the evidence that he reported his injury to his respondent-employer on or around the date of the accident. This is clearly supported by the respondent-employer's first report of injury which states that the date the employer was notified was March 7, 2005.

_____For the foregoing reasons, I respectfully dissent from the Majority's decision affirming and adopting the Administrative law Judge's opinion. In my opinion, the Claimant has met his burden of proving by a preponderance of the evidence that he sustained a compensable injury and should be awarded payment of all outstanding reasonable and necessary medical treatment and expenses beginning on March 7, 2005, all future reasonable and necessary medical treatment, temporary and total disability benefits from March 7, 2005 until a date yet to be determined, and appropriate attorney's fees.

PHILIP A. HOOD, Commissioner