

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H009308**

JESSE R. DOWELL, EMPLOYEE	CLAIMANT
EXCEL ENERGY GROUP INC., EMPLOYER	RESPONDENT
CNA INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED **NOVEMBER 4, 2021**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Russellville, Pope County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 26, 2021, the above captioned claim came before the Workers' Compensation Commission in Russellville, Arkansas, for a hearing. A prehearing conference was conducted on August 20, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1, with modifications announced at the hearing. No objection was raised to making it part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on October 29, 2020.
3. The respondents have controverted the claim in its entirety.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury on October 29, 2020.
2. If compensable, whether claimant is entitled to temporary total disability benefits and

medical benefits.

All other issues were reserved.

The claimant contends that “on October 29, 2020, I felt a pain in my chest when I got out of the lift. It was a burning sensation. Pain got progressively worse each day I worked.”

The respondents contend that “the claimant did not sustain a compensable injury for which he is entitled to benefits.”

The above stipulations are hereby accepted as fact. From a review of the record as a whole to include the documents presented by both parties, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered.

FACTUAL BACKGROUND

At the Pretrial conference, the parties announced as a stipulation that the compensation rate would be determined. That should have been more properly listed as an issue rather than a stipulation. In our discussions before taking any testimony, it was apparent that the parties did not reach agreement on claimant’s average weekly wage. As such, I could not include the average weekly wage as a stipulation.

HEARING TESTIMONY

Claimant testified on his own behalf that he was injured, on October 29, 2020, while he was getting out of the lift at work. He felt a burning sensation in the upper left side of his chest but didn’t think anything of it. He said he went home a couple of hours early that night. The next day when he was working, he again felt the burning sensation and worked about half a day. Claimant said that he didn’t think anything of that because he gets hurt during construction and it usually goes away.

After the weekend¹, claimant said he was feeling a little bit better and worked a full day but “it just progressively got more painful throughout the day. And I went home that night, and I woke up the next morning and I had a really bad burning pain in my chest, so I went to the doctor.” The nurse did an x-ray and sent him home. Claimant said he tried to work a couple of days later; he said it immediately started burning when he raised his arms to take apart the light fixtures that he worked on, so he went home, and it hurt a lot for the next week or so. After the weekend, when he returned to work on another Monday, it started burning again, so his supervisor, who was also his uncle, told him to go home and stay home until he felt better. Claimant said that he took off until after Thanksgiving and returned to work the first of December. He testified he was still sore but he “tried to power through it and I did what I could to make as much money as I could.” Claimant said that he has been hurting on and off ever since. The pain has caused him to miss a lot of work since he returned to work after Thanksgiving 2020.

Because of the nature of his work, claimant has not had a particular treating physician, but has gone to multiple doctors at walk-in clinics. One doctor recommended getting an MRI, but such has not been done as of the date of the hearing. Claimant testified he has received medicine a couple of weeks before the hearing and has not noticed much change in that time. Claimant said that he had tried over the counter pain relievers and a heating pad, but nothing seems to work. He said he has trouble sleeping at night and it impedes his work, because he gets paid piece work.

Claimant called his brother, Travis Dowell, as a witness. Travis testified that he was now the crew leader, making him claimant’s supervisor. He has witnessed claimant going to doctor’s appointments at various walk-in clinics and knew that claimant has been trying to receive treatment for his alleged injury.

¹ I announced at the hearing that I was taking judicial notice that October 29, 2020, was a Thursday.

I found both claimant and his brother to be credible witnesses, both in their demeanor and in the content of their testimony.

EXHIBITS

Claimant's exhibit number one consisted of two pay stubs, one from September 4, 2020, and from October 2, 2020. I believe these were introduced to try to establish claimant's rate of pay at the time of his injury. Claimant also introduced a Walmart pharmacy receipt for Diclofenac 1%. This prescription was dated February 10, 2021.

Respondent introduced a record entitled "transactions by payroll item" from October 29, 2019, through April 2, 2021. In the right-hand margin of that exhibit, there is a handwritten calculation showing claimant's total earnings for the thirty-two weeks before his alleged injury and dividing that sum to determine an average weekly wage of \$545.38. Respondent also introduced Form AR-N the employer's notice of injury which demonstrated that claimant reported his injury the day after it took place, which was consistent with claimant's testimony.

Neither claimant nor respondent produced any medical records other than the aforementioned pharmacy receipt. Claimant was specifically asked if he had any medical records to introduce, and he did not.

ADJUDICATION

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence, Ark. Code Ann. § 11-9-102(4). Claimant bears the burden of proving a compensable injury by a preponderance of the credible evidence, Ark. Code

Ann. § 11-9-102(4)(E)(i). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

As mentioned above, neither party introduced into any medical evidence which would serve to satisfy the requirement that there be objective findings for claimant's injury. "Arkansas Code Annotated section 11-9-102(4)(D) provides that a compensable injury must be established by medical evidence supported by objective findings." *Crawford v. Single Source Transp. Fidelity & Cas. Ins. Co.*, 87 Ark. App. 216, 189 S.W.3d 507 (2004). It was the claimant's burden to prove that he suffered a compensable injury on October 29, 2020. This burden necessarily required that he present objective medical findings establishing an injury. *Liaromatis v. Baxter County Regional Hosp.* 95 Ark. App. 296, 236 S.W.3d 524 (2006). I believed claimant's testimony that his injury arose out of and in the course of his employment, that internal harm was caused that required medical services, and that it happened when and where claimant said it did. However, by failing to present any objective medical findings of his injury, I cannot award him temporary total disability benefits or medical benefits for this injury.

Because claimant did not provide medical evidence supported by objective findings establishing the injury, it was unnecessary for me to attempt to calculate his average weekly wage.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury on or about October 29, 2020, by failing to provide any medical evidence of an objective finding of an injury. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the

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hearing transcript in the amount of \$305.95.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE