

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 1001712-K-5251

MWCC NO. 1003412-K-5266

BRUCE ALLEN RANKIN

CLAIMANT

VS.

AVERITT EXPRESS, INC., SELF-INSURED

EMPLOYER

REPRESENTING THE CLAIMANT:

Honorable Darryl M. Gibbs, Attorney at Law, Jackson, MS

REPRESENTING THE EMPLOYER:

Honorable Sandra T. Doty, Attorney at Law, Jackson, MS

FULL COMMISSION ORDER

This matter was heard by the Commission on January 30, 2012, pursuant to the Employer/Carrier's Petition for Full Commission Review and the Claimant's Cross Petition for Review and Clarification before the Full Commission. In an Order issued on September 8, 2011, the Administrative Judge found a causal connection between the Claimant's alleged work-related incidents and the alleged injuries to his neck, back, right upper extremity, and body as a whole. The Administrative Judge ordered the Employer/Carrier to pay the Claimant temporary total disability benefits from October 1, 2009 to February 17, 2010 and permanent partial disability benefits beginning February 17, 2010 for a period of 450 weeks, as well as medical treatment related to the injury. The Employer/Carrier contend that the Order of the Administrative Judge is unsupported by and contrary to the evidence and the law. For reasons stated below, we reverse the Order of Administrative Judge and find that this claim is hereby denied and dismissed.

I.

A. Lay Testimony

The Claimant testified that on October 1, 2009 he was unloading his truck at a Dollar General store in Kiln, Mississippi around 6:00 a.m. The Claimant alleges that while he was unloading the truck, a metal buggy that weighed approximately 1,000 pounds rolled and pinned him against the side of the trailer. The Claimant stated that he pushed the buggy off of himself and finish unloading the trailer. (Hearing Testimony of Claimant, January 21, 2011, p. 19, ll. 11-18). There were no witnesses to this event, and the Claimant's medical records fail to mention this specific, detailed account of the alleged injury. The Claimant testified that he could not leave the Dollar General because of mechanical problems with his truck. (*Id.* at p. 20, ll.17-19). Then, he called Bonnie Henderson, the Averitt personnel manager, to report the fan belt in his truck was broken. (*Id.* at p.20-21, ll. 28-29, 1-3). Although the Claimant talked to Henderson nine times on the date of the injury, he could not recall if he told Henderson of the accident during his phone calls. (*Id.* at p. 62, ll. 14-26).

The Claimant waited four hours for his truck to be repaired. After his truck was repaired, he finished his scheduled deliveries and continued to unload buggies in New Orleans, Louisiana and Gloster, Mississippi. (*Id.* at p. 21, ll.20-24). While in Gloster, his final delivery spot, the Claimant began experiencing pain in his right arm and chest, and he required the assistance of a Dollar General employee to finish unloading the truck. The Claimant then sought emergency treatment via an ambulance at Field Memorial Community Hospital in Centerville, Mississippi because he felt like he was having a heart attack. (*Id.* at p.27, ll. 21-25).

The Claimant's wife testified that she tried to call Bonnie Henderson, but her voicemail was full and not accepting messages. Bonnie Henderson testified for the Employer/Carrier that she knew the Claimant was having heart-attack symptoms, and he told her it was "workers' compensation," but Henderson testified that the Claimant never mentioned being pinned by a roller. (*Id.* at pg. 16, ll. 20-22). She had no documentation in her file that the Claimant had been pinned by a roller in October 2009. (*Id.* at pg. 18, ll. 15-18).

The Claimant testified that his chest pain kept him from working until December 1, 2009. Upon returning to work, the Claimant testified that he re-injured himself on December 2, 2009 when he tried to prevent a 1,000 pound buggy from falling on a Dollar General employee. (*Id.* at p.30, ll. 1-6). The Claimant testified that he told his primary-care physician Dr. Wade of this alleged second incident that caused him to re-injure his chest. (*Id.* at p. 31, ll. 9-11). According to the Claimant, the lift gate on his truck malfunctioned causing the buggy to become unstable. (*Id.* at p. 29, ll. 24-29). The Claimant made his next delivery and then notified Bonnie Henderson that he re-injured his chest. Henderson testified that the Claimant did not mention a malfunctioning lift gate at the time of his second injury. Henderson also stated that she never documented an injury because the Claimant did not tell her he sustained a work injury.

B. Medical Testimony

The Claimant's records from Field Memorial Hospital's emergency room note that the Claimant arrived on October 1, 2009 at 7:03 p.m. with complaints of chest pains. (General Exhibit 1, p. 6). Neither the ambulance records nor the emergency room records mention that the Claimant had suffered a work-related injury or that he had been struck in the chest by a 1,000 pound buggy. (*Id.*). The Claimant described a gradual onset of pain that increased in sharpness around 5:00 p.m.

radiating through his back. (*Id.*). **The Field Memorial Community Hospital records also note that the Claimant described the pain as a gradual onset over the last 24-hours.** (*Id.* at p. 7). **Further, the medical records indicate that the onset of pain was while the Claimant was at rest.** (*Id.*). The Claimant's pain was associated with nausea and sweating. The Claimant's cardiac tests came back negative, and he opted to be discharged from the hospital. He was released about 10:00 p.m.

The Claimant followed up with his primary-care physician on October 7, 2009 and described his pain as sudden and in a persistent pattern for two days. (General Exhibit 2, p. 10). Dr. Wade noted that the anterior chest wall was tender. Dr. Wade did not indicate in his notes that any specific incident had occurred to cause the chest pain. (General Exhibit 6, p. 3). Dr. Wade testified that in his evaluations of the Claimant he did not see any evidence of a trauma causing the chest pain. (*Id.* at p.8). Dr. Wade referred the Claimant to Magee Physical Therapy.

Magee Physical Therapy performed their initial evaluation on October 20, 2009, which noted: "the Claimant was a 51-year-old man injured at work, pushing buggies on and off an 18-wheeler on October 1, 2009, and **does not recall a specific incident.**" (General Exhibit 3, p. 35). The Claimant's treatment plan was therapy and moist heat.

The Claimant returned two more times to Dr. Wade. On November 13, 2009, Dr. Wade noted that the chest pain was overall better, and the Claimant could return to work by the end of the month or December 1, 2009. Dr. Wade testified that he did not discuss with the Claimant how the work-related injury occurred. He also stated he did not fail to document the incident in the Claimant's medical records. The Claimant returned to Dr. Wade on December 4, 2009 with complaints of chest pain. Dr. Wade's records do not indicate that the Claimant was injured while

he stopped a fully stocked buggy from falling off the truck. (General Exhibit 2, p. 4). Dr. Wade's notes indicate that the re-injury occurred pushing a buggy. (*Id.*)

Dr. Wade testified that if the Claimant had discussed the first incident of being pinned by a 1,000 pound buggy or the second incident of stopping a 1,000 pound buggy from falling, he would have documented these occurrences in his notes. (*Id.* at p. 10-11). **Dr. Wade also testified that if these events occurred, he would have expected the Claimant to present with different pain complaints.** (*Id.*) As to causation of the injury, Dr. Wade testified that the Claimant had musculoskeletal type chest pain, but he was unable to give an opinion as to the cause because a variety of things could have caused the pain. Specifically, Dr. Wade testified as follows:

Q: Also based on the records that you have, are you going to give an opinion in this case as to the cause of Mr. Rankin's musculoskeletal pain that he experienced when you treated him in October and December of 2009?

A: I mean just based on what's on the records, all I can say is he had musculoskeletal type chest pain.

Q: **Okay, and you are unable to give any opinion as to the cause of it?**

A: **No.**

Q: **Meaning you're not able to give an opinion as to the cause of it; is that correct?**

A: **Correct.**

(*Id.* at 13).

The Claimant was also treated by Dr. Katz on December 12, 2009. The Claimant's medical history in Dr. Katz's report states, "on October 1, 2009, Mr. Rankin was pushing a buggy that weighed between 200 and 1,000 pounds. The buggy pinned him to a wall. He continued working. ... [The hospital] felt he had strained muscles in the chest area." (General Exhibit 4, p. 8). Dr. Katz

testified that he had never been asked about causation of the injury, and he was not prepared to testify about causation. (*Id.* at 13). Dr. Katz could not recall a specific event surrounding the Claimant's re-injury on his second day returning to work. (*Id.* at p. 12). Dr. Katz testified that lifting over 50 pounds should not have been within his restrictions prior to the injury because of the Claimant's two previous shoulder injuries, his obesity, his age, and his lack of physical conditioning. (*Id.* at p. 27). Further, Dr. Katz testified that the FCE results were due to "questionable effort" by the Claimant. (*Id.* at p. 28).

Prior to the alleged incident on October 1, 2009, the Claimant was seen in the emergency room of St. Dominic Hospital on February 15, 2009 at 9:10 p.m. (Hearing Testimony, p. 72, ll. 1-12). The Claimant presented with complaints of chest pain, pain between the shoulders, and radiation of pain into the left arm. The pain began occurring four hours prior to arrival and was accompanied by sweating, nausea, and the Claimant's wife stated he became pale. The Claimant's test results came back negative, and the Claimant was instructed to take a baby aspirin daily and follow up at Jackson Heart Clinic. The Claimant failed to disclose this previous incident during discovery. (*Id.* at p. 73, ll. 4-7).

II.

"[I]f the Claimant is uncorroborated as to the occurrence of a claimed accident and is shown to have made statements inconsistent with the claim, the commission is not bound to accept the testimony as the basis for an award." Penrod Drilling Company v. Etheridge, 487 So. 2d 1330, 1333 (Miss. 1986) (citing Vardaman S. Dunn, Mississippi Workmen's Compensation, § 264 (3d Ed. 1982)). Where the claimant is the only eyewitness who supports the claim of accidental injury and the Commission with reason finds claimant's testimony untrustworthy or incredible, the Commission

has authority to reject it. White v. Superior Products, Inc., 515 So. 2d 924, 927 (Miss. 1987). “As judge of the credibility of witnesses, the Commission has the authority to reject testimony in circumstances which demonstrate a lack of trustworthiness or that which is incredible.” Edwards v. Marshall Durbin Farms, Inc., 754 So. 2d 556, 560 (Miss. Ct. App. 2000).

“When a patient gives a history to a physician which is inconsistent with allegations in a workers' compensation case, this is a significant factor in support of denial of a claim.” Raytheon Aerospace Support Servs.v. Miller, 861 So. 2d 330, 336 (¶16) (Miss. 2005) (citing Hudson v. Keystone Seneca Wire Cloth Co., 482 So.2d 226, 227–28 (Miss.1986).

“In all but the simple and routine cases ... it is necessary to establish medical causation by expert testimony.” Cole v. Superior Coach Corp., 234 Miss. 287, 291, 106 So. 2d 71, 72 (1958). A “claim of disability must be supported by medical findings.” Howard Indus. v. Robinson, 846 So. 2d 245, 252(17) (Miss. Ct. App. 2002) (citing Miss. Code Ann. § 71-3-3(i) (Supp.2001)). “[M]edical evidence must prove not only the existence of a disability but also its causal connection to employment.” *Id.* at 259 (¶49) (citation omitted).

Based on the evidence as a whole and the applicable law, the Commission finds that Claimant’s uncorroborated testimony regarding the alleged work-related injury is inconsistent with the evidence as a whole, and we find that the Claimant has not met his burden of proof in establishing a compensable injury. When the Claimant first arrived at the emergency room on the date of injury, his medical records indicate that the pain occurred while at rest, over the past 24 hours, and increased in pain at 5:00 pm. No where in the medical testimony or records is the alleged incident involving a 1,000 pound buggy pinning him to a wall mentioned. In fact, the first documentation in his medical records of any work-related incident occurs in the Claimant’s physical

therapy records on October 20, 2009, and the record clearly states, “does not recall a specific incident.” The Claimant himself testified that he could not remember reporting the exact incident to Henderson, his supervisor.

Moreover, the Claimant has also failed to establish causation by any medical expert. Dr. Wade, his primary treating physician, did not document this alleged injury in his notes, and he directly stated that he could not testify as to causation of the Claimant’s injury. Dr. Katz testified that he would not testify as to causation. “[M]edical evidence must prove not only the existence of a disability but also its causal connection to employment.” Howard, 846 So. 2d at 259. The Claimant has failed to meet his burden of proof to establish that his injury is causally connected to the alleged work-related injury. Due to the lack of medical evidence showing a causal connection, we find the Claimant has failed to demonstrate that this is a compensable claim.

III.

On the day this matter was heard at oral argument, the Claimant filed a Motion for Sanctions and to Strike the Brief of the Appellant. The Claimant alleged that the Employer/Carrier relied on evidence, such as the Claimant’s deposition and video surveillance, that were not made part of the record, and that such rises to a willful violation of the Rules of the Mississippi Workers’ Compensation Commission. The Employer/Carrier filed a response to their motion citing the hearing record for each fact relied on in the Employer/Carrier’s brief. We find the Claimant’s motion to not be based on sufficient evidence. It is clear from the record that the Employer/Carrier relied on testimony and exhibits presented at the hearing. The Employer/Carrier has not exhibited a “willful violation” of the Rules. Accordingly, the Claimant’s motion is denied based on the sufficient evidence in the transcript to support the Employer/Carrier’s brief.

IV.

We, therefore, reverse the Order of Administrative Judge dated September 8, 2011, and we hereby find that this claim is denied and dismissed.

SO ORDERED on **MAR 16 2012**



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Chairman

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Commissioner

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Commissioner

ATTEST:

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Phyllis Clark, Commission Secretary
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