

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F803050

SAM DAVIS, EMPLOYEE	CLAIMANT
QUATTLEBAUM PLUMBING CO., EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, CARRIER	RESPONDENT

OPINION FILED AUGUST 6, 2009

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

Claimant represented by HONORABLE JOE M. ROGERS, Attorney at Law, West Memphis, Arkansas.

Respondent represented by HONORABLE MELISSA WOOD, 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 January 23, 2009.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on March 3, 2008.

2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury,

caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. Based on a de novo review of the record, I find that the that the claimant established the occurrence of a compensable injury, and would award benefits accordingly.

Prior to being laid off in May 2008, the claimant had been employed by the respondent for several years. In the course of his job duties, the claimant worked as a plumbing installer on both residential and commercial construction. According to the claimant, his injury occurred while he, two co-employees, and the owner of the respondent employer were installing gas lines at the West Helena boys and girls club building, which was then under construction. The claimant stated he and a co-worker named Michael Williams were on a scaffold, and below, on ladders, were Terry Quattlebaum, the business owner, and Larry Brown, another co-employee.

The claimant described his injury as having occurred while he was twisting the pipe with a large pipe wrench. He testified that he pulled on the pipe and began feeling a pain in his lower back. He stated that he advised

his fellow employees, including Mr. Quattlebaum, that, "I almost pulled my back in two."

At the hearing, Mr. Williams, Mr. Brown, and Mr. Quattlebaum all testified regarding this incident. There was some discrepancy as to the dates the event occurred. According to the claimant, the incident was on March 3, 2008. However, the other witnesses testified Mr. Brown was terminated on or about February 26, 2008.

Mr. Brown testified he specifically remembered the claimant injuring his back and him telling his co-workers about the sudden onset of back pain. However, Mr. Quattlebaum and Mr. Williams testified they could not recall the claimant attributing his back problems to the incident with the pipe. However, they both acknowledged the claimant did begin displaying symptoms of a back injury on or about the time they were working on the gas pipe at the boys and girls club.

According to the testimony of the claimant and Mr. Quattlebaum, the claimant left work early on March 10, 2008 because of back pain. Mr. Quattlebaum denied he knew the claimant was going to the doctor on that day, but was aware

the claimant later received chiropractic treatment for his back.

The medical records reflect that the claimant saw Dr. McDaniel, a Helena general practitioner, on March 10, 2008. The doctor's treatment note of that date reflects the claimant, "thinks he pulled muscle on lower right side of back and hip area. Pain radiates up back." The report does not set out a history of injury, but it does refer to the claimant being employed at Quattlebaum Plumbing with unintelligible writing after that.

The claimant received medical treatment from the Traylor Chiropractic Clinic on March 14, 2008. The treatment notes related to that visit do not set out any history indicating a job-related injury. However, Mr. Quattlebaum testified at the hearing that he received a call from the claimant on March 14, 2008 from Dr. Traylor's office. Mr. Quattlebaum, who testified he was familiar with Dr. Traylor's voice, overheard the doctor in the background telling the claimant, "Go ahead and tell him it's workers' comp. . . ."

The claimant continued to be seen and treated by Dr. Traylor for the next few months. For a time, the

claimant was forced to use crutches and later a cane because of the pain and stiffness associated with his back injury. However, Dr. Traylor's treatment regimen was successful, and by the time of the hearing, the claimant testified he was recovered and was attempting to find work in the plumbing field.

The Administrative Law Judge, affirmed and adopted by the majority, denied this claim because of her conclusion that the evidence was a "draw." Evidently, she was of the opinion the claimant did not provide sufficient evidence to preponderate in his favor so as to meet his burden of proof. In my opinion, the Administrative Law Judge did not properly analyze the evidence, and her opinion should not have been affirmed and adopted by the majority. I believe the evidence is more than sufficient to establish the claimant sustained a job-related injury and is entitled to the requested benefits.

If analysis of the evidence stopped with the claimant and Mr. Brown testifying he reported an injury to his back at work and Mr. Quattlebaum and Mr. Williams testifying to the contrary, it could be said the claimant did not meet his burden of proof. However, analysis of

other evidence and testimony supports the claimant's version more so than that of Mr. Quattlebaum and Mr. Williams.

I believe it is significant that the claimant associated his injury with his employment in his early medical visits. While Dr. McDaniel's progress note is somewhat vague on its history, I note the claimant's place of employment is prominently mentioned. This suggests the claimant linked his employment with his injury and explained that association to Dr. McDaniel.

While Dr. Traylor's reports do not mention a job-related source of injury, even Mr. Quattlebaum acknowledged he heard Dr. Traylor, over the phone, stating the injury was "workers' comp." On that basis, the medical record supports the claimant's argument his injury was the result of a job-related activity.

Another factor favoring the claimant's credibility is an obvious desire to return to work and a lack of motivation for secondary gain. That is, the claimant missed no more work than he had to, and testified at the hearing that he is fully recovered from his injury. Obviously, the claimant wants to return to work and undertook a course of medical treatment to restore him to

functionality as soon as possible. The claimant is only seeking reimbursement for a limited number of chiropractic visits and a few weeks of temporary disability.

One of the reasons the respondent has given for denying this claim, was an alleged non-job related back injury the claimant sustained prior to seeing Dr. McDaniel. Mr. Quattlebaum and Mr. Williams testified the claimant told them he injured his back while unloading a new bathtub for his home. The claimant admitted he had recently purchased a new bathtub he was going to install in his house, but denied he sustained any injury while transporting it from the store to his home. In support of his contentions, the claimant called two witnesses, his wife, Barbie Davis, and his son, Justin Sheard.

While Mr. Quattlebaum insists the claimant told him of this non-job-related injury, a number facts involving this matter call Mr. Quattlebaum's version into question and challenges his credibility. According to Mr. Quattlebaum, he advised the insurance adjuster of these statements by the claimant when he contacted his workers' compensation insurance carrier after the claimant reported an injury. However, the respondent initially accepted the

claim as compensable.¹ I find it extremely unlikely the respondent would have accepted compensability in this matter if the adjuster had been advised the claimant had told his employer he had been injured in a non-job-related accident.

I also note Mr. Quattlebaum wrote the claimant a letter dated May 13, 2008, advising him he was no longer employed. The letter, which was an entire page in length, did not make any mention of the claimant's injury or in any way refer to the claimant's pending workers' compensation claim. I also find it unlikely Mr. Quattlebaum would not have mentioned an attempt to obtain workers' compensation benefits fraudulently if he had been aware of it at that time.

Mr. Quattlebaum did not make any mention of the claimant having hurt his back in a non-job-related accident until August 4, 2008, the date of the letter he wrote to the Employment Security Division in regard to a pending claim the claimant had filed for unemployment compensation.

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At the hearing, the claimant proffered the Form 2 filed by the respondent. The respondent objected to this type of introduction of the form and the Judge sustained the objection. While I agree this document is not admissible pursuant to statute, I believe the Commission can take judicial notice of its own records and, as such, I note the respondent did initially accept this claim as compensable.

Based upon my review of the evidence, I believe the claimant has provided sufficient evidence to meet his burden of proof. That is, I find the preponderance of evidence establishes that the claimant did sustain a job-related injury on or slightly before March 3, 2008. Not only is the claimant's testimony in this regard more credible and consistent than that of Mr. Quattlebaum and Mr. Williams, his medical records are in accordance with his testimony of a job related accident. The claimant tried to notify his employer of the injury and advised his doctors he was hurt on the job. For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner