

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F805085

TOMMIE LEE JOHNSON, JR, EMPLOYEE	CLAIMANT
ODOM'S TENNESSEE PRIDE SAUSAGE, EMPLOYER	RESPONDENT
SENTRY INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 15, 2010

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

Claimant appeared pro se.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 16, 2010.

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

1. The employer-employee relationship existed from approximately June 18, 2007, to approximately June 18, 2008.
2. The claimant had an average weekly wage of \$715.55 and TTD/PPD rates of \$477/\$358, respectfully.
3. The hearing conducted on January 1, 2010, was in regard to an alleged work-related back injury sustained in February of 2008.

4. The claimant has failed to establish by a preponderance of the credible evidence that he sustained a back injury arising out of his employment at Odom's Tennessee Pride Sausage in February of 2008.

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

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that the claimant proved by a preponderance of the evidence that he sustained a work-related injury in February 2008, for which he is entitled to medical benefits, including the treatment by the providers identified in the record, and to indemnity benefits from June 25, 2008 to August 5, 2008. The respondents should not be entitled to credit for private insurance payments as there is no proof that any were made, in any amount.

The claimant, proceeding pro se, contended that he suffered a work-related low back injury in February 2008, while pulling racks of meat. He credibly testified that his work was very physical. He loaded and unloaded two hundred to three hundred-pound racks of meat into freezers, by pushing and pulling them. First he weighed each rack, and then he put it in the freezer. Sometimes he had to rearrange the racks in the freezer. The claimant explained that his back was injured pushing and pulling the racks in the freezer. Because the wheels locked up due to the cold, he had to jerk and pull to move them. He worked long hours, doing "a lot of pulling and pushing." The claimant

testified that in February 2008, he felt a sharp pain in his lower back at work, which he reported to a supervisor. Nothing was done about this. The claimant then explained that in April 2008, his pain became so great that he sought treatment. An accident report was completed in April.

The accident report is often important evidence of the date of injury. However, in this claim, the claimant's efforts to report the injury in February and later were ignored. Therefore, no accident report was created. The fact that the accident report was completed in April is not proof that no injury occurred in February. The respondents' self-serving testimony that the claimant did not report or complain of a back injury is certainly not dispositive of the question of when the injury occurred.

The medical records support the claimant's testimony that he was injured at work in February 2008. On April 2, 2008, the claimant was referred to Dr. Umerah with mid-back pain, with the notation that he does heavy lifting and pushing at work. On April 17, 2008, the claimant underwent a physical therapy evaluation at the direction of Dr. Umerah. He reported to the therapist the onset of back pain two months prior at work. On May 8, 2008, the claimant presented to an emergency room with back pain for the last

three or four months. On May 11, 2008, the claimant presented to another emergency room, relating a prior back injury in February 2008. The claimant was consistent in his reports to his medical providers that his work-related back pain began in February, although he has been forthright that he did not recall the exact date.

I find that the claimant has proven that he sustained a work-related injury on a specific day in February 2008, when he was pushing and pulling racks and felt a sharp pain.

The claimant presented objective evidence of injury, in the form of an April 11, 2008 MRI, showing disc bulging and foraminal narrowing at L4-5 and L5-S1, as well as the observation of muscle spasms by Dr. Hudson in May 2008. This objective evidence of injury is causally connected to the February 2008 work-related injury. The claimant was able to perform his job before February 2008 without pain, but on a specific day and time in February 2008, the claimant felt a sharp pain and developed low back pain with radiation on the right which has not yet resolved. There is no record of medical treatment of such a problem for the almost two years prior to February 2008. The only evidence of prior back pain is from 2006 when the claimant

had treatment once for similar low back complaints. However, there is no other evidence of complaints or problems in the extended period prior to the work-related injury, while since that time he had numerous visits to medical providers, including emergency rooms. This is another example of a claimant who may or may not have a pre-existing condition, but who was asymptomatic prior to the work-related event and symptomatic after the event. The claimant's need for treatment and disability are directly related to the work-related injury.

I find that the claimant has proved that he sustained a compensable injury on a specific date in February 2008 for which he is entitled to medical and indemnity benefits. I recognize that the medical records show that the claimant has psychological issues affecting his care and condition. However, the presence of the claimant's psychological issues does not relieve the respondents of responsibility under the Workers' Compensation Act. Furthermore, the fact that the claimant sustained a work-related injury which he reported without response by his employer, and the fact that he experienced significant pain, only served to exacerbate his mental and emotional problems. The respondents take the claimant as

they find him, and in this case, the claimant has a back injury which requires treatment. The medical records support a finding of compensability.

The claimant testified that he reported the onset of his back pain to his line leader and another supervisory employee. Three witnesses for the respondents testified that the claimant did not give notice of the injury until April 17 or 18, 2008. However, the claimant's testimony was that he did tell his line leader, in particular. The claimant stated that the line leader's response was to "tough it out." His testimony regarding the responses to his complaints was far more specific than the self-serving denials of the respondents' witnesses, whose interest in protecting their employer and their own jobs is undeniable, especially in light of their failure to follow the injury reporting policy. I credit the testimony of the claimant that he first reported his back injury to his line leader on the date that the pain first occurred.

The claimant is entitled to reasonable and necessary medical treatment including the treatment by Dr. Umerah, Dr. Hudson, the emergency rooms at Baptist and St. Vincent, Concentra and the various physical therapy programs.

The respondents would be entitled to a credit for medical treatment paid by the claimant's private health insurance carrier, however there is no evidence whatsoever that such insurance paid for any of the claimant's treatment. The claimant presented billing records which show no payments by an insurer.

The claimant sought temporary total disability benefits for the period from June 25, 2008 to October 1, 2008. He testified that he was not sure what the significance of those dates was. The claimant was terminated as of June 27, 2008 for failing to report for work for three days after his vacation ended. He testified that, in fact, he did call in to his employer pursuant to the policy, while the respondents' witnesses predictably testified to the contrary. I find that the claimant did attempt to comply with the policy and that he did not voluntarily quit. For this reason, I would award indemnity benefits through August 5, 2008 when he was released to unrestricted duty.

The claimant testified, under questioning by the respondents' attorney, that he filed for unemployment benefits before he went on vacation in June, but the Department of Workforce Services records show that his

initial claim was filed on July 10, 2008. I find that the Department of Workforce Services' records are proof of the date of his filing for unemployment benefits and that the claimant was confused in his recollection.

In conclusion, I find that the claimant proved by a preponderance of the evidence that he sustained a work-related injury in February 2008 for which he is entitled to medical benefits, including the treatment by the providers identified in the record. The respondents are not entitled to credit for private insurance payments as there is no proof that any were made, in any amount. The claimant is also entitled to temporary total disability payments for the period from June 25, 2008 to August 5, 2008.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner