

**NOT DESIGNATED FOR PUBLICATION**

SERGIO JARQUIN \* No. 95-CA-0514  
VERSUS \* COURT OF APPEAL  
CLASSIC CHASSIS CARWASH \* FOURTH CIRCUIT  
\* STATE OF LOUISIANA

\* \* \* \* \*

APPEAL FROM THE  
THE OFFICE OF WORKERS' COMPENSATION  
NO. 93-06294, DISTRICT EIGHT  
HONORABLE GWENDOLYN F. THOMPSON, JUDGE

\* \* \* \* \*

**PATRICK M. SCHOTT  
CHIEF JUDGE**

\* \* \* \* \*


(Court composed of Chief Judge Patrick M. Schott, Judge Robert J. Klees and  
Judge Steven R. Plotkin)

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OCT 12 1995

**AFFIRMED**

 This is a worker's compensation case which was dismissed by a hearing officer in the Office of Worker's Compensation. The hearing officer found that plaintiff failed to carry his burden of proving that he is disabled because of an on-the-job accident. The principal issue is whether the judgment appealed from is manifestly erroneous.

Plaintiff alleged and testified that he injured his back while moving a heavy crate at his job site. He saw a chiropractor on July 15, 1993, and a physician on July 20. For some time thereafter he was treated for a back injury. In pleadings, depositions, and various other statements plaintiff claimed to have sustained his injury on several different dates until, on the day of trial, he filed a supplemental petition and alleged the date to be June 23. Since this was an unwitnessed accident, he had to rely exclusively on his own testimony to prove the accident occurred on the job. By holding explicitly that he failed to prove his case the hearing officer implicitly found that plaintiff's testimony was not credible.

Aside from the many inconsistencies in plaintiff's statements regarding the date of his alleged accident, there are a number of other contradictions to

this testimony. He called as a witness his uncle, a supervisor at the car wash operated by defendant, who testified that plaintiff came to him at his home while he (the uncle) was out sick and reported that he (the plaintiff) had hurt his back on the job. The uncle said this happened in the beginning of June and he told plaintiff to report this to his boss, Barry Speed. The uncle testified that plaintiff tells lies.

Plaintiff denied telling this uncle about the accident, but insisted he reported the accident to the bosses, David and Barry Speed, in his uncle's presence at work. Not only did the uncle contradict this, but the Speeds did also. They testified that they didn't hear about the accident until some time after plaintiff left (they thought he just quit) when a doctor called their office to determine whether they would pay the bills for plaintiff's medical treatment. Plaintiff also testified that the cashier, Jose Toro, saw the accident, but Toro flatly denied this. Toro said plaintiff started complaining about backache in the beginning of June.

The chiropractor who first saw plaintiff on July 15 testified that plaintiff told him he had been having low back pain for two weeks and wanted it checked out. Dr. Evans, a family practice physician who treated plaintiff over a long period, had July 15 as the date of plaintiff's accident. Evans testified that when he contacted the Speeds on August 3 to determine whether they would pay the bills they stated that they knew nothing about an accident.

Finally, aside from not being able to remember any dates, plaintiff's testimony about his hours of work and salary were rife with contradictions.

The hearing officer's conclusion that plaintiff failed to carry his burden of proof is amply supported by the record. There was no credible evidence to support his claim. In the light of this conclusion plaintiff's assignments of error with respect to the hearing officer's rejection of plaintiff's claim for medical

expenses and his claim that the failure of defendant to pay was arbitrary and capricious are likewise without merit.

Finally plaintiff's assignment that the hearing officer failed to rule on his motion for mistrial made during the course of the hearing and renewed at the end of it has no merit. First, the record does not support the granting of a motion for a mistrial in the middle of this hearing and, second, plaintiff suffered no prejudice whatsoever by the failure of the hearing officer to make a specific ruling on the motion. There was an implied denial of the motion by virtue of the fact that the hearing proceeded to a conclusion.

Accordingly, the judgment appealed from is affirmed.

AFFIRMED.

STATE OF LOUISIANA  
OFFICE OF WORKER'S COMPENSATION  
DISTRICT 8  
DOCKET NO. 93-06294

SERGIO JARQUIN  
VS.  
SPEED'S CLASSIC CHASSIS CARWASH

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REASONS FOR JUDGMENT

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This matter came for trial on March 4, 1994 in New Orleans, Louisiana. Office of Worker's Compensation, Eastern Division Judge Gwendolyn F. Thompson presiding.

I. ISSUES

1. Did a work-related accident occur? What as the date?
2. Did claimant report the alleged accident to defendant?
3. If a work-related accident occurred, was claimant a part-time or full-time employee? What is claimant's rate of pay?
4. Is claimant guilty of fraud pursuant to R.S. 23: 1208?
5. What is the extent, if any, of claimant's disability?
6. What benefits, if any, is claimant entitled to?
7. Was defendant arbitrary and capricious in its denial of worker's compensation benefits?

II. STIPULATIONS

1. No worker's compensation payments were made and nor medical payments were made.
2. An orthopedist was requested of the worker's compensation carrier and it was not authorized.

III. FINDINGS OF FACT/SUMMARY/CONCLUSIONS OF LAW:

1. Did a work-related accident occur? What as the date?
2. Did claimant report the alleged accident to defendant? Claimant is a male of Hispanic origin who does not speak English. The testimony was through a translator. The trial that was expected to last only 3 hours in fact lasted until 8:15 p.m. at on Friday night.

The accident is an unwitnessed accident. Claimant testified that he told the cashier Jose Toro of his injury to his back on that same day.

The exact date of the accident could not be stated by claimant. Claimant testified that the accident occurred on the date that some heavy equipment (two rug beaters) were delivered to the defendant's premises. The defendant did not have documentation as to the exact date of delivery.

Jose Toro testified that some time in June of 1993, claimant came to him complaining of back pain after pulling the rug beaters equipment and asking for tylenol, which Toro gave to him around 9:00 a.m. However, Toro did not witness any accident.

Claimant's usual immediate supervisor was Donald Jarquin, his uncle. However, on the date of the alleged injury, Donald Jarquin was at home himself recuperating from an accident. Donald Jarquin testified that claimant went to Donald Jarquin's home and told him of the injury accident to his back. Donald Jarquin testified that he told claimant to tell the owners of Classic Chassis Carwash (hereinafter CCC). Donald Jarquin told claimant to go to Dr. Dennington, a chiropractor.

Donald Jarquin testified that he was not sure of the exact date that claimant told him of the injury but that it was approximately one week before claimant's last day of work at CCC.

Donald Jarquin, although a relative of claimant, was claimant's immediate supervisor and the supervisor of others at CCC. He was still employed at CCC at the time of trial and testified that he did not want to be involved in this matter. He was subpoenaed for trial. Also, at trial Donald Sergio testified that the reason he did not tell the owners of CCC of claimant's statement that he was

injured is because claimant lies.

Dr. Dennington testified that claimant's first visit was on July 15, 1993 and gave a history of lifting heavy equipment at work. Dr. Dennington testified that he had never treated claimant before, did not know who referred claimant to him, and had treated only one other person from CCC. Dr. Dennington further testified that he did get authorization from "Susan M" to treat claimant.

Dr. Henry Evans testified that he first saw claimant on July 20, 1993 and was given a history of a on the job back injury while lifting heavy equipment.

Dr. Evans stated that on 8/3/93 Barry & David Speed, the owners of CCC, were spoken to about payment/authorization and was informed that CCC was not aware of the accident. Dr. Evans, or is staff, then contacted the worker's compensation carrier for CCC and spoke to "Miss Mack" or "Susan M". However, no payment was received.

3. If a work-related accident occurred, was claimant a part-time or full-time employee? What is claimant's rate of pay?

Donald Jarquin, claimant's immediate supervisor, testified that claimant worked Monday through Saturday from 8:30 a.m. until 6:00 p.m., approximately 9.5 hours per day. Claimant testified as to the same hours worked. When asked if he would defer to the time sheets, he testified yes.

When the owners of CCC both testified, only one of them kept the time initial time sheets. However, he testified that after the payment for each time period, the initial time sheets were not kept but a handwritten ledger of amounts of money was the only record

kept. Therefore there were no time sheets to look at to determine the actual time worked.

Claimant testified that the payday envelopes contained checks and cash every pay day; and, that there were frequent complaints by employees that they were not paid the correct amount of money from CCC for the hours that they worked. However, Donald Jarquin testified that he handed out the envelopes with only checks (no cash) in them to all employees each pay day. The owners of CCC both testified that no cash was ever in the envelopes.

The cashier Jose Toro could not testify as to the exact number of hours claimant worked daily. However, Jose Toro had no complaint as to the number of hours he worked and the pay he received. He did not know claimant's rate of pay nor did he ever see claimant's check.

Claimant testified that he was paid \$5.25 per hour and received one check every two weeks plus cash in the same envelope with the check. Claimant testified that there was \$200 - \$300 cash in the envelope.

4. Did claimant have a prior back problem? If so, what is the impact of that?

Dr. Dennington testified that he believed claimant that he injured his back at work. Further that if there was a prior back problem that had been pain free for months prior to the alleged injury then Dr. Dennington's opinion is that the pain was from the on the job injury. Also, after looking at the report of Dr. Olson at trial, Dr. Dennington testified that he did not see a disc problem stated therein but that it could easily have been a sprain

or strain problem.

Defendant contends that since claimant did not tell Dr. Dennington nor Dr. Henry Evans of any prior back problem that either the injury is due to the old back problem and not work related or that the work related injury did not occur at all because claimant is untruthful.

Dr. Evans diagnosis is "lumbar disc syndrome"; that claimant can not return to previous employer; however, claimant could possibly perform light duty work as of the date of trial.

Dr. Evans' bill remains unpaid. (Dr. Evans testified that his fee for trial testimony is \$400.00)

As to prior back problem, Dr. Evans testified that if the back was asymptomatic prior to the work related injury, then the past back history may not be that important. After reviewing Dr. Olson's report (Defendant exhibit 1), Dr. Evans testified that the report revealed the same level but not the same side as the treatment/problem today. Dr. Evans noted that there was a communication problem with claimant as claimant spoke only Spanish and Dr. Evans does not speak Spanish. Dr. Evans found related both subjective and objective findings from his evaluation of claimant.

Claimant did not tell Dr. Evans nor Dr. Dennington of a prior back complaint with Dr. Olson.

Claimant was involved in an accident in 1989 and he saw Dr. Olson. Claimant testified that he never had any back complaints, just knee complaints, associated with that accident.

Defendant exhibit #2, a joint petition for settlement

pertaining to the 1989 accident, states:

1. That worker contends that he was injured while working within the course and scope of his employment with Armont Enterprises. The injury occurred on or about March 27, 1989. As a result of the accident mentioned above, worker sustained injuries to his left knee, and claims to have injured his low back."(paragraph 1., emphasis added)

Claimant signed the document but since he can not speak English it is inherent that he can not read it either. However, claimant was represented by an attorney in that matter who also signed the document.

**IN SUMMARY:**

The Court has not yet answered any of these questions:

1. Did a work-related accident occur? What as the date?
2. Did claimant report the alleged accident to defendant?
3. If a work-related accident occurred, was claimant a part-time or full-time employee? What is claimant's rate of pay?
4. Did claimant have a prior back problem? If so, what is the impact of that?

The Court finds that the testimony of claimant is consistent with the others witnesses only if they relied upon what claimant told them. Most, if not all, of the testimony of the witnesses who related information not told directly to them by claimant, have a different or opposite version of every important aspect of this case; namely, the above questions #1 through #4. When one person's testimony is at odds with almost all other independent testimony, the Court can not help but doubt the one standing alone. When you

add a supervisor who is also a relative of claimant testifying that claimant lies, the Court must look even closer at the veracity of all testifying. In this case, the Court had serious doubts as to who was telling the truth. Given the amount of doubt of the testimony herein, the Court can not say that claimant has borne his burden of proof that a work-related accident occurred.

The last question to be answered is:

4. Is claimant guilty of fraud pursuant to R.S. 23: 1208?

The Court can not find fraud solely because of so much doubt. Claimant is not guilty of fraud pursuant to R.S. 23: 1208.

endreasons

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