

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H008053

KENNETH LAMOREAUX, Employee	CLAIMANT
POTLATCHDELTIC CORP., Employer	RESPONDENT
SENTRY CASUALTY COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 30, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Russellville, Pope County, Arkansas.

Claimant represented by MATTHEW KETCHAM, Attorney, Fort Smith, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 17, 2022, the above captioned claim came on for hearing at Russellville, Arkansas. A pre-hearing conference was conducted on October 20, 2021 by Administrative Law Judge Mike Pickens and a pre-hearing order was filed on October 21, 2021. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed at all relevant times including March 10, 2020, when the claimant alleges he sustained compensable injuries to his right shoulder, right knee, and lower back.

3. The claimant's average weekly wage was sufficient to entitle him to the maximum 2020 weekly indemnity rates of \$629.00/week for temporary total disability benefits and \$533.00/week for permanent partial disability benefits.

4. The respondents controvert this claim in its entirety.

5. The parties specifically reserve any and all other issues for future determination and/or hearing.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether the claimant sustained compensable injuries to his right shoulder, right knee, and lower back within the meaning of the Arkansas Workers' Compensation Act on March 10, 2020.

2. Whether and when the claimant notified the respondents of his alleged compensable injuries.

3. If the claimant's alleged injuries are deemed compensable, the extent to which he is entitled to medical and indemnity benefits.

4. Whether the claimant's attorney is entitled to a controverted fee.

The claimant contends "he was injured on March 10, 2020 when he was struck by a forklift which was being operated by another employee causing an injury to his lower back, right shoulder, and right knee. An ambulance was called to the respondents' place of business, however, the claimant did not take it. The claimant received treatment with Dr. William Berry at Chambers Memorial Clinic when the pain in his right knee and right shoulder would not subside. The claimant was referred for MRIs of right shoulder and right knee and instructed to return to work in four weeks. He returned to Chambers Memorial Clinic two weeks later presenting with low back pain radiating down right leg

from the on-the-job injury. Josh Manatt, P.A. treated the claimant and referred him to a neurosurgeon for further evaluation of his lower back pain. The claimant eventually received an appointment with Dr. Jonathan Reding, a neurosurgeon, in Little Rock, Arkansas, who evaluated him and prescribed physical therapy. The claimant attempted physical therapy at Mena Regional Medical Center. The physical therapy has been unsuccessful in alleviating the claimant's complaints of pain. Upon a follow-up appointment with Dr. Reding, the claimant was referred for pain management with LESIs. His first appointment is September 28, 2021. The claimant contends he has not yet reached maximum medical improvement and he is entitled to temporary total disability from the date of his injury to a date yet to be determined. In addition, he is still undergoing active medical treatment and is entitled to medical benefits for his medical treatment. The claimant specifically reserves any and all other issues for future litigation and/or determination."

The respondents contend "the claimant has not produced any objective medical evidence establishing the existence of any compensable injuries, or that support his alleged entitlement to medical and indemnity benefits. Therefore, he cannot meet his burden of proof pursuant to the Act in demonstrating he has sustained any compensable injuries. The claimant did not give notice of any claimed work injury until October 20, 2020; consequently, even if the claimant's alleged injuries are deemed compensable, the respondents are not liable for any medical or indemnity benefits before this date. The respondents specifically reserve any and all other issues for future litigation and/or determination." Respondent further contends that claimant's off-work status is not causally related to his injury. He was terminated for no call/no show in August 2020.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on October 20, 2021 and contained in a pre-hearing order filed October 21, 2021 are hereby accepted as fact.

2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder, right knee, or low back on March 10, 2020.

FACTUAL BACKGROUND

There is no question that an incident occurred involving the claimant on March 10, 2020. Claimant testified that on that date he went to the guard shack and clocked in to work. As he came out of the shack a fork truck carrying wood struck him and dragged him some 25-30 feet. Claimant testified that he had abrasions on his arms, back, and knees. This incident was confirmed by the testimony of Jackie Carter, the former safety director for the respondent. Carter testified that he was working in his office when someone informed him that claimant had been struck by a forklift. He along with several other individuals went outside to investigate. Carter testified that video surveillance confirmed that as claimant was walking past the guard shack he was hit by a forklift carrying a package of lumber from the kiln.

Carter testified that claimant had various scratches and bruises on his arm which he and the mill manager washed off and bandaged. Carter then took claimant and the forklift driver to Russellville for a drug screen test. After receiving the negative results from the drug screen, claimant returned to work for respondent at his regular job and continued to perform his regular job at full duties until he was terminated for excessive absences in August 2020.

Approximately two months after his termination by the respondent, claimant sought medical treatment from Dr. William Berry on October 6, 2020, for complaints of pain involving his right shoulder and right knee. Claimant gave a history of having injured his right shoulder and right knee after being run over by a fork truck on March 10, 2020. X-rays of the claimant's right knee and right shoulder were negative.

On October 16, 2020 claimant sought medical treatment from St. Mary's Regional emergency room with complaints involving his right shoulder, right knee, and low back pain which he also attributed to the forklift incident in March. Claimant was instructed to receive follow-up care with his primary care physician or Dr. Kelly if his symptoms continued.

On October 20, 2020, claimant was evaluated by Josh Manatt, PA, with complaints of right shoulder and lumbar back pain. Manatt ordered an MRI scan of claimant's lumbar spine and his right shoulder. The MRI scans revealed a herniated lumbar disc as well as a tear of the right supraspinatus tendon. In a report dated November 2, 2020, Manatt indicated that claimant should be seen by a neurosurgeon before seeing an orthopedic surgeon for his right shoulder. Manatt continued to treat claimant with medication and injections.

Claimant was not evaluated by a neurosurgeon until he saw Dr. Jonathan Reding on June 30, 2021. Dr. Reding noted that claimant was complaining of right-sided low back pain and he recommended physical therapy. Claimant began physical therapy in Mena on July 28, 2021.

Claimant returned to Dr. Reding on August 18, 2021 and he noted that claimant had completed four to five weeks of physical therapy and that claimant reported that the physical therapy actually made his pain worse. Dr. Reding went on to indicate that claimant had some foraminal stenosis at L5-S1, but he did not suspect that surgery would be needed. He referred claimant to pain management closer to Mena.

The documentary evidence contains a discharge summary from physical therapy dated September 7, 2021. The discharge summary does not support Dr. Reding's belief that claimant had completed four to five weeks of physical therapy. Instead, the discharge summary indicates that claimant only had six visits with physical therapy with the first visit occurring on July 28, 2021, and the last visit occurring on August 11, 2021. The discharge summary stated:

Pt frequently stating he would rather be treated by a chiropractor. He canceled his appointment on 8/18 and failed to show to his subsequent appointment. Unable to formally assess progress due to inability to show to sessions. Additionally, he frequently switches from "no pain" to severe pain within seconds of being asked.

Although Dr. Reding referred claimant for pain management in Mena, and claimant also testified that he received some injections in Hot Springs, those medical records are not submitted into evidence.

Claimant has filed this claim contending that he suffered a compensable injury to his right shoulder, right knee, and low back as a result of the incident on March 10, 2020. He seeks payment of medical treatment as well as temporary total disability benefits.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his right shoulder, right knee, and low back on March 10, 2020 when he was struck by a forklift carrying a load of wood and dragged some 25 to 30 feet. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proof.

There is no question that claimant was involved in an incident on March 10, 2020 when he was struck by a forklift carrying a load of wood and dragged some 25 to 30 feet. There is also no question that claimant had various abrasions as a result of that incident. The issue is whether claimant has proven by a preponderance of the evidence that as a result of that incident he suffered compensable injuries to his right shoulder, right knee,

and low back.

