

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705689

DONALD L. LAMB, EMPLOYEE	CLAIMANT
CONAGRA FROZEN FOODS CO., SELF-INSURED EMPLOYER	RESPONDENT NO. 1
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED AUGUST 6, 2009

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney at Law, Bryant, Arkansas.

Respondent No. 1 represented by HONORABLE BILL WALMSLEY, Attorney at Law, Batesville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed September 9, 2008.

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 set forth above are reasonable and are hereby accepted.
3. The hearsay objections by Respondents No. 1 to portions of Claimant's testimony are overruled. The admission of the testimony will help to "best ascertain the rights of the parties" under Ark. Code Ann. §11-9-705(a)(1) (Repl. 2002).
4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his spine.
5. In light of the above finding, the balance of the issues presented are moot and will not be addressed.

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. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable lower back injury while mixing spices on January 10, 2007, and would award medical and disability benefits accordingly.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment;

(2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

First, I find that the claimant has presented medical evidence, supported by objective findings, of an injury which required medical services and resulted in disability. Objective findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). The claimant testified that he moved a heavy barrel of spices on January 10, 2007. After moving the barrel, he completing the mixing order, shoveling the spices out of the barrel into a large mixer. After the mix was complete, the claimant climbed over a bar to dump the spice mixture into a box. After dumping the spice mixture the

claimant climbed back over the bar and onto a forklift. The claimant then moved the box of completed spice mixture with the forklift. After completing the task, the claimant realized he was experiencing excruciating pain in his back and could not get out of the forklift. The claimant notified his supervisor and was assisted to the nurse's office by his supervisor and another employee. After his initial visit to the company nurse's office, the claimant reported to the Dardanelle Family Clinic where he was diagnosed with a lumbar strain. An MRI taken on February 21, 2007 showed moderate disc displacements at L1-2 and L2-3. On March 19, 2007, Dr. Richard Peek stated:

He claudicates just walking in the building a very short distance and has to walk with assistive devices. On examination, he is the most tender around the right sciatic nerve. On review of the MRI films which were available, there really is the most impingement up at L1-2, with impingement of the thecal sac, which would correspond with the right sciatic nerve problem.

Eighty percent of these respond to conservative care. A small percentage need surgery. With his pain and disc problems, we may have to do a myelogram if this persists. He has tried therapy alone without response. he has too much nerve root impingement. We will set up a

series of L1-2 injections, possible up to three, to help reduce this. There is the slight chance he will need surgical treatment.

On July 8, 2007, Dr. Peek performed a bilateral decompressive laminectomy at L2-3. The claimant has not returned to work since the date of injury. Based on the above medical evidence, I find that the claimant has presented medical evidence, supported by objective findings, of an injury which required medical services and resulted in disability.

Second, I find that the claimant has proved by a preponderance of the evidence that the injury was caused by a specific incident identifiable by time and place of occurrence, arising out of and in the course of employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested

itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962).

Here, the claimant sustained a specific incident injury while performing employment services for the respondent, specifically, while mixing spices. The claimant immediately reported the injury to his supervisor, and was assisted to the nurse's office, where he informed the nurse of his injury. I find that the essential elements of the claimant's testimony, that he was injured on January 10, 2007 while preparing a spice mixture, remains consistent throughout the evidence of record. The claimant went to the nurse's station immediately after the incident, in a wheelchair, with his supervisor, reporting a work related accident on January 10, 2007. The claimant also reported a work related injury to the doctor on January 11, 2007. And reported a work-related injury to Northside Open MRI on February 21, 2007. And reported a work-related injury to the respondent's Human Resources Specialist, Ms. Bertha Kellybrew, in February. And reported a work related injury

to Dr. Richard Peek on March 19, 2007. The claimant's reports of his injury and his testimony at the hearing and in the deposition, while perhaps differing in minor details, do not vary in the essential elements. I find that the consistencies far outweigh any inconsistencies, and the claimant is a credible witness.

As for the arising out of element, the respondent's entire argument is seemingly based on the fact that the claimant did not fill out a Form N until June. But it is clear from the medical record and the testimony of the respondent's HR specialist Ms. Bertha Kellybrew, that the claimant was not keeping the work related nature of his injury a secret. It is hard to believe, as the respondent alleges, that the claimant would tell every medical provider about the work-related nature of his injury, but failed to mention it to the company nurse when he was wheeled in to the nurse's office by his supervisor immediately after the incident. I simply do not believe the respondent's allegation that the claimant did not report the injury to the company nurse. I also find it rather irrelevant, as the respondent does not dispute the claimant's testimony that he reported the injury to his supervisor. I find the evidence

to be clear that the claimant reported a work related injury to his supervisor and to the company nurse on the date of injury. Regardless of when the respondent finally gave the claimant a Form N, the evidence shows that in addition to reporting the injury on the date of injury, the claimant reported the injury again a month later to Ms. Kellybrew, who testified that the claimant told her in February that his injury was work- related.

In conclusion, I find that the claimant is a credible witness and has proved by a preponderance of the evidence that he sustained a compensable specific incident injury on January 10, 2007 and would award benefits accordingly. For the aforementioned reasons I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner