

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 10 01900-K-6469

JOHNNY D. WILLIAMS

CLAIMANT

VS.

PIGGLY WIGGLY

EMPLOYER

AND

STATE FARM FIRE AND CASUALTY COMPANY

CARRIER

APPEARING FOR THE CLAIMANT:

Mr. H. Tobias Coleman, Attorney at Law

APPEARING FOR THE EMPLOYER-CARRIER:

Mr. Robert R. Stephenson, Attorney at Law

ORDER OF THE ADMINISTRATIVE JUDGE

Mr. Johnny D. Williams (hereinafter "Claimant") alleged he had a work accident on or about February 19 or 20, 2010, and injured his back. Piggly Wiggly and State Farm Fire and Casualty Company (hereinafter "the Employer-Carrier") denied compensability. The hearing was held at the Lincoln County Courthouse in Brookhaven, Mississippi, on December 1, 2011. The Employer-Carrier filed a Motion to Dismiss. On January 31, 2012, the parties submitted additional, agreed-upon records, which were entered as Exhibit 9. The record was then closed.

ISSUE

The sole issue for consideration is whether Claimant had a work accident on or about February 19 or 20, 2010, and injured his back.

REVIEW OF EVIDENCE

Claimant is 31 years of age and resides in Copiah County, Mississippi. He went to the

eleventh grade and got his GED, but he has no further education or training. Claimant worked for the Employer about three years as a meat cutter. His primary work history has been as a meat cutter.

Claimant cut meat and unloaded trucks for the Employer, a grocery store. He moved pallets of meat with a manual jack and lifted crates of meat weighing from 50 to 100 pounds. Claimant's supervisor was Roy Moak.

Claimant testified that he was working for the Employer around 6:30 or 7:00 a.m. on a Thursday in February 2010 when he lifted a case of meat and hurt his back. He stated that he lifted the case off the floor to throw it on a top rack when he felt a pop in his back. Claimant felt pain from his back down his buttocks and into both feet. He testified in his deposition that he did not feel excruciating pain immediately, but the pain gradually increased over time.¹ He kept working but had to have a co-worker named Dedric Reese to lift for him. Claimant stated that he told Reese about being injured at work.

Claimant testified that he went to Roy Moak and reported that he lifted a case of meat and felt a pop in his back. He stated that Moak did not complete an accident report and said nothing further about the incident. Claimant worked on Friday but still had Reese do the lifting for him.

Claimant was scheduled to work on Saturday. That morning, he got out of bed, stretched, felt the strength leave his legs, and fell to the floor. He said his back pain from Thursday had eased up until he stretched that morning. After resting about 30 minutes, Claimant's wife helped him off the floor. Claimant said he called and told Moak that he would be late for work. Claimant eventually went to work that Saturday.

Claimant testified that he talked with Moak about the injury when he arrived at the store. He

¹ Exhibit 9 contained the pertinent excerpts from Claimant's deposition.

told Moak about stretching and falling that morning. Claimant said that a co-worker named Arlester Smith was present during the conversation. Claimant went to work on Sunday, but could not finish. Claimant said he was working alone and had to lift the meat by himself. He only worked until about 10:30 or 11:00 a.m., then he told the other worker, Lawanda, that he had to leave. Claimant did not tell her why.

Claimant was treated at the University Medical Center the following Tuesday. He was diagnosed with a lumbar strain/sprain. Claimant said he informed the hospital personnel that he hurt his back lifting a case of meat at work. He was given prescription medication.

Claimant next went to his family physician, Dr. Gullede. He told Dr. Gullede about hurting his back at work from lifting a case of meat. Claimant had an MRI several months later. He was sent to Dr. John Davis by the Employer.

Claimant was also treated at the Jackson Neurosurgery Clinic and by Dr. Grigoryev. He told Dr. Grigoryev about lifting a case of meat at work and hurting his back. Claimant was referred to Region VIII for depression. Claimant testified that he has fallen three more times after feeling a sharp pain in his lower back running down into his legs. He said his back pain is worsening.

Claimant testified that he called James Rushing, the owner of the Employer. He said he told Rushing that he hurt himself at work and that Moak did not fill out the proper paperwork. Claimant guessed that Rushing filed a report because someone from the Carrier began calling him. He did not tell anyone else at the store about his work accident.

In his deposition in January 2011, Claimant denied having any prior back pain or injuries. He denied having a prior workers' compensation claim.² During cross-examination, Claimant

² Exhibit 9 contained the pertinent excerpts from Claimant's deposition.

admitted he was injured in 2002 when a four wheeler struck his leg. He was treated at the emergency room and diagnosed with a back sprain. Claimant also admitted having a back injury at another employer - Wilson's Meat House. He said he sprained his back when he lifted a side of a hog. He went to the emergency room and was off work only a couple of days.

Mr. Bruce Garrett testified for the Employer-Carrier. He is the Employer's store manager. Garrett said that Roger Whittington managed the meat department. Garrett said that the manager on duty has to complete the first report when an accident occurs.

Garrett testified that no accident report was completed for the incident alleged by Claimant. Garrett first heard about Claimant's accident the Monday after it occurred. He said Claimant was not at work, so he tried to call him.

Garrett testified that talked to Claimant by phone, and Claimant said he woke up with pain and tingling. Claimant told Garrett that the physician said it was caused by pushing and pulling at work. Garrett wrote what Claimant said in Exhibit 2 and sent it to the insurance agent. He thought he wrote it on February 25 or 26, 2010, but he was unsure. Garrett denied that Claimant reported hurting his back while lifting a case of meat. In Exhibit 2, Garrett wrote that Claimant got up Saturday morning on February 20, 2010, and had pain and tingling in his feet.

Mr. Dedric Reese testified for the Employer-Carrier. He worked with Claimant in the Employer's meat department. Reese said Roy Moak was their supervisor.

Reese testified that Claimant never said he hurt his back at work. He recalled that Claimant said he woke up and his back was hurting. Reese did not know what date it was, but he remembered that Claimant said his back was hurting when he got up that morning. Reese stated that Claimant left early that day and never came back to work.

Mr. Arlester Smith testified for the Employer-Carrier. He has worked for the Employer for 34 years. Smith is a meat cutter and worked with Claimant at the Employer.

Smith testified that Claimant never talked to him about back pain. He heard from someone else that Claimant got out of bed and hurt his back. Smith never heard anything directly from Claimant. He did not hear Claimant tell Moak about a work accident.

Ms. Lawanda Pittman testified for the Employer-Carrier. She has worked for the Employer for 13 years. She is a meat clerk, responsible for wrapping, pricing, and placing the meat in the counter. Pittman worked in the same department with Claimant.

Pittman testified that Claimant said he got up on the wrong side of the bed and hurt his back somehow. She thought it was on a Saturday, but she was not positive. Pittman did not recall the day Claimant left work early. She never heard Claimant say anything about hurting his back at work.

Mr. Roger Whittington testified for the Employer-Carrier. He has worked for the Employer for 14 years. Whittington was one of Claimant's supervisors along with Roy Moak.

Whittington recalled that Moak told him about Claimant's back pain. Whittington spoke with Claimant's mother on the Friday of the week after Claimant said he hurt his back. Whittington said Claimant's mother wanted papers to fill out so Claimant could have an MRI. Whittington testified that Claimant did not report a work accident to him.

Mr. Roy Moak testified for the Employer-Carrier. He is now retired. When he worked for the Employer, Moak was the market manager. Moak was one of Claimant's supervisors.

Moak stated that Claimant came in to work on a Saturday morning and said he hurt his back when he got out of bed and stretched. Moak testified that Claimant did not report hurting his back at work. Since Moak did not work on Sunday, he did not see Claimant again.

MEDICAL EVIDENCE - HOSPITAL RECORDS

Claimant was treated at the University Medical Center emergency room on February 23, 2010. The intake form showed that Claimant had lower back pain for 3 to 4 days with no injury. The nurse's notes indicated that Claimant had back pain which began gradually three weeks prior. Claimant was diagnosed with a muscle spasm and lumbar muscle strain. His straight leg raising test was negative. Claimant was released to return to work with no lifting for two weeks.

Two days later, Claimant was treated at the Howard Wilson Memorial Hospital emergency room. The insurance form showed "N" for "work comp." Further, the notes showed that Claimant had no trauma and had woken up feeling this way on Saturday. Claimant had right sided back pain with radiculopathy. However, his straight leg raising test was negative. Claimant's urine drug screen test was positive for marijuana and benzodiazepines. He was released to return to work and to follow up with his primary care physician for further treatment.

In the hospital records, there were prior visits by Claimant to the emergency room. On September 2, 2002, Claimant had symptoms of lower back, head, and right hip pain after having a four-wheeler accident. He was diagnosed with a soft tissue injury to the lower back. On June 1, 2000, Claimant had lower back pain after hurting his back at work from lifting a vegetable buggy two days prior.

PHYSICIAN RECORDS

Dr. Jerry Gulledge treated Claimant on February 25, 2010. Dr. Gulledge wrote that Claimant hurt his back five days ago at Piggly Wiggly and needed an MRI. The other parts of his note are illegible. Claimant returned on March 12, 2010, with back pain. Dr. Gulledge wrote that Claimant hurt himself pulling a pallet.

On November 4, 2010, Claimant had a lumbar spine MRI, which showed degenerative disc disease with no herniated disc or central stenosis and a mild disc bulge at the L5-S1. Claimant was initially seen by Dr. Adam Lewis with Jackson Neurosurgery on November 12, 2010. Dr. Lewis found that Claimant was not a surgical candidate, so he referred Claimant to Dr. Gordon Lyons for pain management. Dr. Lyons treated Claimant on December 6, 2010, at which time Claimant reported lifting a case of meat at work and hurting his back. In a letter dated that same day, Dr. Lyons wrote that Claimant felt a pop “and ever since then he has had disabling back pain.” Dr. Lyons wrote that Claimant exhibited some illness behavior. He noted that Claimant’s straight leg raising test was negative. The next day, Claimant’s urine test came back positive for cannabinoids.

On December 15, 2010, Dr. Lyons referred Claimant to Dr. Leon Grigoryev, a physiatrist. Dr. Grigoryev began treating Claimant on January 19, 2011. Claimant gave a history of lifting a heavy case of meat at work in February 2010 and hearing a pop in his back. Dr. Grigoryev wrote that Claimant immediately developed severe back pain radiating into the legs.

Dr. Grigoryev diagnosed Claimant with chronic mechanical low back pain with a history of a thoracolumbar and lumbosacral paraspinal muscle and gluteal muscle strain/sprain. He said Claimant had inconsistencies in the physical examination, so he referred Claimant to Dr. Angela Koestler, a psychologist. Dr. Grigoryev prescribed therapy and medications for Claimant’s back pain.

On January 26, 2011, Dr. Grigoryev performed electrodiagnostic studies on Claimant’s lower extremities. The studies showed that Claimant had no evidence of a peripheral large fiber mono- or polyneuropathy, myopathy, lumbosacral plexopathy, or radiculopathy on either side. Dr. Grigoryev treated Claimant on February 28, 2011, and prescribed additional therapy.

On March 28, 2011, Dr. Grigoryev wrote that Claimant was discharged from physical therapy because he was not putting forth any effort and was showing significantly amplified pain behavior. Dr. Grigoryev diagnosed Claimant with mechanical low back pain and a sprain from an on-the-job injury, but he also found that Claimant had a significant psychogenic component with augmented pain behavior and inconsistencies on the physical examination. Dr. Grigoryev placed Claimant at maximum medical improvement and assigned a 3% permanent medical impairment rating to the body as a whole. He said Claimant could work in the sedentary to light categories with standing/walking up to two hours out of an eight-hour day; occasional lifting up to 15 pounds; frequent lifting up to five pounds; occasional pushing/pulling up to 25 pounds; occasional carrying up to 10 pounds; and occasional bending, squatting, twisting, and climbing up stairs.

DECISION

I base the following findings on a preponderance of the evidence, including medical proof as required by the Mississippi Workers' Compensation Law:

The sole issue for consideration is whether Claimant had a work accident on or about February 19 or 20, 2010, and injured his back. Claimant's testimony had several inconsistencies, both with his prior deposition and with the other witnesses.

More importantly, there is insufficient medical evidence establishing causation due to Claimant's failure to fully and completely inform the physicians about the incident at home. In particular, Dr. Lyons wrote on December 6, 2010, that Claimant had "disabling back pain" from the moment he felt a pop in his back at work. Dr. Grigoryev thought that Claimant "immediately" developed severe back pain at the time of the work accident. Claimant's own testimony contradicts those assumptions. Claimant testified during his deposition and at the hearing that his back pain was

not immediately excruciating and that his back pain was mostly gone by the time he stretched that Saturday morning at home. Since the physicians did not have the correct history of what occurred, their opinions cannot be relied upon to establish causation.

After observing the demeanor of the witnesses, hearing the testimony, considering the medical evidence, and reviewing the other evidence, I find that Claimant has not proven he sustained a compensable, work-related injury to his back on or about February 19 or 20, 2010. There is insufficient credible lay and medical evidence to support Claimant's claim. As a result of the previous findings, the Employer-Carrier's motion to dismiss is moot.

ORDER

IT IS THEREFORE ORDERED AND ADJUDGED that Johnny Williams is not entitled to workers' compensation benefits for an alleged work-related back injury occurring on or about February 19 or 20, 2010.

SO ORDERED AND ADJUDGED

FEB 10 2012



Tammy Green Harthcock

**TAMMY GREEN HARTHCOCK
ADMINISTRATIVE JUDGE**

ATTEST:

Phyllis C. Clark

**Phyllis Clark, Commission Secretary
MWCC NO. 10 01900-K-6469**