

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212620

LEIGHTON BALLARD

CLAIMANT

CARROLL COUNTY JUDGE

RESPONDENT

AAC RISK MANAGEMENT SERVICES
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 6, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 19, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 2, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On May 18, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$303.00 for temporary total disability and \$227.00 for permanent partial disability.

4. The parties have agreed that the claimant has continued to receive his regular salary since May 18, 2001.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to his low back and neck.

2. Related medical.

3. Temporary total disability from October 28, 2002, to a date to be determined.

4. Attorney's fees to include an attorney's fee on what TTD the claimant would have been entitled to.

In regard to the foregoing issues the claimant contends that he sustained a compensable injury to his lumbar spine which occurred on or about May 18, 2001. The claimant has remained temporarily totally disabled and has incurred reasonable and related medical treatment. The claimant's attorney is entitled to a controverted attorney fee on all benefits found due.

In regard to the foregoing issues the respondents contend that this claim was accepted from the start. The claim was paid and the claimant returned to work. The injury was initially an aggravation of a pre-existing abdominal or bowel problem. The claimant did not seek treatment for his neck and shoulder until over a year later. There are no objective medical findings and one doctor has stated that the MRI of the cervical spine is normal. There is no medical proof that the claimant is disabled. Respondents contend that they are entitled to a credit for short term disability.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted non medical information marked Joint Exhibit No. 1 and medical information marked Joint Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 49 years old, had a high school education and had been through numerous classes for interviewing and interrogation for homicides, rapes and other types of police work. The claimant testified that he began work for the respondent on August 15, 1994, as a dispatcher/jailer and one year later was made a deputy. The claimant testified that he then was made a criminal investigator and has been that to present. The claimant agreed that he underwent a pre-employment physical and had no restrictions or limitations at the time of his hire by the respondent. The claimant did agree that he has had a previous cervical operation in 1982 but stated that he did not have any problems as a result of this surgery or any limitations or restrictions.

The claimant testified that on May 18, 2001, he was answering a call in rural Carroll County and, since the suspect was a good sized guy, he waited for back up. The claimant testified that the suspect also appeared to be under the influence of methamphetamine acknowledging that this person had a history of meth use. The claimant stated that when his back up, Officer Langhover and Officer Hoos, arrived he grabbed the suspect by his arm. The

suspect pulled away and the claimant continued to try to subdue him and in the process of the altercation he was knocked to the ground. The claimant testified that he reported his injuries after he returned to the office, remembering that his shoulder, neck and hips were feeling stiff because it was not often that he had to wrestle with someone. The claimant testified that this incident happened on a Friday and he made an appointment to be seen by Dr. Nash on Monday. The claimant stated that due to bleeding in his rectum over the weekend he was concerned and reported this to Dr. Nash when he was seen on Monday and it was agreed since the claimant had no broken bones they would attend to the bleeding problem first. The claimant testified that he was referred to a urologist and these bleeding problems resolved.

The claimant testified that the respondents accepted this bleeding problem as compensable and has paid all benefits related to this problem. The claimant testified that his hip, when he would walk, felt like it needed to be popped into place and that it really did not hurt but was more uncomfortable. The claimant stated that his shoulder blade started out having about a dime size burning pain and progressed in size and involved the back of his shoulder, his elbow and his wrist. Over a period of time, the claimant indicated that these problems continued to progress to the point to where he finally could not get out of bed and his wife had to take him to the emergency room. The claimant testified that during the summer and fall of 2001 he did not go back to see Dr. Nash about his hip, shoulder or neck pain. The claimant testified

that he was tolerating his problems as best he could because of his heavy job duties.

The claimant testified that Dr. Nash had him undergo an MRI and then referred him to Dr. Riccardi. The claimant testified that he underwent physical therapy and then was referred to Dr. Raben. The claimant testified that just before his first visit with Dr. Raben is when his sciatic pain started in his left leg. The claimant agreed that it was his left hip that he injured when he fell due to the altercation in May. The claimant agreed that his initial treatment was for his neck and shoulder problems and soon after that he began to develop low back, hip and left leg problems. The claimant testified that since his MRI was for his neck and shoulder area, Dr. Raben had him undergo an MRI for his lower back. The claimant stated that Dr. Raben also set him up for epidural injections which helped his shoulder a lot but did not help with his hip problems. The claimant agreed that eventually he came under the care of Dr. Arthur Johnson and that Dr. Johnson performed surgery on his back on February 12, 2003. The claimant testified that the excruciating pain down his leg has ceased but his hip still hurts and the pain is coming back.

The claimant testified that he has not worked since October 18, 2002, although he has been subpoenaed to testify in court cases since that time. The claimant agreed that being a witness is part of his duties as being the CID. The claimant also agreed that the respondent has continued to pay his full salary although he was required to use all of his vacation and sick leave as well as

holiday leave. The claimant testified that his doctor has not released him to return to work and in fact has follow up appointments scheduled.

The claimant testified that during the fall of 2001 his work schedule was very heavy, often times working thirty-six hours straight at a time. The claimant testified he did not see Dr. Nash sooner for his shoulder and hip problems because he was hoping the problem would go away and secondly he had responsibilities with his job.

On cross examination, the claimant was asked what the minor pain at the tip of his right shoulder was as mentioned by Dr. Nash in his initial report. The claimant testified that it was just a pain which he attributed to his aches and pain resulting from being old and hitting the ground. The claimant testified that at the time he did not realize how serious his situation was. The claimant testified that when he underwent a physical on June 18, 2002, for a foster care position he did not mention anything about his arm, back, hip and neck because they were checking for disease. The claimant testified that when he was treated by Dr. Nash in November 2001 for a groin cyst, he did not mention or talk to the doctor about his hip and neck problems since he was in being treated for a cyst. The claimant agreed that he did not begin reporting his hip/low back problems until July 2002. The claimant insisted that he never complained about low back pain, only hip pain, but did understand that when he underwent surgery on February 12, 2003, it was for his low back. The claimant testified that he

has not been released by his doctor to return to work following his back surgery and is contemplating whether to undergo the recommended surgery on his neck. The claimant testified that after he used up his comp time, sick and vacation leave time the respondent has kept him on the regular payroll at his regular salary. The claimant testified that he has applied for social security disability.

On redirect examination, the claimant agreed that his radicular pain all the way down his leg developed over time following his altercation on May 18, 2001. On recross examination, the claimant more specifically stated that he had hip pain immediately after his altercation but the sciatic nerve or radiating pain down into his leg developed over time.

Allen Hoos testified on behalf of the claimant stating that he was employed by the respondent as a deputy sheriff and was familiar with and had worked with the claimant. Officer Hoos testified that he was working with the claimant on May 18, 2001, on a call to a residence in the north part of the county in reference to a violation of a protection order. The suspect was resisting arrest and he observed the claimant reach out to get a hold of the suspect and place handcuffs on him and the suspect pulled away from the claimant. This witness testified that the claimant had a hold of the suspect and at that same time he, Officer Hoos, grabbed hold of the suspect and they ended up going to the ground with the suspect. Officer Hoos testified that after a brief struggle they were able to get the suspect in handcuffs and than transported him to the

sheriff's office. Officer Hoos testified that this took place on a grassy rocky slop and when they fell, he fell to one side and the claimant fell on the other side. This officer testified that when they got back to the sheriff's office the claimant mentioned that his hip had started hurting and a injury report was filled out. This witness testified that the claimant was in charge of the detective and investigation unit for the respondent and that several deputies worked beneath the claimant. Officer Hoos testified that as far as any assistance with criminal investigation, the claimant was the only one at that time employed by the respondent. This witness testified that he worked with the claimant on a daily basis up through October 28, 2002, and observed the claimant from the date of the altercation up until the October date gradually go down hill as far as his physical abilities. This witness testified that, "it seemed like it was all he could do to stand up or even move around and function." This witness was asked if he related the claimant's problems to the altercation in May 2001 and Officer Hoos responded, "yes, sir." Officer Hoos also testified that the claimant continued to refer to his problems as stemming from the May 2001 altercation. This witness testified that after the May incident he observed the claimant having a hard time getting out of a chair or difficulty bending over to pick up something, noting that you could tell that the claimant's back would catch and he would have to stop and straiten back up. Officer Hoos testified that it appeared that the claimant could not sit still for maybe fifteen to twenty minute periods and then he

would have to get up and walk around. Officer Hoos testified that following the May incident, the claimant was involved in working on a homicide case as well as other major cases and the claimant as well as the other deputies were working unusually long hours because there was no one else able to work the cases. Officer Hoos testified that it was not uncommon for their schedule to begin at 8:00 in the morning and not get off until 10:00 or 12:00 at night. Officer Hoos testified that the claimant was a hard worker, good investigator and in his opinion an honest man.

Sargent Hoos stated that to his recollection the information as put forth in Dr. Raben's report as to the altercation on May 18, 2001, was incorrect. The officer testified again that he did not know exactly what the claimant's position was when he hit the ground on the day of the event. This witness testified that he was not on top of the claimant, however. Office Hoos stated that when they returned to the office after the altercation in May 2001, the claimant complained about his hip hurting and thought it had occurred when they were subduing the suspect.

Theresa Nazario testified that she was an attorney and had previously been a deputy prosecutor for Carroll County. Ms. Nazario testified that in her capacity as a deputy prosecutor for the county, she and the claimant worked together pretty much every day. Ms. Nazario testified that she was aware of and had heard about the altercation on May 18, 2001, involving the claimant and a suspect. This witness testified that the claimant had told her that he had hurt himself wrestling with the suspect and he was

"stove up" but thought that he would get better with time. Ms. Nazario testified that following the May altercation, the two of them had worked on a very high profile murder case and she would observe the claimant having a hard time standing up, sitting down or just getting comfortable. This witness testified that his problems seemed to get progressively worse. This witness testified that Carroll County is set up in a manner that requires the deputy sheriffs to go out on calls but the follow up investigation is done by the CID. This witness testified that the claimant was working pretty much 24/7 plus having to be in court for all the different hearings. Ms. Nazario testified that the claimant was very dedicated to his work even though there were times when he did not think that he would be able to sit in the witness stand but he would in fact show up. This witness testified that she has observed the claimant laying on the floor at night when they would be working in hopes of getting some relief. Ms. Nazario testified that after May 2001 there were a lot of cases that hit all at once and the claimant, being the main investigator, was required to attend numerous pre-trial hearings. This witness testified that before May 2001 she did not observe the claimant having any physical difficulty performing his job.

Pam Webb testified on behalf of the claimant stating that she was employed at the Carroll County Sheriff's Office as an administrative assistant to the sheriff. This witness testified that she has been in this position approximately seven years and was familiar with the claimant. Ms. Webb testified that she did

recall the incident on May 18, 2001, and she was the one that prepared the workers' compensation forms and reports of that injury. This witness testified, when asked what injuries the claimant reported, that "basically it was all over, but it was his neck and his shoulder and a hip." Ms. Webb testified that she was unaware of and had never observed the claimant having any physical problems or limitations prior to May 18, 2001. This witness testified that the claimant was capable of performing the full range of his job duties and he was an excellent investigator. Ms. Webb testified that at the time of the incident in May 2001, the claimant was the only CID officer for the County and they had several murder and rape cases in the process. Ms. Webb testified that following the May incident, she observed the claimant in pain and his condition seemed to get worse as time went on. Ms. Webb testified that the claimant did ask permission to be seen by a doctor. This witness testified that the claimant kept tremendous hours due to it being a really hard time and there being a very very heavy case load. Ms. Webb testified that several times she told the claimant that he did not look good and ought to go back to see the doctor but the claimant had indicated that he had too much to do and just could not go right then. Ms. Webb testified that the claimant was taken off work on October 28, 2002, by his physician and at that time the claimant was required to use up his vacation and sick leave. Ms. Webb testified that when these benefits ran out the respondent continued to pay the claimant his regular salary, agreeing that this was a very unusual circumstance

and she had never seen that happen before. Ms. Webb testified that she was unaware of any other problems or accidents the claimant experienced after his May 18, 2001, injury.

The medical records set forth that the claimant was seen at St. John's Northwest Arkansas Medical Center by Dr. John Nash on May 22, 2001. Dr. Nash's report sets forth that the claimant was involved in an altercation on Friday which resulted in him going to the ground with a suspect and since then he has had minor pain at the tip of his right shoulder and complaints in the hip or actually right flank, noting further that he subsequently began to pass blood in his stool. The claimant was primarily treated for his bleeding problem. Dr. Nash's report of May 24, 2001, indicates that the claimant's bleeding has stopped and he was to contact a doctor in Fayetteville for a colonoscopy. On June 18, 2001, the claimant was seen by Dr. Nash and again the claimant is encouraged to be seen by a gastroenterologist. This report indicates that the claimant had no complaints except he still passes a little blood every now and then. The claimant was seen for a foster care physical on August 23, 2001. On November 12, 2001, Dr. Nash saw the claimant for his complaints of a painful lump in his right groin. Dr. Nash prescribed medications for the claimant for his groin problems.

On January 22, 2002, Dr. Nash saw the claimant for complaints of pain in his right shoulder and neck, noting that he had a history of a herniated cervical disc. Dr. Nash notes that the claimant reports that his pain radiates all the way down to his

wrist. The doctor writes that the claimant has had no direct trauma and this has been going on for three to four weeks. After examination the claimant was assessed with having a strained shoulder/herniated disc in his neck and medications were prescribed. On February 6, 2002, the claimant was seen for complaints of back pain and an MRI was scheduled as well as medications prescribed. The claimant underwent an MRI on his cervical spine on February 6, 2002, which revealed a broad based posterior osteophyte at C6-7 which mildly narrows the channel and both neuroforamina but there is no evidence of soft disc herniation at this level. It also revealed that there is a left para central to left lateral osteophyte at C5-6 which narrows the left neuroforamen and on a single image there are finding suspicious for a super imposed left lateral disc herniation. Dr. Nash writes on June 3, 2002, that he saw the claimant on May 22, 2001, as a result of an altercation which resulted in shoulder, right hip and even abdominal pain as well as right costo vertebral angle pain i.e. low back pain. Dr. Nash notes that he saw the claimant on January 22, 2002, with right arm and shoulder pain which was opined to be a herniated cervical disc resulting from his earlier injury. The doctor notes that the claimant underwent an MRI on February 6, 2002, which was normal. Dr. Joseph Riccardi writes on June 10, 2002, where it is reported that the claimant was injured while wrestling with a suspect in May 2001. Dr. Riccardi notes that this is clearly indicated on his orthopedic intake form dated February 8, 2002, and the claimant is being seen for right posterior neck

pain and right upper extremity nerve problems. Dr. Riccardi writes that the claimant has been seen in his clinic and treated on February 8, 15, 21 of 2002 and March 8, 2002. Dr. Riccardi writes that he has no doubt that the patient's current symptoms date from the episode of wrestling with a detainee.

Dr. Cyril Raben writes on July 9, 2002, that he has seen the claimant for complaints resulting from an altercation approximately one year earlier. Dr. Raben notes that the claimant was seen for discomfort and constant aching, stabbing, burning, numbness and tingling in his neck and right arm with back pain as well as leg pain. After examination, Dr. Raben recommended that the claimant undergo an EMG nerve conduction study and to begin physical therapy. Neurontin was prescribed. The claimant underwent an EMG on July 11, 2002. The results of these tests are consistent with a diagnosis of right C8 radiculopathy and moderately severe right ulnar neuropathy at the level of the elbow. The claimant was seen by Dr. John Nash on July 16, 2002, with complaints of back pain. After examination, the claimant was assessed with having abdominal pain, back pain, fever, headaches and viral syndrome for which medications were prescribed. On July 30, 2002, the claimant was seen by Dr. Cyril Raben with complaints of a burning ache in his right arm and left hip rated to be about a five out of ten. Dr. Raben recommended that the claimant undergo an MRI of his lower lumbar spine and medications were prescribed. The claimant underwent an MRI on August 2, 2002, which revealed moderate neuroforaminal stenosis being present on the left at L5-S1 for

degenerative facet disease and a mild disc protrusion which would be expected to affect the left L5 nerve root. Dr. Cyril Raben writes on August 5, 2002, that he has reviewed the claimant's MRI noting that this test appears to show a left sided neuroforaminal bulge at L5/S1 and that mild stenosis and lateral recessed stenosis is noted at L4/5. Dr. Raben writes that he is questioning whether or not the claimant has a synovial facet cyst on this left side, noting that there is definite neuroforaminal narrowing on the left side at L5/S1 level. Dr. Raben writes that the claimant is complaining of a constant ache and burning in his right arm and shoulder and left hip and leg. Dr. Raben set up epidural steroid injections as well as recommended that he continue with his physical therapy and his medications were continued. On a follow up visit with Dr. Raben on September 9, 2002, a TENS unit was prescribed, the claimant was to continue with his physical therapy and undergo an EMG nerve conduction study of his left lower extremity. The claimant was taken off work on October 28, 2002, as a result of his severe pain. The claimant was seen by Dr. Arthur Johnson on December 12, 2002, for his complaints of shoulder, hip and leg pain. Dr. Johnson notes that the MRI of the claimant's lumbar spine shows that he has a disc protrusion on the left at L5-S1 for which he recommended back surgery. Dr. Johnson also recommended that the claimant undergo a cervical MRI to evaluate his shoulder and right arm problems. The claimant underwent surgery on February 12, 2003, for a central disc herniation at L5-S1 performed by Dr. Arthur Johnson. Dr. John Nash writes on February 22, 2003, that he

had been treating the claimant since April 11, 2000, at which time he saw the claimant for a back strain. Dr. Nash notes that at that time there were no real physical findings that pointed to a herniated lumbar disc. Dr. Nash writes again that he does not feel that the claimant had a bulging or ruptured disc in his back on April 11, 2000. Following the claimant's surgery the claimant had follow up appointments with Dr. Cheyne as well as Dr. Johnson noting that he is to remain off work.

After a review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable low back injury as a result of his altercation with a suspect on May 18, 2001. The claimant as well as a deputy sheriff have testified to the altercation and several witnesses, including the deputy sheriff, a deputy prosecuting attorney and a county employee, have all testified that prior to the May 18, 2001, date the claimant was able to fully perform his duties and exhibited no physical limitations and after the altercation in May 2001, his physical abilities visible deteriorated and the claimant was obviously in pain. The claimant's treating physicians have indicated that his problems arose out of and as a result of his altercation in May 2001 and Dr. Nash has even stated that the treatment which he had given to the claimant prior to the May 2001 date was not for the problems which the claimant has been treated for subsequent to May 18, 2001. It is noted that the claimant did not receive treatment for his low back for several months following the altercation but the testimony from several witnesses have

indicated that the claimant had an extremely busy and heavy work schedule which he felt responsible to perform and, therefore, medical treatment was not pursued even though it was obvious that he was having physical problems. The claimant's MRI sets forth objective medical findings of injury as required by Arkansas law in establishing a compensable injury. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his low back and neck problems. The claimant continued to work for the respondent up until he was taken off work on October 28, 2002. The claimant has testified and the medical records set forth that he has not been released to return to work subsequent to that date, therefore, the claimant is entitled to temporary total disability from October 28, 2002. The claimant has testified that he has continued to receive his regular salary, therefore, no TTD will be ordered up to the date of this hearing. At what point the respondent discontinues paying the claimant his regular salary, TTD will begin and the claimant's attorney will be entitled to a fee on the amounts of TTD which the respondent actually pays to the claimant.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 18, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$303.00 for temporary total disability and \$227.00 for permanent partial disability.

4. The parties have agreed that the claimant has continued to receive his regular salary since May 18, 2001.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back as well as to his neck in his altercation with a suspect on May 18, 2001, while he was working for the respondent. See discussion above.

6. The respondents should pay for the cost of this claimant's medical treatment for his compensable injuries.

7. The claimant is entitled to temporary total disability to be paid by the respondents from the date he last receives his regular salary to a date to be determined.

8. The respondents have controverted this claim in its entirety.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee for the benefits awarded herein. It is noted that no attorney's fee will attach to the temporary total disability until this benefit begins to be paid when the respondents discontinue his regular salary.

10. This case falls prior to the change in attorney's fees, therefore, an attorney's fee is awarded on medicals as well.

ORDER

This claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on May 18, 2001.

The respondents should pay for the medical treatment for this claimant's compensable injuries.

The respondents should pay temporary total disability to this claimant from the date the respondent last pays his full salary to a date to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE