

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G003447

JOHN C. HOLLEMAN, EMPLOYEE CLAIMANT

HEDGER BROTHERS CONCRETE, EMPLOYER RESPONDENT

STONETRUST COMMERCIAL INS. CO.,  
CARRIER/TPA RESPONDENT

OPINION FILED APRIL 19, 2011

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

Claimant appeared *pro se*.

Respondent represented by HONORABLE MARK ALAN PEOPLES,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed and  
Dismissed.

OPINION AND ORDER

The respondent appeals a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant worked for the respondent employer as a truck driver. The claimant alleged that on December 8,

2009, he was cleaning his concrete truck when he fell off the back of it and onto his back. The claimant testified that he went to the office and told Charles Rogers, the plant manager, about the incident. He indicated to Mr. Rogers that he was not hurt but that he just wanted to tell him about the accident. The claimant continued to work until March 16, 2010, when he stopped working because of leg pain. The claimant called the office and said that he was having trouble driving his truck. He had pulled the truck over and could not drive any further. Mr. Stanley Clements, Supervisor, went to get the claimant at the truck. The claimant went to the doctor complaining of leg pain after he was unable to drive the truck.

The medical evidence demonstrates that the claimant first went to the doctor on December 15, 2009, when he went to the Crittenden Regional Hospital Emergency Room. The history indicates that the claimant had pain for six months in his back, but it was now worse. The examination of the claimant at that time revealed only pain and there was no mention made of bruises or any other objective findings.

The claimant went to the emergency room again on January 15, 2010. At that time, the claimant's chief complaint was a small knot on his right, lower leg. Again,

the claimant told the physician that his condition had been ongoing for six months. There is also a notation that the claimant was seen at the emergency room two months ago for the same problem.

The claimant has the burden of proving by a preponderance of the evidence the compensability of his claim. Jordan v. Tyson Foods, 51 Ark. App. 911 S.W.2d 593 (1995); Kuhn v. Majestic Hotel, 50 Ark. App. 23, 899 S.W.2d 845 (1995). 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) (Supp. 2005), 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 a disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code. Ann. § 11-9-102(16), 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. See also, Ark. Code. Ann. § 11-9-

103(4) (E) (i) (Supp. 2005); Freeman v. ConAgra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001); Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997), see also Reed v. ConAgra Frozen Foods, Full Commission Opinion, February 2, 1995 (Claim No. E317744. 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 evidence demonstrates that the histories in the medical records do not match up with the claimant's testimony. The claimant's medical records from the first emergency room visit indicate that the claimant had been having an ongoing problem for approximately six month's duration. The claimant did not mention that it was a result of any accident and when asked about recent injury, the emergency room record has a circle around no as the answer.

The second emergency room record indicates that the claimant's onset of the condition was six months prior

to January of 2010. It was noted at that time that the claimant had previous skin grafts in 2008 and that the claimant was complaining only of a small knot on his leg that contained the skin grafts.

The claimant again went to the emergency room on March 16, 2010. At that time, the claimant did not say he fell off of a truck and injured his back. He denied any recent injury but said that he injured his leg a few months ago. He did not mention his back, nor did he mention any bruising.

There is no mention of a work incident until March 30, 2010, when the claimant found out he needed medical treatment and he applied for unemployment compensation and was denied. It was at that time the claimant told Dr. Marion Barr and Dr. Roy Denton that he fell off a concrete truck and landed on his lower back. Dr. Denton assessed the claimant with low back pain and a back contusion.

The claimant testified that the records noting six months were wrong in both incidences and that it should have read six days. We note that one notation can be wrong but two is simply incredible. Therefore, we give more weight to the records and no weight to the claimant's testimony.

Mr. Rogers testified at the hearing that the

claimant never told him about a work-related accident. He did see the claimant limping around and assumed the claimant was having some type of a problem. The claimant never reported an injury to him, and he never notified the corporate office to file a claim because he knew nothing about an accident. Similarly, Stanley Clements also testified that the claimant never mentioned his problem was related to a work-related accident, and he knew nothing about a Workers' Compensation claim. Mr. Clements did go pick up the claimant when he reported in March of 2010 that he was having trouble driving. However, the claimant did not report an injury to him at that time.

The evidence fails to indicate that the claimant sustained a compensable injury. The claimant told the first three physicians that treated him that he had a condition that was in existence prior to the alleged injury in December of 2009. Further, Mr. Rogers and Mr. Clements both testified that the claimant did not tell them that he had had an on-the-job injury. Simply put, we cannot find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury. Accordingly, we hereby reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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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, a credible witness, sustained a compensable injury on December 8, 2009 for which he is entitled to indemnity and medical benefits and an attorney's fee.

The claimant testified that he worked for the respondent employer as a truck driver and laborer. Prior to his injury on December 8, 2009, he had not been having back problems. On that date, he was cleaning the cement off of his mixer truck, obviously employment services. It was almost the end of his shift. He slipped as he was climbing down the ladder off his truck. He fell about five or six

feet, and he landed on his back, between his low back and tailbone, on the concrete floor. He reported his injury to Roy, the plant manager. He thought that he would be able to shake it off, and he told Roy so. He went home at the end of his shift, showered and went to bed, because he was tired and aching. He was sore when he awoke. He continued to work, but his symptoms continued to increase in his back and into his leg.

On December 15, 2009, the claimant went to the hospital. He reported that his pain had begun about six days prior, which was December 8, 2009. The note said that he had pain for six months prior, but it was only six days. The claimant has had consistent complaints since that time. It is a simple case of a laborer sustaining an injury, believing that it would resolve but reporting just the same, and that injury becoming more serious over time. There is no real doubt as to causation here. He fell on December 8 and was seen on December 15 with pain. He was seen again in January 2010. In March 2010, he stated that he had not had an injury recently but that he had an injury a few months ago. In April, the medical records have more specifics recorded about his fall. In March and April, the claimant was diagnosed with a contusion, sciatica, and lumbar pain,

and with low back pain with radiculopathy. The claimant sustained an injury to his low back while performing employment services on December 8, 2009 at work.

The claimant was prescribed Robaxin by the emergency room physician in March, which is consistent with Dr. Denton's notes in April that he observed "marked lumbar midline +PVM [positive paravertebral muscle] PS+ to palp," which indicates and suggests paraspinal spasm positive to palpation." The prescription of a muscle relaxer and the presence of muscle spasm satisfy the objective finding requirement, as does the diagnosis of contusion by Dr. Denton.

I would award the claimant medical and indemnity benefits for this compensable injury, as well as an attorney's fee.

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

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PHILIP A. HOOD, Commissioner