Testifying at the hearing was Jackie Carter. In March 2020, Carter was the respondent's safety director. Carter had worked for the respondent as safety director for 43-44 years and was responsible for handling workers' compensation claims. Carter testified that after being informed that an individual had been struck by a forklift, he along with the mill manager and various other employees went out to investigate. Carter confirmed that claimant had various abrasions on his arm which were washed off and bandaged. Carter also testified that he offered to call an ambulance for the claimant, but claimant declined. Claimant admitted that he declined an ambulance on the day of the accident. Carter testified that over the next several days and weeks he saw claimant on multiple occasions and asked claimant how he was doing. Carter testified that while claimant indicated he was sore, he also indicated that he was going to be okay and stated that claimant never asked to see a physician.

Q At any time, did Kenneth ask to go get checked out or go see a doctor?

A No, sir.

Q At any time after the accident, did Kenneth ask you if he could go see a doctor?

A No.

Q Never?

A Never.

Carter specifically testified that on at least one occasion he asked claimant if he needed to go to the doctor and claimant indicated that he did not.

Claimant testified that when he returned to work for the respondent after passing his drug screen test he informed Carter that he needed to see a doctor because his back and arm were hurting and that Carter responded: “I got you.” Claimant testified that he asked Carter for medical treatment at least three times but no medical treatment was provided. Claimant also testified that Carter informed him that if he sought medical treatment on his own he would be terminated by the respondent. Carter denied this accusation. Claimant also testified that on several occasions after he returned to work for the respondent he had bowel accidents which he attributed to the incident of March 10, 2020. However, claimant acknowledged that he never informed Carter that he was having those accidents and that he thought it was related to the forklift incident.

Notably, claimant returned to work for respondent approximately two days after his drug screen test and continued performing his regular job duties until he was terminated in August 2020, some five months after the forklift incident. Claimant acknowledged that he decided not to return to work at some point and made a conscious decision to acquire enough points to be terminated.

Q Now, the way you phrased it to me in the deposition is that you allowed yourself to be pointed out; you decided you weren't going to come into work anymore. You agree with that; right?

A Yeah, I agree with that.

Q You told me you were not pleased with the forklift drivers and how they were operating the forklifts in the facility?

A Yes, sir. I did tell you that.

Q So you made a conscious decision; you knew seven points was going to point you out and your job would be

over; right?

A Yes, sir.

Q You let that happen; right?

A Yes, sir.

After claimant was terminated by the respondent he completed a form for unemployment benefits dated August 25, 2020 indicating that he quit his last job because of a personal emergency. He also indicated that he could begin work immediately, could work full time, and did not have any disability that would limit his ability to perform normal job duties.

Claimant did not seek any medical treatment for his right shoulder, right knee, or low back until October 6, 2020. Admittedly, claimant did attribute those complaints to the incident of March 10, 2020.

After my review of the evidence presented, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder, right knee, or low back as a result of the incident on March 10, 2020. Claimant admittedly refused an ambulance on the date in question. Furthermore, claimant returned to work approximately two days later and continued working for respondent until he decided to miss enough work to be terminated by the respondent in August 2020. Claimant did not seek any medical treatment for an alleged work related injury until October 6, 2020, some seven months after the forklift incident. Claimant contends that he requested medical treatment from Jackie Carter, the respondent's safety director, and the person responsible for handling workers' compensation claims.

However, Carter denies that claimant ever requested medical treatment. To the contrary, Carter testified that he checked with claimant on several occasions and on at least one occasion specifically asked him if he needed medical treatment and claimant indicated that he was okay.

I find Carter's testimony to be credible. With respect to claimant's testimony, I note that claimant acknowledged that at his deposition he testified that he had not worked anywhere after the respondent except for helping an older man put some mineral blocks out at his house. However, at the hearing claimant testified that he performed work for approximately two months for an individual named Walter Beck who owns a corporation that built sheds. Claimant testified that he performed cleanup work using a leaf blower to blow sawdust and was paid some \$15.00 - \$16.00 per hour. Claimant testified that he did not know which two months he worked for Walter Beck. Claimant's testimony at his deposition that he had performed no work since leaving the respondent versus his testimony at the hearing indicating that he worked for an individual for some two months is a reflection of credibility.

Accordingly, for the foregoing reasons, I simply find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right shoulder, right knee, and low back on March 10, 2020.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right shoulder, right knee, and low back on March 10, 2020. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$636.34.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE