

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: G703605**

COURTNEY Z. JOHNSON, Employee	CLAIMANT
A&R MOBILE HOME SERVICE SUPPLY, INC., Employer	RESPONDENT
OWNERS INSURANCE CO., Carrier	RESPONDENT
AUTO OWNERS INSURANCE CO., TPA	RESPONDENT

OPINION AND ORDER FILED AUGUST 3, 2021

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

Counsel for the Claimant: HONORABLE WILLARD PROCTOR, JR., Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a hearing on May 11, 2021, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on November 4, 2020, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/carrier/TPA relationship existed at all relevant times; and,
- (3) The Respondents have controverted this claim in its entirety

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

- (1) Whether the Claimant sustained a compensable injury to his lower back on June 3, 2016, and is entitled to appropriate benefits associated therewith, inclusive of reasonably necessary medical care and related expenses, temporary total disability benefits for the period of June 4, 2016, through April 13, 2017, permanent partial disability benefits; and,

(2) Attorney's fees related to controverted indemnity benefits.

All other issues were reserved. During preliminary discussions, the parties agreed that the Claimant's average weekly wage on the date of the date of his alleged injury was \$600.00. With such amendment noted on the record, the Commission's pre-hearing Order of November 4, 2020, was introduced into the record as Commission's Exhibit One without objection. (TR 7) Thereafter, the parties' respective exhibits, inclusive of a Joint Medical Exhibit, were introduced into the record without objection along with the record of previous proceedings in this matter. (TR 8-9; see also TR 38 and TR 97).

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;
- (2) The Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable lower back injury on June 3, 2016; and,
- (3) All other issues are rendered moot.

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).

With respect to "specific incident" injuries, 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 (E)(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

Courtney Johnson

The Claimant testified that he began working for Respondent Employer in 2010 and provided numerous services with respect to "basically everything that you can do to a mobile home." (TR 12) According to the Claimant, he helped unload an air conditioning unit from a pick-up truck on June 3, 2016, and shortly afterward experienced back pain while he was "kinda in a position like I was on my knees, like I was wiring it up." (TR 16-19) The Claimant further testified that he declined an offer from a co-worker named "David" to be taken for medical treatment and managed to finish the installation job with respect to the air conditioning unit. (TR 19-20)

Subsequently, and again according to his testimony, the Claimant sought medical

treatment beginning June 7 [2016] and ultimately learned that there was an issue involving his "lower disk" in relation to his alleged lower back injury. (TR 23; 28) The remainder of the Claimant's testimony during direct examination primarily related to his recollection of medical treatment he received subsequent to June 7 [2016]. (TR 29-37)

During cross-examination, *inter alia*, the Claimant conceded that he had been discharged from the care of one of his providers in September, 2016, in relation to a drug screen that was positive for cocaine. Upon substantial inquiry by the undersigned Administrative Law Judge, the Claimant testified that he was not under the influence of any substance and that he was not impaired to continue with the hearing. Counsels for both parties agreed with the Claimant's testimony. (TR 45-49; see also TR 56) The Claimant further conceded that he had been involved in a motor vehicle accident in 2014 which resulted in symptoms and treatment that involved his back, neck, and shoulder. (TR 51-52) In addition, the Claimant participated in the following exchange:

Q: In going through these records from Pain Treatment Centers of America, they also noted that there was no pending workers' compensation claim and no lawsuit. Did you tell them that?

A: *I thought I told 'em that in 2016.* Are you saying I told 'em that in 2014?

Q: No, in 2016. We're back to that date. I'm sorry.

A: Okay. See you're confusin' me and I'm sorry I just don't keep up with you, but yes.

Q: All right. In 2016, it says in the records from Pain Treatment Centers of America that this is not a pending workers' comp claim and there is no lawsuit. Did you tell them that?

A: I don't remember tellin' 'em that. (TR 52; emphasis added)

Also,

Q: And it says, [as read] "This is not a workers compensation case." It says, [as read] "The patient denies involvement in a lawsuit related to current pain conditions." Is that accurate?

A: Yes, sir.

Q: Okay. And throughout these records, and I'll go through all of them, it's got that same information.

A: Yes, sir. *Whatever it says, it's gotta be true, I guess.* (TR 53; emphasis added)

David Powell

Mr. Powell testified that he has worked for Respondent Employer for 23 years as an HVAC tech, and that, with respect to the Claimant's alleged injury of June 3, 2016:

A: The only thing I can remember -- I know we was disconnecting the air conditioner, the old air conditioner, and I remember his getting shocked or somethin' on somethin' or another in there, and then I remember him jerkin' back.

Q: You say you remember him getting -- who was getting shocked?

A: Courtney.

Q: Okay. You remember Courtney getting shocked?

A: Uh-huh.

Q: You mean like electrically shocked?

A: Yes.

Q: Okay. All right.

A: And then it was after that that I remember him complaining about his back hurtin'.

Q: Okay. All right. Do you recall if this happened before or after the unit got off of the truck?

A: That was before.

Q: Okay. All right. All right. So did you all have any problems getting the unit off the truck?

A: Not that I can remember, we didn't. (TR 60; 62)

In addition:

Q: All right. When Courtney was complaining about back problems or problems with his back, did you offer to take him to the doctor or anything of that nature?

A: I didn't. I mean, I told him if he needed to go to the doctor, I mean, if it was hurtin' that bad, he needed to go -- go to the doctor.

Q: Okay. All right. You told him that?

A: Uh-huh.

Q: Okay. All right. But you didn't offer to take him or anything like that?

A: I would have. I mean, I didn't but I would have if he needed me to. I mean, he -- he kept workin' so I just assumed that he was all right. (TR 64)

Robert Morse

Mr. Morse testified that he has worked for Respondent Employer for over 20 years, principally with respect to "H.V.A.C. and underpinning." (TR 69) Mr. Morse was unable to recall the precise date of the Claimant's alleged injury, but did testify, *inter alia*, as follows with respect to the alleged incident:

Q: Okay. All right. And what happened, if you recall anything?

A: I helped them get the package unit off and -- but I had another job to do and so I left after that.

Q: Okay. All right. Do you remember if anything happened to Courtney at the --

A: No, but he -- he called me that night sayin' he had hurt his

back.

Q: Okay. Did you observe anything that would indicate that he hurt his back?

A: No.

Q: Okay. All right. Did you all get the unit off without any problems?

A: I think so, yes.

Q: Okay. Do you remember if the -- if he was at all injured during this process?

A: Not that I remember, no. (TR 70)

Clinton McGough

Mr. McGough testified that he is a part owner of Respondent Employer and has worked for such since he was 14 years old. With relation to the Claimant's alleged incident of June 3, 2016, Mr. McGough testified, *inter alia*, as follows:

Q: And what did you do on that job?

A: I arrived shortly after David and Courtney got there, with the package unit in the back of my truck, and Bob came and we all unloaded it, and got the other one out of the way, and then unloaded it, and then loaded that one back up in my truck, and then I -- I know I stayed and I know Courtney was there, and we just hooked it back up.

Q: You were involved in the delivery of the four (4)-ton unit in your Dodge Ram pickup?

A: Yes, sir.

Q: And did you help unload that unit?

A: Yes, sir.

Q: With the help of others, including Courtney?

A: Yes, sir.

Q: Was there anything that happened that was eventful or out of the routine or norm during that unloading?

A: No, sir.

Q: Okay. Were you aware of any injury or any problem reported by Courtney or any of the other employees?

A: By the time I had gotten there I remember distinctly a little bit about them talking about him getting shocked by a loose wire hanging or something. I don't remember but...

Q: Was that the only incident you were aware of?

A: Yes, sir. (TR 74-75)

Thereafter, Mr. McGough offered somewhat conflicting testimony with respect to the alleged incident of June 3, 2016, and the Claimant's alleged back problem, but ultimately stated that "I would say I knew it before we even unloaded the package unit. I would say that, if anything, it was before I got there, so it wouldn't have nothing to do with the package unit situation." (TR 86-96) Upon hearing such and without invitation from either Counsel or the undersigned Administrative Law Judge, the Claimant stated "That's fine." (TR 96)

Medical/Documentary Evidence

I have reviewed the entirety of the substantial medical evidence presented herein. The most salient and relevant of such reflects that the Claimant underwent an X-ray of his lumbar spine on November 11, 2014, in relation to an accident that had occurred "one year ago with history of persistent pain." (JX 1 at 28) In addition, an MRI of the Claimant's thoracic spine was performed on June 9, 2016, with respect to "a fall one week ago." (JX 1 at 119) Further, the Claimant presented to Dr. Mikhail Ivanovsky on June 29, 2016, with complaints of chronic neck, back, and shoulder pain of gradual onset dating back to 2014 and "without significant initiating factor." (CX 1 at 1) Dr. Ivanovsky further noted that "This is not a workers' compensation case.

The patient denies involvement in lawsuit related to current pain conditions." (CX 1 at 2)

Finally, the Claimant was discharged from the care of Dr. Carl Covey on September 20, 2016, in relation to a drug screen that was positive for cocaine. (RX 1 at 1-2)

Adjudication

I specifically find that this matter hinges entirely upon the Claimant's credibility, which I further specifically find to be severely lacking. While the Claimant presented as a polite and courteous witness during the hearing, I am particularly persuaded by Dr. Ivanovsky's records discussed above and find the Claimant's description of his alleged injury to be utterly inconsistent with such and to also be insufficiently supported by the testimony offered by Messrs. Powell, Morse, and McGough -- all of which I have taken into full consideration as also above-noted. In addition, it is clear that the Claimant experienced back pain as early as 2014, engaged in the use of illegal substances while being treated for his alleged injury in 2016, and candidly admitted that he "thought I'd told them that in 2016" with respect to not having a workers' compensation claim or otherwise being involved in a lawsuit in relation to his alleged compensable injury.

In sum, for the reasons discussed hereinabove, I specifically find that the Claimant was simply not a credible witness and has thus failed to prove, by a preponderance of the evidence, that he sustained a compensable lower back injury on June 3, 2016.

ORDER

Based on the foregoing discussion, including my observation of the witnesses and their testimony, review of the hearing transcript, the documentary evidence supplied by the parties, 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 lower back

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injury on June 3, 2016.

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 if they have not already done so.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge