

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC CLAIM NO.: H008127**

MICHAEL ARMSTRONG, Employee	CLAIMANT
SOUTHLAND RACING CORPORATION, Employer	RESPONDENT
NEW HAMPSHIRE INSURANCE COMPANY, Carrier	RESPONDENT
AIG CLAIMS, INC., TPA	RESPONDENT

OPINION AND ORDER FILED FEBRUARY 9, 2022

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Crittenden County, Arkansas.

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: HONORABLE MELISSA M. WOOD, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a full hearing on the merits on November 19, 2021, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on October 6, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/carrier relationship existed at all relevant times, including September 27, 2020, on which date the Claimant alleges that he sustained a compensable cervical injury;
- (3) The Claimant's average weekly wage on the date of the alleged injury was sufficient to entitle him to compensation rates of \$253.00 and \$190.00 for temporary total and permanent partial disability benefits, respectively; and,
- (4) The Respondents have controverted this claim in its entirety.

The pre-hearing Order also reflected the issue to be adjudicated, as set forth below:

(1) Whether the Claimant sustained a compensable cervical injury on or about September 27, 2020, and is entitled to appropriate benefits associated therewith, inclusive of reasonably necessary medical treatment and related expenses, and temporary total disability from September 28, 2020, through a date yet to be determined.

All other issues were reserved.

During preliminary discussions, the Commission's pre-hearing Order was introduced into the record as Commission's Exhibit No. 1 without objection. (TR 8) In addition, Respondents' Exhibit Nos. 1 and 2 were likewise introduced into the record without objection. (TR 9-10) The Claimant offered a document with respect to a description of "cervical radiculopathy," but candidly admitted that he had not provided a copy of such to Counsel for the Respondents in accordance with the requirements of the pre-hearing Order of October 6, 2021. Accordingly, such document was not allowed into the record by the undersigned Administrative Law Judge. (TR 10-12) The Claimant offered no other exhibits. (TR 12)

Findings of Fact and Conclusions of Law

(1) The parties' stipulations are accepted as findings of fact herein, inclusive of the Commission's jurisdiction over this claim; and

(2) The Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable cervical injury on September 27, 2020.

Applicable Law

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3). In order to demonstrate a compensable "specific incident" injury, as alleged herein, a claimant must prove, by a preponderance of the evidence, that he or she sustained an "accidental injury causing internal or external physical harm to the body...arising out of and in the course of

employment,” and which is identifiable by time and place of occurrence. Ark. Code Ann. §§11-9-102(4)(A)(i) and I(i). The alleged injury must also occur at a time when “employment services” were being performed and must be established by medical evidence supported by “objective findings.” Ark. Code Ann. §§11-9-102(4)(B)(iii) and (D). In turn, “objective findings” are those findings “which cannot come under the voluntary control of the patient.” Ark. Code Ann. §11-9-102(16)(A)(i).

Also, it is long-settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar’s Head Provisions Co.*, 2017 Ark. App. 133 (2017)). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant’s credibility. (See *Yates, supra*. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant’s testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

Testimony

Michael Armstrong

Upon direct examination by the undersigned Administrative Law Judge, the Claimant testified in essence that his alleged compensable injury occurred on September 27, 2020, as he was pulling and throwing trash near the end of his shift, suddenly could not raise his left upper extremity, and believed that he had injured his shoulder. (TR 13-15) According to the Claimant, he immediately reported the incident to Respondent Employer, waited approximately thirty

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minutes for an ambulance because he feared an oncoming stroke, but then drove himself to the emergency room which was two or three minutes away from Respondent Employer's location.

(TR 15-19)

Following his presentation to the nearby emergency room on September 27, 2020, the Claimant gained an understanding that his shoulder was not injured. (TR 22) Ultimately, the Claimant underwent surgery performed by a Dr. Camillo, presumably to his cervical spine. (TR 26; see also RX 1 at 15)

During cross-examination, *inter alia*, the Claimant participated in the following exchange:

Q: Now, Mr. Armstrong, when you saw all of your doctors, so the emergency room, Dr. Hood, Dr. Camillo --

A: Right.

Q: -- did you tell them all that you had hurt yourself pulling trash bags at work?

A: Yes, ma'am.

Q: So when the Judge reviews those medical records, he should see that history given by you; is that right?

A: Yes, ma'am. (TR 32)

Following the conclusion of cross-examination, and upon further examination by the undersigned Administrative Law Judge, the Claimant testified, *inter alia*, as follows:

JUDGE LUCY: You had all this pain on that occasion on September 27, 2020, when you alleged this incident occurred, but when you go to the E.R. that same day, you tell them that you can't recall any specific injury or trauma. Do you understand what I'm getting at, sir?

A: Yes.

JUDGE LUCY: Okay. All right. Do you have any ability to

explain why you might have denied any injury when you went to the emergency room on September 27th?

A: 'Cause I didn't have no injury at the particular time.

JUDGE LUCY: But that was the date of your alleged injury, sir, September 27 of 2020.

A: Right.

JUDGE LUCY: Okay.

A: But prior to me comin' to work, I didn't -- I mean, I didn't have no injury. That's what I'm sayin'. I didn't. (TR 37-38)

Medical/Documentary Evidence

Respondents' Exhibit No. 1 reflects that on September 27, 2020, the Claimant presented to Baptist Memorial Hospital Crittenden with a chief complaint of "left shoulder pain that began about a week ago. PT states that he has an old injury to that area." (RX 1 at 1) During the same encounter, the Claimant reported that he had experienced:

...insidious onset of left shoulder pain approximately two days ago but much worse overnight patient cannot remember any specific injury or movements or trauma that may have caused this pain mentions that it has gotten slowly worse patient denies any previous history of injury or surgery to this shoulder on the left side. (RX 1 at 2)

However, the Claimant did present on this occasion with "severe left-sided paraspinous and trapezial neck muscle spasm." (RX 1 at 3) Curiously, the attending provider attempted to "massage" said spasms but noted that the Claimant "cannot tolerate this patient has declined further massage and would recur (sic) like a lidocaine patch." (RX 1 at 3) On October 9, 2020, the Claimant presented to Dr. Michael Hood with a chief complaint of neck pain in the "context of an insidious onset...present for two weeks." (RX 1 at 7) There is no description of an alleged work-related incident or any other acute injury in Dr. Hood's notes of October 9, 2020; however,

upon review of X-rays, he did note a loss of cervical lordosis. (RX 1 at 8) The Claimant subsequently underwent a cervical MRI on January 13, 2021, which revealed multi-level degenerative changes. (RX 1 at 12)

Thereafter, on February 10, 2021, the Claimant presented to Dr. Francis Camillo of the Spine Specialty Center in Memphis and reported that his neck and back pain had "started on 09/27/20" -- however, Dr. Camillo's notes once again reflect no history of a work-related incident or injury. (RX 1 at 14-15) Respondent's Exhibit No. 2, *inter alia*, includes the following written statement bearing the Claimant's signature, dated October 1, 2020:

I Michael D. Armstrong do hereby say. My injury did not happen on the job I just re-injured my neck and muscle on 9-27-2020 at Southern Gaming & Racing. In my neck. (RX 2 at 2)

Adjudication

I note that the Claimant was a polite and courteous witness. Also inuring to the Claimant's favor are the facts that his account of an injury sustained in the course of his employment on September 27, 2020, was not contradicted by any opposing testimony, and that he did present with acute objective findings of injury to his cervical spine in the form of spasms and a loss of cervical lordosis.

However, I cannot conclude that these factors, even when taken in conjunction, are sufficient to overcome the histories provided by the Claimant to his treating physicians, which severely undermine his credibility with respect to the alleged incident of September 27, 2020. In particular, on the very date of the alleged injury, the Claimant provided two different time frames with respect to the onset of his pain, e.g., "about a week ago," and "approximately two days ago." In addition, with respect to the latter time of onset, the Claimant could not recall any specific injury or trauma that may have induced his pain, and specifically denied any previous history of

injury -- despite having related at a different point during the same date of service that he "has an old injury" to his left shoulder.

By October 9, 2020, when he presented to Dr. Michael Hood, the Claimant's focus appears to have shifted from his left shoulder to his neck/cervical spine. However, he once again failed to describe any work-related incident and merely reported neck/cervical pain of "insidious onset" which had been present for two weeks. Even when the Claimant presented to Dr. Camillo on February 10, 2021, and related that his pain had begun on September 27, 2020, there is yet again no mention of a work-related incident on such date. As for the Claimant's apparent written statement of October 1, 2020, it is self-contradictory at worst and, at best, can perhaps be interpreted as a claim for an aggravation of a pre-existing condition with respect to his cervical spine. Regardless, given the discussion above in relation to the various histories given by the Claimant to his medical providers concerning the date of onset of his pain, I specifically find that his written statement of October 1, 2020, is entitled to no weight with respect his own burden of proof, and that its self-contradictory nature only serves to further diminish his credibility.

I am not unmindful of the Claimant's initial belief that he had injured his left shoulder rather than his neck. Nonetheless, given his consistent failure to describe an alleged work-related injury to his providers, I am simply unable to reconcile his testimony with the documentary evidence. In turn, I specially find that the Claimant was not a credible witness, that this claim hinges entirely upon such lack of credibility, and that the Claimant has thus failed to prove, by a preponderance of the evidence, that he sustained a compensable injury within the course and scope of his employment on September 27, 2020.

ORDER

Based on the foregoing discussion, including my observation of the witness and his

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testimony, review of the hearing transcript, the documentary evidence supplied by the Respondents, and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury within the course and scope of his employment on September 27, 2020.

This claim is respectfully denied and dismissed, and the Respondents are ordered and directed to pay the Court Reporter's fee within thirty days of billing for such if they have not already done so.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge