

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300483

JASON B. LOVE, EMPLOYEE	CLAIMANT
REYNOLDS CONSTRUCTION COMPANY, INC., EMPLOYER	RESPONDENT
AMERICAN CASUALTY CO. OF READING PA/ GALLAGHER BASSETT, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 19, 2024

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

Claimant appeared *pro se*.

Respondents represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 15, 2023. The administrative law judge found that the claimant did not prove he sustained a compensable injury. The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

Jason Love, now age 33, testified that he became employed with the respondents, Reynolds Construction Company, in about April 2022. Mr. Love testified that he initially worked for the respondent-employer on its

“painting crew” and eventually became a general laborer with the respondents’ “carpenter crew.” The parties stipulated that the employee-employer-carrier relationship existed on October 23, 2022 and at all other pertinent times. The claimant testified on direct examination:

Q. Tell me what happened at work.

A. It was a big furniture move. We had, I believe, it was 15 or plus offices or conference rooms, we needed to get all of the furniture taken out, put in to two large connexes....So that way we could have everything moved out of the room to redo the floors, repaint, I believe, new lighting and in the end of it, move everything back to its proper position in the office to where it was prior to us moving it.

Q. Okay. So you were moving furniture and what happened to you?

A. I believe I overstrained and hurt myself at some point and continued working and it just seemed to escalate and move – move past what I thought was comfortability.

Q. What part of your body was hurting?

A. My shoulder....My left shoulder in between my shoulder blade and my spine.

Q. Okay. Did you tell your employer that you got hurt moving furniture?

A. I made mention that I was having pain in my shoulder. I didn't formally tell them as [an] accident report, because at the time, I didn't feel like there was anything to report.

Q. Okay. Did you continue to work?

A. Yes, ma'am.

Q. Okay. Full duty?

A. Yes, ma'am.

Q. Okay. What happened on October 23rd, 2022?

A. I woke up that morning immobile and in severe pain, took me extensive time to get out of the bed and prepared for my day; and so, I went to Urgent Care, because I knew at that point something had escalated and it was not simply a sore muscle or something of that nature. It was something more severe it felt....

I believe, I told them that I'd hurt it at work and couldn't tell them exactly what day it was, but it was some time during our

move. As hectic as everything was, it was hard to pinpoint the timing of it, but had mentioned that I was going to the doctor to get things figured out, because it seemed like it was much more severe than previously thought....

Q. Now, you mentioned that you woke up with this pain on October 23rd, is that correct?

A. Yes, ma'am.

Q. Now, that was a Sunday, is that correct?

A. Yes, ma'am.

Q. Were you working that Sunday?

A. No, ma'am....

Q. So what was the last date that you worked?

A. It would be October 21st.

Q. Okay. And did you experience any new injuries on October 21st?

A. No, ma'am.

Q. Okay. How did you feel when you left work that Friday?

A. General soreness, still located pain in my left shoulder, just general tense from working through the week and making it to the weekend.

Q. Did you tell Casey on Friday that you needed to go to the doctor?

A. No, ma'am....

The claimant's testimony indicated that he sent a text message that morning to his supervisor, Casey Harness. The record contains excerpts of text messages sent by the claimant beginning Saturday, October 23, 2022: "I'm about to go to urgent care my shoulder has been f---ing with me for about 2 or 3 weeks and I woke up this morning and literally could not move at all I was in so much pain it took me almost an hour to get dressed...."

According to the record, the claimant treated at Jefferson Regional Medical Center on October 23, 2022. An Urgent Care Note indicated:

31 y/o male with complaints of 8/10 back pain medial to left shoulder blade x 3 weeks – states he has had pleurisy in the

past and it feels very similar – states he has a catch in his breath because of the pain. Denies cough, runny nose, sore throat. He works construction and lifts heavy objects often. He has tried ibuprofen without improvement. Denies chest pain – pain is primarily in the back.

An x-ray of the claimant's chest was done with the impression, "No acute pulmonary finding." The claimant was discharged from Jefferson Regional on October 23, 2022 with the diagnosis "1. Musculoskeletal strain." A physician's note indicated that the claimant could "return to full physical activity as of 10/24/2022."

The record contains a portion of another text message sent by the claimant on October 23, 2022: "They think I may have tore a muscle and my shoulder and if giving me some muscle relaxers and told me to rest it for a bit and to try not to over do it"

The respondents' attorney cross-examined the claimant:

Q. Now, when you went to the Urgent Care on Sunday, October 23rd, they inquired, "Is this a work-related injury," didn't they?

A. Yes, ma'am.

Q. And you told them, "No," didn't you?

A. Yes, ma'am, I believe so.

Q. So on October 23rd, you're thinking it's an over-exertion from work, "I've over-worked – I wouldn't be here, if I hadn't worked so hard." You still told them, "It's not a workers' compensation claim," didn't you?

A. Yes, ma'am....

Q. And your attorney is claiming the stipulations are that you injured yourself on October 23rd, 2022. You didn't injure yourself on that day, did you?

A. No, ma'am.

Q. And she got the testimony that moving the furniture, you think, you injured yourself moving furniture, right?

A. Yes, ma'am.

Q. But you can't say when, can you?

A. No, ma'am. That was the only –

Q. You can't say, "I was moving that desk or that file cabinet," can you?

A. No, ma'am.

The claimant testified on direct examination:

Q. Following going to the Urgent Care, did you contact Casey or Mr. Harness about this being a workers' comp claim?

A. No, ma'am.

Q. Okay. Why not?

A. Whenever I went there, they said there was no signs of pleurisy and that it was probably just a disturbed muscle from over-exertion and to let it rest and give it time to heal and it should work out on its own....

Q. And did you notify your employer, though, that you would have to be off work?

A. Yes, ma'am.

The claimant sent a text message on Monday, October 24, 2022 indicating, "Gonna give it another tay (sic) of rest. And have to pick up prescription at pharmacy today." The claimant's supervisor, Casey Harness, replied through text, "Thats fine. But you need to be here tomorrow."

The respondents' attorney examined Casey Harness:

Q. What do you do for Reynolds?

A. I'm construction superintendent, general construction superintendent....

Q. Was [the claimant] working for you at the Juvenile Justice Center in September and October of last year?

A. Yes, ma'am....

Q. What was he doing?

A. At that time, we were moving furniture in and out so that they could repaint and lay flooring....

Q. All right. And Jason was doing this work with your crew?

A. Yes, ma'am. He was on my crew....

Q. Tell me what you know about him getting hurt?

A. What I know about Jason getting hurt is he came in one Monday morning and he told me that he had injured himself over the weekend. He said that he thought that he had pulled something or did something. He told me that he had been hurt previously and he thought that he had just re-pulled something and he said he wanted to go to the doctor about that. At that point, I allowed him to stay and work, because Jason had been there the entire time....

Q. Was this before we know he went to the Urgent Care on October 23rd?

A. Yes, I believe so.

Q. Okay.

A. That was before he had seen anyone about the shoulder.

Q. Okay. So before he went to the doctor, he told you he got hurt over the weekend?

A. Yes, ma'am....

Q. Did he ever tell you, "I got hurt at work"?

A. He told me he did not get hurt at work.

The claimant's attorney cross-examined Casey Harness:

Q. Now, you mentioned that Mr. Love said that he never got hurt at work. Did you ask him how he got hurt?

A. I didn't, but he told me that he had been helping his brother and they moved some bottles or some tanks. I'm not – I don't specifically, know what, he just said he was helping his brother over the weekend moving some heavy objects and that he had pulled something.

The claimant returned to Jefferson Regional Medical Center on October 31, 2022: "Patient reports one month hx of left posterior scapula pain radiating to middle of back with swelling. Reports this has been going on for one month. Reports for the past week he has had numbness and

tingling extending to left hand and fingers. Denies fall or injury.” The claimant was diagnosed with “Musculoskeletal pain” and “Radicular pain.”

A CT of the claimant’s thoracic spine was taken on October 31, 2022 with the following findings:

No acute fracture or dislocation. Alignment is normal. Vertebral body heights are normal. Intervertebral disc spaces are within normal limits. No bony spinal canal stenosis. No neural foraminal stenosis. Mild pleural/parenchymal scarring in the lung apices. Calcified granulomas in the left lung. Soft tissues otherwise within normal limits.
IMPRESSION: No acute abnormality of the thoracic spine.

The claimant testified that he did not return to work for any employer after October 31, 2022.

An MRI of the claimant’s cervical spine was taken on November 11, 2022:

HISTORY: Neck pain and left upper extremity radiculopathy....
IMPRESSION: 1. At C7-T1 there is a left-sided disc herniation extending into the region of the foramen. This produces left foraminal stenosis and appears to impinge upon the left C8 nerve root.
2. At C4-5 there is shallow broad-based central and left paracentral disc protrusion. There is mild left foraminal stenosis.
3. At C5-6 there is shallow broad-based diffuse disc protrusion and bony spur. This effaces the ventral subarachnoid space and produces some mild central canal narrowing. There is moderate bilateral foraminal stenosis.

The record indicates that the claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on or about December 16, 2022. The

ACCIDENT INFORMATION section of the Form AR-N indicated that the Place of Accident was "Gradual onset multiple job sites." The claimant wrote in the Date of Accident section, "Initial doctor visit 10/23/22." The Time of Accident was "Gradual Onset," and the claimant wrote that he notified the employer of the accident on October 23, 2022. The claimant reported on the Form AR-N that he injured his "Left shoulder and neck." The claimant wrote regarding the cause of injury, "Began with massive furniture move at JJC. No prior issues or pain. Other job site tasks at other locations include lifting sheet rock panels, overhead demolition, and general lifting and labor. Believed it was simply a sore/pulled muscle until an MRI revealed objective finding and was referred (sic) to a specialist."

The claimant testified on direct examination with regard to the Form AR-N:

Q. And the date on here is December 16th, 2022. Is that the date that you gave it to your employer?

A. Yes, ma'am, I believe so.

Q. Okay. Who did you give it to?

A. I gave it to Mr. Mike Reynolds.

Q. Okay. So you gave him notice of a workers' comp injury in December, is that fair?

A. Yes, ma'am....

The respondents' attorney examined Mike Reynolds:

Q. Mr. Reynolds, what do you do for a living?

A. I am president of Reynolds Construction....

Q. Do you remember him coming in to your office with this form, this AR-N?

A. Yes, I do....

Q. So after he filed a claim and you became aware that he was saying he got hurt at work, did you have a conversation with him?

A. I'm sure I did, but I don't remember exactly.

Q. Okay. But did he ever tell you he got hurt at work from a specific incident?

A. He did say that the strain, he thought, came from moving the furniture, yes.

Q. Okay. But did he tell you when that happened?

A. Not with a specific incident, no.

Q. Did he ever report injuring himself to you or Casey or anybody else, before filing this claim in December of last year?

A. No, ma'am. There was no First Report of Injury done. There was no accident report done. There was no post-accident drug screen performed. There was nothing – none of the procedures that have been laid out in our company handbook followed....

Q. If he had told you, "I got hurt at work," what would you have done?

A. He would have been sent to Healthcare Plus, which is who we use for our – most of our accident stuff, immediately for a post-accident drug screen. There would have been a First Report of Injury form filled out as well as an accident report, and the workers' comp claim would have kicked in at that point.

Q. All right. And that did not happen here?

A. That did not happen here.

The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on January 20, 2023. The claimant wrote in the ACCIDENT INFORMATION section of the Form AR-C, "Massive furniture move, overhead work, and demolition work. Pain began in left shoulder blade leading to doctor visits to discover (by MRI) 2 herniated discs, bone spur, and a pinched nerve. Sent to a specialist at Ortho Arkansas and awaiting the appointment to determine next step in treatment."

Dr. Jared Seale examined the claimant on or about February 8, 2023:

Jason Love is a 31 year old Male who presents to discuss concerns about their Neck pain, OTHER (Shoulder pain and pinched nerve) that began on 10/23/2022....

31-year-old gentleman status post a gradual work related injury when he developed severe left-sided neck pain that occasionally radiates down the arm with functional numbness and weakness/neurologic deficit.

His symptoms started at work 3 months ago. Since that time he [has] really been fighting a legal issue with Worker's Comp. and been unable to obtain help....

AP and lateral x-ray of the cervical spine ordered, obtained, and interpreted today reveals mild disc space degenerative changes with spurring at C5-6. C7-T1 is easily approachable anteriorly.

MRI of the cervical spine reviewed on disc today reveals mild degeneration at C5-6. Most pertinent finding is acute disc protrusion on the left at C7-T1 that extends into the foramen causing severe impingement of the exiting C8 nerve root.

Dr. Seale assessed "Disc protrusion, large, left, C7-T1 with functional neurologic deficit/numbness/weakness, left C8 with neck pain" and "C5-6 degenerative disc disease, asymptomatic." Dr. Seale discussed, "The patient has a significant functional neurologic deficit on the left side. His symptoms have been ongoing for over 3 months. My recommendation is for decompression to give the nerve root the best chance to improve but the patient and his mother understand that decompression does not guarantee improvement of symptoms....The patient's cervical MRI does showed (sic) an acute injury of a disc protrusion on the left at C7-T1 which correlates with the patient's clinical symptoms. The patient's objective signs on the

MRI correlate perfectly with his subjective complaints of symptoms. The patient's symptoms began on and after the work injury. The patient has no history of pain in the neck pain or pain down the arm prior to the work injury. Therefore it is within a certain degree of medical certainty that at least 51% of the patient's current symptoms are directly related to their work injury."

The Commission received another Form AR-C, CLAIM FOR COMPENSATION, on March 29, 2023. The ACCIDENT INFORMATION section of this Form AR-C indicated that the Date of Accident was October 23, 2022: "The claimant was injured during the course and scope of employment. The claimant sustained injuries to the neck, left shoulder, left arm, back and other whole body."

A pre-hearing order was filed on June 6, 2023. According to the pre-hearing order, the parties agreed to litigate the following issues:

1. Whether Claimant sustained compensable injuries to his neck, back, and left shoulder by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from October 24, 2022, to a date yet to be determined.
4. Whether Claimant is entitled to a controverted attorney's fee. All other issues have been reserved.

The parties stipulated that the respondents "have controverted this claim in its entirety."

Dr. Seale performed surgery on June 23, 2023: “1. Anterior cervical decompression with arthrodesis, C7-T1. 2. Instrumentation, anterior, C7-T1. 3. Insertion of machined interbody spacer, anterior, C7-T1.” The pre- and post-operative diagnosis was “1. Disc protrusion, left, foraminal, C7-T1. 2. Degenerative disk disease, C7-T1. 3. Cervical radiculopathy.” Dr. Seale noted, “Mr. Levin (sic) is a 32-year-old gentleman a chronic, progressive history of neck pain radiating into left arm. The pain has progressively worsened over time.”

A hearing was held on September 14, 2023. At that time, an administrative law judge read the claimant’s contentions that “on October the 23rd, 2022, the claimant was moving furniture in the scope and course of employment when he felt a strain on his neck, left shoulder, and back. The claimant continued to work, the pain increased. Respondents denied the claim in its entirety and the claimant received medical treatment on his own. An MRI revealed a herniation at C7 to T1, and protrusions at C4, C6. The claimant contends that he sustained a compensable injury and that he is entitled to TTD, medical benefits, and his attorney’s fee, and all other issues were reserved per that questionnaire response. The respondents on the other hand contend that the claimant did not sustain a compensable injury at work on the 23rd of October 2022, that is identifiable by time and place of occurrence or any other time. Respondents further contend that

the claimant's issues with his back, left shoulder, and neck are pre-existing and did not arise out of his employment. Claimant cannot meet his burden of proof that he sustained a compensable injury as defined by the Arkansas Workers' Compensation Act."

An administrative law judge filed an opinion on December 15, 2023 and found that the claimant did not prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) "Compensable injury" means:
 - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Commission. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

The Full Commission reviews an administrative law judge's decision *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

An administrative law judge found in the present matter, “4. The claimant has not proven that he suffered a compensable injury on 23 October 2022.” The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012).

The claimant testified that he became employed with the respondents in April 2022. The claimant testified that he “overstrained and hurt myself” while moving heavy furniture for the respondents. The parties stipulated that the employment relationship existed on October 23, 2022, which date the parties agreed was a Sunday, and that claimant was not performing employment services for the respondent-employer that day. The claimant testified that he sent a text message to his supervisor, Casey Harness. The record includes a text message sent to Casey Harness in which the claimant stated he had been suffering from shoulder pain which the claimant did not attribute to work. The claimant sought treatment at Urgent Care on October 23, 2022 and reported that he had been suffering from left shoulder and back pain for three weeks. Although it was noted that the claimant “lifts heavy objects often,” the claimant did not attribute his pain to a work-related incident. The claimant admitted on cross-examination that he did not inform the medical providers at Urgent Care that he had sustained a work-related injury. Casey Harness, the claimant’s

supervisor and a superintendent for the respondents, testified, “He told me he did not get hurt at work.” Mr. Harness testified, “[H]e just said he was helping his brother over the weekend moving some heavy objects and that he had pulled something.” A co-worker, James Tillman, corroborated Casey Harness’ testimony that the claimant had reported sustaining an injury while assisting his brother away from the workplace. Another co-worker, Wes Brandon, also testified that the claimant did not report sustaining an injury while performing work for the respondents.

The claimant sought medical treatment on October 31, 2022 and it was expressly noted at that time, “Denies fall or injury.” The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on December 16, 2022 and alleged that the Place of Accident was “Gradual onset multiple job sites.” Mike Reynolds, company president, testified that the claimant did not report a work-related specific incident to him. Dr. Seale examined the claimant on February 8, 2023 and noted an alleged “gradual work related injury.” Dr. Seale eventually performed surgery.

The Full Commission finds in the present matter that the claimant was not a credible witness. The claimant’s testimony was not corroborated by the evidence of record or the testimony of Casey Harness, James Tillman, Wes Brandon, or Mike Reynolds. The Full Commission finds that the claimant did not prove he sustained a compensable injury in

accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant did not prove that he sustained an accidental injury causing physical harm to the body. The claimant did not prove that he sustained an injury which arose out of and in the course of employment, required medical services, or resulted in disability. We attach minimal evidentiary weight to Dr. Seale's conclusion that the claimant's symptoms were "directly related to their work injury." Nor did the claimant prove that the alleged injury was caused by a specific incident which was identifiable by time and place of occurrence. See *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001).

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant does not contend that he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012). This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner