

|                     |   |                         |
|---------------------|---|-------------------------|
| LARRY HOLLAND,      | : |                         |
|                     | : |                         |
| Claimant,           | : |                         |
|                     | : |                         |
| vs.                 | : |                         |
|                     | : | File No. 5001699        |
| SHEAFFER PEN CORP., | : |                         |
|                     | : |                         |
| Employer,           | : | A P P E A L             |
|                     | : |                         |
| and                 | : | D E C I S I O N         |
|                     | : |                         |
| LIBERTY MUTUAL,     | : |                         |
|                     | : |                         |
| Insurance Carrier,  | : |                         |
| Defendants.         | : | Head Note Nos.: 1108.50 |

The motion to submit additional evidence is denied. The medical record which contains the words "frequent visitor" is rather obvious. There is no showing that explanatory evidence could not have been discovered and offered at hearing if reasonable diligence had been exercised.

I delete the following two sentences from the sixth paragraph on page five of the arbitration decision:

Claimant's testimony and overall demeanor at hearing suggest that claimant lacks emotional maturity and is likely to reconstruct events in a

matter that better serves his perceived self interests than more objective reviews of events would suggest. For this reason, claimant's testimony is suspect.

I do not adopt the quoted part of the decision because the record does not contain evidence that shows that claimant's level of emotional maturity has been evaluated and what a lack of emotional maturity might be manifested. This is a topic that requires expert testimony.

Nevertheless, it is readily apparent that the presiding deputy was not impressed with claimant's demeanor at hearing. Even if I exclude from consideration the record referring to the words "frequent visitor," ample evidence exists in the record to sustain a finding that claimant lacks credibility.

The two physicians who supported this claim based their opinions upon claimant's assertion to them that he had no prior back problems or complaints before this injury. Claimant admitted to prior problems when he first reported his back pain to the plant nurse. (Exhibit D:1) While a coworker testified that claimant did not specifically complained of prior back problems, he had numerous hip complaints while working before the alleged work injury to his back and told this worker after the alleged injury in this case that his back pain was due to his hip problems and not work related. (Ex. Q:16) This coworker expressed surprise when she learned of this claim.

At hearing, claimant mentioned involvement of the hip at the time of his injury three times. (Transcript, pp. 21:18; 23:6; 55:17) The back pain was in the middle and the hip pain was on the left side. (Tr., p. 23:6) At the close of the hearing, claimant identified the location of his continuing pain on the left side near his kidney. (Tr., p. 56) Claimant denied telling a coworker after the alleged injury that it was due to his hip. He testified that he had immediately pain but denied stating to Dr. Hendricks he had no immediate pain. (Tr., p. 55:16) The medical evidence shows evidence preexisting disc disease. (Exs. H & I) The evidence does not show a separate hip condition.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 30th day of April, 2004.

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MICHAEL G. TRIER  
WORKERS' COMPENSATION  
COMMISSIONER

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