

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G005817

CEDRIC RAULSTON, EMPLOYEE	CLAIMANT
WASTE MANAGEMENT, INC., EMPLOYER	RESPONDENT
INDEMNITY INS. CO. OF NORTH AMERICA/ GALLAGHER BASSETT SERVICES (TPA), CARRIER	RESPONDENT

OPINION FILED JUNE 13, 2011

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

Claimant represented by the HONORABLE WILLARD PROCTOR, JR., Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, 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 18, 2011.

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 employee-employer-carrier relationship existed on December 14, 2009.
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.

3. If they have not already done so, the respondents are directed to pay the court reporter, Linda Parker's, fees and expenses within thirty days of receipt of the bill.
4. No notice was given to the employer until June, 2010, of the December 14, 2009, injury.
5. The 2001 claim is barred by the statute of limitations.

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 did prove a compensable specific incident back injury on December 14, 2009, and I would award 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).

The claimant testified that, on December 14, 2009, he was at Ketcher & Company delivering a roll-off container for his employer, Waste Management. He also testified that it had been raining. After delivering the container, the claimant testified that his truck got stuck. To get the truck moved, the claimant, the customer, and some of the customer's employees used five-gallon buckets of rocks to fill the truck ruts. During the process, the claimant testified that something happened in his back.

The claimant's testimony regarding the injury was corroborated by the testimony of Lisa Goodman, a company dispatcher. Ms. Goodman testified that Mr. Raulston reported the injury immediately to his supervisor, Darren Moore. She also testified that the injury occurred in December of 2009, while he was at work. She overheard Mr. Raulston speaking to Anna Holcomb, another dispatcher, and Darren Moore, his supervisor, about the injury.

The claimant's testimony regarding the injury was also corroborated by his wife. Mrs. Raulston testified that, on December 14, 2009, she noticed that Mr. Raulston was complaining of pain in his back. Mr. Raulston told her that the pain was the

result of an injury he sustained to his back as a result of picking up a bucket of bricks.

Mr. Raulston's testimony regarding this specific incident was also corroborated by a diary that he kept. In his diary, Mr. Raulston wrote:

This week @ Waste Management while delivering a contain at Katcher Co. on Gill St. I got my truck stuck, trying to place container were customer wanted it. While trying to get traction by toting 5 gal buckets of rocks putting them under the wheels my back gave out. I called Darren my supervisor on the company radio to report it. He called me back on the cell phone. He ask me if I needed to go to the doctor. I told him I did not know. After about 30 min, Darren call me on the cell phone again to check on me. I told him I would try to make the day.

This was written on the back of Mr. Raulston's pay stub and is in line with the testimony offered by Mr. Raulston, Ms. Goodman, and Mrs. Raulston.

Dr. Justin Seale testified that he ordered an MRI of Mr. Raulston's lumbar spine. The MRI was taken on October 20, 2010. The MRI revealed disc desiccation, moderate in nature, at L4-5, which was pre-existing and chronic in nature. The MRI also revealed foraminal stenosis on the right at L4-5, that also appeared to be chronic. However, the MRI showed a protrusion at L5-S1 central facing bilateral S1 nerve cords. Dr. Seale

concluded that this disc herniation appeared to be acute.

In his report, Dr. Seale noted that the disc protrusion at L5-S1 was acute, "causing right buttock and left leg pain (acute injury sustained at work on 12/14/09)." Dr. Seale further expounded on this point:

The only objective evidence, the true objective evidence we do have is an MRI showing a disc protrusion or herniation. That's the objective evidence. Now, subjective complaints of numbness, tingling, and pain down the leg and the subjective report of an injury in 12/09. The objective evidence is the MRI, showing an MRI - showing a disc herniation that correlates with the subjective complaints.

During his deposition, Dr. Seale was challenged about his opinion.

Q. You're opinion, Dr. Seale, on what caused his problems is based on his history given to you. You have to believe that to be able to give the opinions you've given, right?

A. Correct. I agree with that 100 percent. I understand that he has a long history of injuries and back problems, and we've clarified that. And I agree, that's producing back problems. The problem is that he has a disc protrusion. And I can't without a shadow of a doubt say that that didn't occur during - - you know, was a work injury, which he's stating was in 12/09. Now, I've had a lot of depositions,

people come in and show me medical records. We'll say, "This patient come in with left leg pain documented, you know, six months prior to the injury." That'll change my mind in a heartbeat. Obviously, it was there prior to that. I just haven't seen anything there. I was glancing through these, and I read all of the previous history that I was given prior to - - and it stretched over about a year. I haven't seen anything here from doctors, reports or anything documented subjective complaint of pain radiating down the leg prior to 12/09. And if you could show that to me, I could definitely change my mind.

Based on the claimant's credible testimony and the medical evidence provided by Dr. Seale, I find that the claimant has met all of the elements of a compensable specific incident injury occurring on December 14, 2009, while lifting buckets of rocks.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner