BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE № H300483

JASON B. LOVE, EMPLOYEE **CLAIMANT**

REYNOLDS CONTRUCTION COMPANY, INC., EMPLOYER **RESPONDENT**

AMERICAN CASUALTY CO. OF READING, P.A.,/ GALLAGHER BASSETT, CARRIER/TPA **RESPONDENT**

OPINION FILED 15 DECEMBER 2023

On hearing before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe, 14 September 2023, Pine Bluff, Jefferson County, Arkansas.

Ms. Laura Beth York, Attorney-at-Law with Rainwater, Holt & Sexton of Little Rock, appeared for the claimant.

Ms. Karen H. McKinney, Attorney-at-Law with the Barber Law Firm of Little Rock, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 14 September 2023 in Pine Bluff, Arkansas, after the parties participated in a prehearing telephone conference on 6 June 2023. A Prehearing Order, admitted to the record without objection as Commission's Exhibit № 1, was entered that same day. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant sustained compensable injuries to his neck, back, and left shoulder by specific incident.

2. Whether the claimant is entitled to reasonable and necessary medical treatment.

3. Whether the claimant is entitled to temporary total disability benefits from 24 October 2022 to a date yet to be determined.

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

All other ISSUES were reserved.

The Prehearing Order set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.

2. An employee/employer/carrier relationship existed between the parties on 23 October 2022 and at all other times relevant to this claim.

3. The respondents have controverted this claim in its entirety.

3. The claimant's average weekly wage[1] was $786, entitling him to temporary total disability and permanent partial disability in the amounts of $524 and $393, respectively.

The following WITNESSES testified at the hearing: the claimant testified on his own behalf; and Mr. Casey Harness, Mr. James "J.T." Tillman, Mr. Wes Brandon, and Mr. Ronnie Michael Reynolds testified on behalf of the respondents.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated by reference into the Prehearing Order. Essentially, the claimant contends that he suffered a compensable injury on 23 October 2022 and that he is entitled to associated benefits, while the respondents contend that he did not sustain a compensable injury by specific incident and that any back, shoulder, or neck issues the claimant experienced are pre-existing and not arising out of his employment.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under Arkansas Code Anotated § 11-9-704:

1. The AWCC has jurisdiction over this claim.

2. The parties' stipulations are accepted as fact.

4. The claimant has not proven that he suffered a compensable injury on 23 October 2022.

[1] The 6 June 2023 Order noted that a stipulated Average Weekly Wage would be offered at the time of the hearing. These amounts are reflective of the same.

4. In the absence of a compensable injury, the other issues are moot and need not be specifically addressed.

5. Accordingly, the claimant is not entitled to an attorney's fee.

III. EVIDENCE PRESENTED AT THE HEARING

The claimant testified on his own behalf as the sole witness called for his case. The respondents then called Mr. Casey Harness, Mr. James "J.T." Tillman, Mr. Wes Brandon, and Mr. Ronnie Michael Reynolds. Their relevant testimony is recounted below.

A. *Claimant on Direct Examination*

Jason Love is a thirty-two (32) year old high school graduate with a history of construction and service industry work. (TR at 10-11) He began working for the respondent as a painter on 18 April 2022. Towards the end of September of that year, he began working as a general laborer with the carpentry crew. This work still involved painting, but also helping with ceiling demolition, cleanup, moving furniture, and preparing areas for painting. (TR at 12)

According to his testimony, the claimant participated in a "big furniture move" in early October, when he "over-strained and hurt" himself between his left shoulder blade and spine, but kept working. (TR at 13) Mr. Love said that he mentioned some pain, but did not report an accident "because at the time, I didn't feel like there was anything to report." (TR at 14)

On 23 October 2022, however, the claimant "woke up that morning immobile and in severe pain" that felt like "not simply a sore muscle or something of that nature. It was something more severe it felt." *Id*. Mr. Love presented to an urgent care clinic, where he thought that he mentioned hurting himself at work. According to the clinic notes, his complaints were listed as:

> 8/10 back pain medial to left shoulder blade x3 weeks- states he has had pleurisy in the past and it feels very similar- states he has had a catch in his

> breath because of 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.

See, (Cl.Ex. 1 at 1-6) Chest X-rays showed no findings. He was diagnosed with musculoskeletal strain, prescribed a muscle relaxer, and authorized to return to work without restrictions the following day. *Id*.

The claimant testified that he mentioned his shoulder bothering him while at work, but that it was "not directed as a – as a on-the-job report filed so to speak." (TR at 15) Mr. Love also said that he was able to perform all work duties before 23 October and that while there was some pain, it seemed manageable. He confirmed that while he woke up in pain on the 23rd, that was a Sunday and that he had not worked since Friday, 21 October 2022. (TR at 16) The claimant denied hunting or fishing or playing football over the course of the weekend. He said that working in general labor and construction, one anticipates some aches and pains. (TR at 17) The claimant notified his supervisor Casey Harness via text message about seeking treatment. (TR at 18) Some of that and subsequent text exchanges were introduced into the record as (Claimant's Exhibit 2)

Mr. Love presented for treatment again, this time at the emergency department, on 31 October 2022. *See,* (Cl. Ex. 1 at 7-13) He complained again of pain, now for the preceding month, and that it was getting worse and disrupting his sleep. He reported feeling numbness and tingling down his left upper extremity since his previous visit, but denied a fall or injury. A thoracic spine CT report showed no acute abnormalities. He was diagnosed with musculoskeletal pain and radicular pain, referred for orthopaedic follow-up, prescribed Tylenol #3 and Flexeril, and authorized to return to work without restrictions after three (3) days. *Id*.

The claimant underwent an MRI study on 11 November 2022 that revealed a herniated disc and eventually saw Dr. Seale. (TR at 21) Mr. Love stated that he attributed

his pain to "over-exertion at work" from "immense moving, heavy lifting, et cetera, things of that nature that would result in a sore or a disgruntled muscle." *Id*. But he denied filing a workers' compensation claim around that time. (TR at 22)

Mr. Love stated that he found a Form N online and provided that to his employer on or about 16 December 2022, acknowledging that he gave them notice of an alleged workplace injury at that time. *See,* (Cl. Ex. 3) The claimant denied asking for or about medical care from the respondents at the time because he "had already gone to the doctor and that was already in motion." (TR at 23) According to the claimant he told Mr. Reynolds that he meant no ill will in filing the form, but thought it appropriate "with there being a possible surgery and with – to my knowledge, that the incident happening during work, it seemed like the appropriate next step." (TR at 24)

The claimant was unsure about his days worked between the two (2) provider visits, but stated that he had not performed any work for the respondent since 31 October 2022. (TR at 25)

According to the claimant, Dr. Seale performed a C7 to T1 spinal procedure on 23 June 2023. He remained under Dr. Seale's care at the time of the hearing. He denied applying for Social Security Disability or unemployment benefits, but discussed the latter with the respondent. (TR at 26)

Mr. Love testified that he had not experienced the kind of pain he felt in October since his mid-teens. Most work-related pains he had encountered since, he said, could be relieved with over-the-counter pain medication and hot or cold compresses. The claimant denied seeking medical treatment for pain in the past or having a primary care physician, but stated that he underwent a previous MRI scan for lower back pain in 2016 when he injured himself working at a rock packing plant. (TR at 28-29) He did not pursue a workers' compensation

claim associated with that injury. Mr. Love began working another job instead of returning after that injury.

The claimant testified that the surgery with Dr. Seale provided some relief and that physical therapy had helped, but that his recovery had been slow with some ongoing pain and discomfort. (TR at 30)

B. *Claimant on Cross Examination by Ms. McKinney*

Mr. Love confirmed that the present matter was his first experience with a workers' compensation claim. (TR at 31) He also confirmed that during his deposition he explained that his stepfather Mr. Toby Crow is a workers' compensation insurance adjuster. Mr. Crow, he testified, told him that he needed to file this workers' compensation claim and helped him fill out the Form N he provided to the respondents. (TR at 32)

The claimant said that he had experienced muscle pain similar to what he felt in October before and that it was from "over-exertion" or "over-working." (TR at 34) Reviewing his Form N, he acknowledged that his stepfather helped him in choosing to use the words "objective findings." (TR at 35)

Mr. Love agreed that he was asked at the urgent care clinic whether his injury was work-related and responded that it was not. "You still told them, 'it's not a workers' compensation claim,' didn't you?" "Yes, ma'am," he said. (TR at 36-37) He also acknowledged that at the time he mentioned possible "pleurisy," and that he did not mention a neck or shoulder injury.

He said that his supervisor was aware of some pain, but that he told him it was something he could work through. Mr. Love testified that on the weekend before presenting at the emergency department, he "ate and hung out at the house, rested up, in hopes of returning to work on Monday." (TR at 38) He was staying with his brother at the time and helping with his brother's six (6) young children. He continued helping take care of the

children through the summer of 2023, saying that others would come to help, too, while he was first recovering from surgery. (TR at 39)

Regarding his visit to the emergency department, the claimant acknowledged that the report showed that he denied a fall or injury, but said, "[t]o clarify, that was meant as a – I couldn't pinpoint when – when it happened as far as, you know, I lifted this at this time on this date." When asked, "the stipulations are that you injured yourself on October 23rd, 2022. You didn't injury yourself on that day, did you?" he answered, "No, ma'am." (TR at 42) Mr. Love acknowledged that he did not mention hurting himself at work in the text messages he sent Casey Harness when he first missed work. (TR at 44)

The claimant agreed that his responses to written discovery provided a work history of no more than five (5) previous employers, but a more complete work history was discussed at his deposition, which accounted for more than twenty (20) jobs in fourteen (14) years of working. (TR at 46) He acknowledged "over-working and aggravating" his back and neck at other jobs and working other jobs just as physically demanding as his work with the respondent. (TR at 47) Mr. Love said that he mentioned "general groans and moans" about pain on the jobsite and that Casey Harness told him to "take it easy" after he said that his arm was bothering him at some point. (TR at 48)

Mr. Love recalled his deposition testimony, where he said that he did not hurt his back in a particular instance and further testified at the hearing that "there's no defining moment of injury to my knowledge as far as like I mentioned, for example, I was doing this task on this day at this time." (TR at 49) That discussion went on:

> Q: … we're talking about your step dad and the conversations you had with your step dad and him educating you on what's going on, and your answer starting with line 2 – what was your answer?
>
> A: "It was probably a couple weeks after the initial injury. He told me that if I – you know, I may end up – it may be long term, maybe it was something worse. It may be long term. Maybe it was something worse. Maybe look into workers' comp, to which I

> told him that I didn't think that it would be convincible. I didn't, because there was no defining moment. There was no defining injury, and that's where he informed me –"
>
> Q: And that's where he talked about the gradual onset injury, right?
>
> A: Yes, ma'am.
>
> Q: But you told me these are your words, "No defining moment. No defining injury." You read those words correct?
>
> A: Yes, ma'am.
>
> Q: Ad you said those words in your deposition, right?
>
> A: Correct.
>
> Q: You had that conversation with your stepfather, right?
>
> A: Correct.
>
> Judge: And to be clear from the Prehearing Order, gradual onset [injury] is not being argued.
>
> Ms. York: It's not. …

TR at 50-51. The respondents' cross examination ended shortly thereafter.

C. *Witness Casey Harness*

Mr. Harness testified that he had worked for Reynolds Construction for eight (8) years and that he was a construction superintendent. (TR at 58) He recalled the claimant working on a project at the Juvenile Justice Center in September and October of 2022. According to Mr. Harness:

> What I know about Jason getting hurt is he came in on one Monday morning and 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 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… He had been taking photos of the furniture… He's good at taking the pictures, going back and locating the pictures to that room and making sure everything gets put back…. (TR at 60)

He believed that this was before the claimant went to urgent care and before he had been seen for his shoulder pain. Mr. Harness recalled asking if the claimant was hurt at work, because he knew as the supervisor, that an accident form would need to be completed if so, and the claimant responded "no." (TR at 61) Mr. Harness went on to say that he was familiar with the process for reporting workplace accidents.

On cross examination, Mr. Harness said that he did not specifically ask the claimant how he hurt himself, but recalled Mr. Love saying that he had been helping his brother with moving some tanks or bottles or something heavy of a similar sort. (TR at 62)

D. *Witness James "J.T." Tillman*

Mr. Tillman stated that he worked as a laborer for the respondent and that he had worked there for eight (8) years. (TR at 64) When asked about what happened to Mr. Love and the reason for the day's proceedings, he said, "I know he was at his brother's house working, cutting trees and stuff. He come in that Monday or Tuesday and said his back was hurting." (TR at 65-66) "He said, 'I hurt my back there at my brother's.' You know, he come in complaining that his back was hurting. He was working with his brother that weekend and stuff." Mr. Tillman said he remembered the claimant working for a few days afterwards before not seeing him at work anymore.

On brief cross examination, Mr. Tillman testified that the claimant said his back and his shoulder were hurting, but mostly his back. (TR at 67)

E. *Witness Wes Brandon*

Mr. Brandon testified that at the time of the hearing he had worked for Reynolds Construction for about sixteen (16) months and that while he did "all kinds of stuff," he was classified as a carpenter. (TR at 68) He did not observe the claimant injuring himself at work, but called him after Mr. Love had not been at work for some time. "I called him just to razz him and asked him pretty much 'Did you quit?' or 'What's up?' And he says, 'No,' he just

injured hisself [sic]. I asked him if he injured hisself [sic] while at work, because I was gonna make fun of him because we were working together hanging drywall and he said, 'No,' he did not injure hisself [sic] at work." (TR at 69)

F. *Respondent Michael Reynolds*

Mr. Reynolds testified that he is the president of Reynolds Construction, and that he was indirectly aware of Mr. Love complaining about pain in late September or early October of 2022. Mr. Harness mentioned Mr. Love complaining of pain "in passing" and said "it was no big deal." (TR at 72) According to Mr. Reynolds, he and the claimant talked several times before the claimant alleged a workplace injury. He recalled, "I believe, I asked him, specifically, in my office, you know, 'Is this a workers' comp claim? Do we need to move forward with this?' And he said 'No… he didn't believe himself that he had a workers' comp claim.'" (TR at 73) When they eventually spoke about Mr. Love's claim, he recalled the claimant thought that he experienced a strain from moving furniture. (TR at 74)

The witness went on to explain that a formal report of an injury did not occur before the Form N was presented, and that if an injury had been reported, company policy would have triggered a First Report of Injury, possible treatment from Healthcare Plus, an accident report form, and a post-accident drug screening. He said that every new hire is made aware of the company's policies and signs a statement to that effect. (TR at 75-76)

On cross examination, Mr. Reynolds said that he did not offer medical treatment or paperwork to the claimant when they first discussed his pain because "he said he didn't have a claim." (TR at 77) He confirmed receipt of the Form N in December of 2022 and concluded his testimony shortly thereafter. (TR at 78)

IV. ADJUDICATION

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their

demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. The Claimant Failed to Prove by a Preponderance of the Evidence that he Sustained a Compensable Injury

Whether the claimant suffered a compensable injury is a threshold matter that must be addressed before considering the merits of his various claims of entitlement based upon such a finding. Under Arkansas's workers' compensation laws, a worker has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Causation does not need to be established by objective findings when the objective medical evidence establishes that an injury exists and other nonmedical evidence shows that it is more likely than not that the injury was caused by an incident in the workplace. *Bean v. Reynolds Consumer Prods*., 2022 Ark. App 276, 646 S.W.3d 655, 2022 Ark. App. LEXIS 276, citing *Wal-Mart Stores, Inc. v. VanWagner*, *supra.*

Mr. Love alleges a compensable injury occurred by specific incident. The claimant must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) that the injury arouse during the course of employment; (2) that the injury caused an actual harm that required medical attention; (3) that objective findings support the medical evidence; and (4) that the injury was caused by a particular incident, identifiable in time and place. See *Cossey v. G. A. Thomas Racing Stable*, 2009 Ark. App. 666,5, 344 S.W.3d 684, 689.

I find that Mr. Love fails to meet his burden for satisfying these factors. He has not shown that it is more likely than not that he suffered an injury in the course of his employment, nor has he shown (as he readily admits) that any particular incident caused an injury. There is conflicting evidence, through testimony I have no reason to find not credible, as to exactly when and how Mr. Love injured his neck, back, and shoulder. He appears to have told others that he hurt himself working with his brother, with whom he was living at the time, over a weekend, and there is testimony of more than one instance where he denied a workplace injury. His lodging of the Form N and providing notice of his intent to pursue this claim seems to have been at the urging of his stepfather, who has knowledge of the benefits available through a workers' compensation claim and who assisted Mr. Love in initiating his claim. The available evidence, however, simply does not support a finding of a compensable injury in this matter.

B. Other Claims of Entitlement

Because Mr. Love fails to meet his burden on a compensable injury, his related claims of entitlement must also fail. He is not entitled to TTD benefits or reasonable and necessary medical treatment. His claim for an attorney's fee, accordingly, also fails.

V. ORDER

Consistent with the findings of fact and conclusions of law set forth above, this claim is DENIED and DISMISSED.

SO ORDERED.

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JAYO. HOWE
ADMINISTRATIVE LAW JUDGE