



Government of the District of Columbia

Department of Employment Services

Office of the Director • Employment Security Building • 500 C Street, N.W. • Suite 600 • Washington, D.C. 20001

CHARLIE BOOKER,	:	
	:	
Claimant	:	
	:	
v.	:	H&AS No. 85-5
	:	OWC No. 0049406
GEORGE HYMAN CONSTRUCTION	:	
COMPANY,	:	
	:	
Self-Insured	:	
Employer	:	

Appeal from the Compensation Order of Charles E. Crosby, Hearing Examiner

Timothy F.X. Cleary, Esquire
for the Claimant

D. Stephenson Schwinn, Esquire
for the Self-Insured Employer

DECISION OF THE DIRECTOR

I. Preliminary Statement

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979 as amended, D.C. Law 3-77, D.C. Code, §36-301 et seq. (1981 Edition, as amended) (hereinafter, "Act").

On May 28, 1986, Hearing Examiner Crosby issued a Compensation Order wherein he determined that no compensable injury occurred on February 27, 1984 as alleged by claimant.

Claimant appeals the Hearing Examiner's denial of his claim.

File

II. Background

Claimant commenced employment as a laborer with the George Hyman Construction Company in February of 1984. Claimant contends that he fell in a hole on February 27, 1984 and injured his back. Claimant apparently did not provide timely written notice of his injury and he sought no immediate medical care. Claimant quit his employment in March of 1984.

On May 7, 1984, claimant began new employment with Turner Construction Company. On or about July 12, 1984, approximately four to five weeks after beginning his new employment, claimant provided his previous employer, George Hyman Construction Company, with written notice of injury as concerns the alleged February 27, 1984 injury.

III. Discussion

The Director must affirm the Compensation Order under review if the findings of facts contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. See D.C. Code, §36-322, and 7 DCMR 230.

During the course of the fact finding hearing, claimant's credibility was called into severe question. The Hearing Examiner specifically found that claimant's testimony was not credible; and he therefore completely rejected claimant's claim that he sustained any injury arising out of his employment.

A fact finder's credibility findings are given great weight. Dell v. DOES, 499 A. 2d 102, 106 (1985). The record herein provides substantial evidence to support the Hearing Examiner's finding that claimant did not suffer an injury arising out of his employment.

Among some of the many considerations that adversely bore upon claimant's credibility were the following: First, while claimant testified that he reported his injury to his friend and supervisor, Dave Miller, Mr. Miller specifically denied any knowledge of claimant's injury or of even being told about claimant's injury. This testimony appears particularly important in view of the facts that the two men were personal friends prior to the commencement of claimant's employment with George Hyman, and that the two men frequently traveled to and from work together. Second, employer's investigation did not turn up any persons who may have witnessed the occurrence. In his deposition testimony,

claimant stated that only one person, whose name he did not know, witnessed claimant's fall. At the actual fact finding hearing, claimant testified that a couple of guys saw him fall, but he did not know their names. Third, employer's witnesses testified that if claimant fell in the hole which he claimed to have fallen in, claimant would have had to impel himself on steel pilings and would have suffered immediate and obvious injury. Fourth, claimant's written statutory notice of injury was not provided until July 12, 1984. Fifth, there appears to be a conflict in claimant's medical history given to his treating physician, Dr. Chandra. For example, while Dr. Chandra's Southern Maryland Hospital Center Admission Note of August 7, 1984 states that "patient gave history of falling on concrete about three months ago" which would be April 1984 not February, Dr. Chandra's October 20, 1984 report notes the onset of injury as February 1984. Moreover, in Dr. Chandra's handwritten notes of April 19, 1984, Dr. Chandra reports that claimant had severe back pain for seven to ten days prior to the April 19, 1984 visit, and the note contains no mention of any trauma or fall. In other words, Dr. Chandra's early records seem to indicate the onset of injury in April, but the later reports move the injury back to February. And sixth, the Hearing Examiner also found it incredible that claimant could have continued to work and perform his regular duties if claimant had sustained his injuries on February 27, 1984 as alleged.

Claimant argues that the Hearing Examiner only paid lip service to the presumption of compensability; however, in the Director's view, the presumption of compensability never arose. The presumption to which claimant refers is found at D.C. Code, §36-321 and provides in relevant part as follows:

§36-321

In any proceeding for the enforcement of a claim for Compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter.

However, as the Director has repeatedly held, in order for the presumption of compensability to arise, a claimant has the initial burden of introducing persuasive evidence of basic facts tending to establish coverage under the Act before other facts necessary to establish the claimant's coverage under the Act are presumed. At a minimum, claimant must first establish that he suffered an injury which occurred or manifested itself during employment, and claimant must also establish that conditions of

his employment could lead to the type of injury in question. See Naylor v. Grove Construction Company, H&AS No. 83-163, OWC No. 20378 (August 1, 1984), Stewart v. Washington Hospital Center, H&AS No. 85-152 (Director's Final Compensation Order, May 13, 1987), Parodi v. Singleton Electric Company, Dir. Dkt. No. 86-32 (Director's decision, April 1, 1988).

In this case, and in view of the Hearing Examiner's credibility findings, the Director concludes that the claimant failed to introduce persuasive evidence of the facts necessary to trigger the presumption that claimant's injury arose out of and in the course of his employment. More specifically, claimant did not establish that his injury occurred or manifested itself during the course of his employment.

IV. Disposition

Accordingly, for the reasons more fully set forth above, the Compensation Order of May 28, 1986 is hereby affirmed, adopted, and incorporated by referenced herein.


F. Alexis H. Roberson
Director

Date

Aug. 2, 1988

APPEAL RIGHTS

Any party aggrieved by this Order may petition the D.C. Court of Appeals for its Review. D.C. App. R. 15(a) requires that the Petition for Review be filed within 30 days of notice of a final order. The Court is located at 500 Indiana Avenue, N.W., Washington, D.C. 20001.

In addition to service upon opposing counsel in this proceeding, copies of the Petition for Review and all motions, briefs, or other documents in connection with such appeals should be served upon:

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Charlie Booker

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August 1988, I mailed by certified mail, return requested, a copy of the foregoing Decision of the Director to the following:

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