

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F011187**

**RONALD BAUMAN, EMPLOYEE**

**CLAIMANT**

**BULLOCK FLYING SERVICE, EMPLOYER**

**RESPONDENT**

**OLD REPUBLIC INSURANCE COMPANY,  
GAB ROBINS NORTH AMERICA, TPA, CARRIER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 16, 2003**

The hearing was conducted on August 15, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

The claimant was represented by Ben E. Rice, Attorney at Law, Jacksonville, Arkansas.

The respondent was represented by William C. Frye, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on August 15, 2003, in Little Rock, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant is entitled to the maximum compensation rate.
3. The respondent accepted a September 21, 2000, compensable neck, left upper extremity and right lower extremity injury.
4. Respondent has accepted and paid a 9% permanent impairment rating for the neck injury.
5. Respondent paid temporary total disability through March 11, 2001.

The issues to be litigated at the hearing were as follows:

1. Did claimant sustain a compensable low back injury on September 21, 2000?
2. Did claimant suffer a compensable disfigurement to his nose, and is he entitled to benefits pursuant to A.C.A. § 11-9-524 (Repl. 2002)?
3. Is claimant entitled to temporary total disability for his leg injury from March 12, 2001, through May 2, 2001?

The claimant testified that he was an employee of respondent/employer on September 21, 2000. On that date, he suffered a plane crash injury which arose out of and in the course of his employment. The claimant underwent neck surgery and was released by his doctor for the neck injury on November 29, 2000. The claimant suffered a compensable hand injury and he was released with 0% impairment rating on January 24, 2001. The claimant sustained a leg injury and suffered deep vein thrombosis in his upper right leg. He saw Dr. Alan Storeygard for treatment for his leg injury. The claimant testified that he was off work beginning February 19, 2001. On March 23, 2001, his treating physician released the claimant to return to unrestricted activities. The doctor's note stated that the claimant was "back flying again." The claimant returned to work on May 2, 2001. According to the claimant, he returned to the physical workplace, but did not work as a pilot. According to the claimant, he really did not perform any work and received no pay. He was not able to fly a plane, and so he just came to the workplace, apparently, just for something to do. His treating physician stated that the claimant could "continue regular duties" on July 23, 2001. (The claimant seeks temporary total disability from March 11, 2001, through May 2,

2001.) According to the claimant, Dr. Storeygard recommended the claimant see a vascular specialist to determine the degree of any permanent impairment, if any, to his leg.

A note from Dr. Storeygard, dated March 5, 2001, showed that the claimant was “doing well.” His right leg was “asymptomatic.” (Rx-1, p. 20) Respondent’s Exhibit 1, page 21, notes that Dr. Storeygard approved the claimant returning to work on March 12, 2001. A note dated March 23, 2001, showed that the claimant was “doing very well” and was “back to unrestricted activities.”

At the hearing, the claimant demonstrated his facial scar as a result of the work related injury. The claimant is pictured shortly after the injury in a photograph introduced as Claimant’s Exhibit 6.

Regarding the claimant’s back, he testified as follows:

“Q. Now, I don’t want to beat a dead horse to death, but from the day of the accident did you have back problems?”

A. From the day of the accident I was in such pain, I mean, I was on pain pills - - they was - - kept me on pain killers. And I was just basically healing up everywhere, so my back really never noticed - - I never notice it until I actually started getting up and doing things again like normal act - - normal activities, until February.

Q. Yeah. So, you - -

A. Approximately that time, you know, January, February.

Q. Are you telling the Court that you were more or less laid up until February, in bed - -

A. Yeah. I was limited at what I was able to do.

Q. - - or in a recliner?

A. And I was doing physical therapy on my hand. I was running back and

forth down to see Frazier on that. Up until the end of November I was limited on anything, because I didn't want to break the - - after fusing my neck, I had to stay in a collar, so there wasn't a heck of a lot I could do.

Q. And when you could start doing things, that's when you noticed the back problem?

A. That's right.

.....

Claimant testified about his activities when he began to work at his rent house in February:

THE WITNESS: That's right. I climbed ladders, nailed boards, I scrapped up some old flooring and had a fella come in and lay new carpet. I supervised, mostly, what I was doing, the people coming in that worked on my house to get it ready for another - - another renter. And I was on my feet most all of the day, and in and out of the truck driving back and forth chasing for parts, and it really - - moving things around, you know, getting really active."  
(T-59, 60, 61)

The claimant testified that, regarding his back injury, he mentioned it many times prior to February, 2001, to Dr. Stroygard, but realized it was not noted in any of the medical records before that date. It was clearly claimant's testimony that his back bothered him more after his neck surgery, his hand treatment and after he began more strenuous activities. He used the term "got active," (in association with the rent house activities) and testified regarding the meaning of that term:

"JUDGE CURDIE: What's the term, quote, "got active," mean to you? What did you do that **started your back pain**, in your opinion?

THE WITNESS: Well, I **started working on my rent house, which I - - that I have, and that's when it really started acting up.**

JUDGE CURDIE: What were you doing? What type of movements?

THE WITNESS: **Bend over, picked things up, a lot of twisting and turning, crawling around, driving.**

MR. FRYE (Continuing):

Q. Where were these rent houses located?

A. I have one in Mississippi.

Q. And where else? You said you had one in Mississippi, I - - is that the only one?

A. That's the only one I've got.

Q. Okay. And that would've been around February of '01?

A. That was the beginning of February of '01.

Q. Okay. **Did your leg also swell up on you while you were over there?**

**A. That's correct.**

**Q. All right. Is that when you started noticing the deep vein thrombosis?**

**A. That's correct."**  
(T-37, 38)(Emphasis added.)

The claimant testified that he could work more hours if he did not have the back pain. According to the claimant, Dr. Bruce Safman performed an MRI. He recommended epidural steroid injections, and a Lidoderm patch for pain. According to the records, the claimant did want the epidural steroid injections. The claimant's wife appeared to testify for the claimant, and it was stipulated that if she testified, she would testify similarly to the claimant's testimony.

The medical records in this case reflect that the claimant was injured in a plane crash on September 21, 2000. A report dated September 25, 2000, (Cx-1, p. 63), reflects that x-rays were taken of the thoracic and lumbar spine. No fractures were

noted, but it was noted that the claimant had some degenerative joint disease of the thoracic and lumbar spine. There were contusions and abrasions on claimant's body, but it is specifically noted that there was not a contusion or abrasion in the thoracic or lumbar area. The records in the case reflect that the claimant did not complain of low back pain until February, 2001. However, the claimant told Dr. Safman that his "lower lumbar pain occurred shortly after the accident." He told Dr. Safman that it radiates down his right lower extremity to the knee.

A note dated April 29, 2002, stated that the claimant was "farming again." (Cx-1, p. 36). Dr. Safman ordered an MRI of the claimant's back. The MRI was negative except for indications of chronic disc degeneration and mild bulges. Dr. Safman's note of June, 2002, stated that the claimant did not want any additional treatment other than Lydoderm patches.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant is entitled to the maximum compensation rate.
3. The respondent accepted a September 21, 2000, compensable neck left upper extremity and right lower extremity injury.
4. Respondent has accepted and paid a 9% permanent impairment rating to the neck injury.
5. Respondent paid temporary total disability through March 11, 2001.
6. The preponderance of the evidence reflects that the claimant did not suffer a compensable back injury on September 21, 2000.

7. The preponderance of the evidence reflects that the claimant suffered a serious and permanent facial disfigurement, pursuant to A.C.A. 11-9-524 (Repl. 2002,) and he is entitled to compensation in the sum of \$1, 500.00.

8. The preponderance of the evidence reflects that the claimant is not entitled to temporary total disability for his leg injury from March 12, 2001 to May 2, 2001.

9. The preponderance of the evidence reflects that the claimant is entitled to an attorney's fee for his attorney Mr. Ben Rice, for controversion of the above-mentioned benefits awarded.

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### **DISCUSSION**

**1. DID CLAIMANT SUSTAIN A COMPENSABLE LOW BACK INJURY ON SEPTEMBER 21, 2000?**

The claimant's injury occurred after July 1, 1993, and thus the claim is governed by the provisions of Act 796 of 1993. In order to establish the compensability of an injury, a claimant must satisfy all of the requirements set forth in A.C.A. § 11-9-102, See: Jerry D. Reed vs. Conagra Frozen Foods, Full Workers' Compensation Commission Opinion, filed February 2, 1995, (Claim No. E317744). The claimant must prove by a preponderance of the evidence that he sustained an accidental injury as a result of a specific incident, identifiable by time and place of occurrence, which caused internal or external harm to the body, which arose out of and in the course of his employment, and which required medical services or resulted in disability or death. See: A.C.A. § 11-9-102(4)(A)(i), and A.C.A. § 11-9-102(4)(E)(i) (Repl. 2002.) A.C.A. § 11-9-102(4)(D) further requires that a claimant establish a compensable injury by

medical evidence supported by objective findings. As defined in A.C.A. § 11-9-102(16), objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work related accident, where a preponderance of other non-medical evidence establishes the causal relationship. When a claimant chooses to rely on medical evidence to establish causation, that evidence must be stated within a reasonable degree of medical certainty. If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish the compensability of the claim and compensation must be denied.

It was stipulated that the claimant sustained a compensable neck, left upper extremity and right lower extremity injury on September 21, 2000. The claim was subject to numerous medical records during which the claimant described his injuries within four days after the alleged injury. X-rays showed only degenerative disc disease in the claimant's lumbar and thoracic spine. Medical records were extensive in describing claimant's exact complaints and symptoms. Even though claimant insists that he told Dr. Storeygard about his low back complaints, the medical records do not reflect that complaint until February, 2001. Regardless, the claimant testified that the first time he noticed the back pain was when he started "getting active" in February, 2001. (T-35, 36). His testimony was to the effect that the term "got active" meant a lot of twisting, turning, crawling around, driving, bending over (T-38), climbing ladders, nailing boards and scraping up some old flooring, (T-61). The claimant testified that all of the work on his rent house "aggravated my back, or whatever got me - - and it's been

the same since.”

The preponderance of the evidence in this case certainly reflects that the claimant sustained a compensable injury to certain parts of his body. However, the preponderance of the evidence in this case also reflects that the claimant did not sustain a compensable injury to his back on September 21, 2000. The preponderance of the evidence does not reflect that the claimant sustained a low back injury “which arose out of and in the course of his employment.” Additionally, I do not believe that the injury has been established by medical evidence supported by objective findings. The claimant’s treating physicians have not rendered an opinion that any of his back problems stem from his work related injury of September 21, 2000. There is simply insufficient proof to show that the claimant’s back problems were caused by his work related injury, especially given the lack of medical records which describe a back injury, and the indications from the claimant that his activity taking care of his rent house “aggravated” his back. Therefore, the preponderance of the evidence reflects that the claimant did not sustain a compensable back injury on September 21, 2000.

## **2. BENEFITS PURSUANT TO A.C.A. § 11-9-524 (DISFIGUREMENT).**

The claimant testified that he suffered serious and permanent facial disfigurement based on his work related plane crash on September 21, 2000. The claimant introduced a picture (taken shortly after the accident) of his facial injuries. (Cx-6). The stitches in his nose are clearly visible in the photo. At the hearing in this case on August 15, 2003, one could view a serious and permanent facial scar on claimant’s nose. The preponderance of the evidence reflects that the claimant’s serious and permanent facial disfigurement occurred on September 21, 2000. After viewing the

claimant's scar, it could easily be characterized as clearly visible. The preponderance of the evidence reflects that the claimant is entitled to compensation for this serious and permanent facial disfigurement in the sum of \$1,500.00.

**3. IS CLAIMANT ENTITLED TO TEMPORARY TOTAL DISABILITY FOR HIS LEG INJURY FROM MARCH 12, 2001 TO MAY 2, 2001?**

It was stipulated that the claimant was paid temporary total disability through March 11, 2001. As stated earlier, the claimant was released by his doctor from his neck injury on November 29, 2000, and was released from his hand injury on January 24, 2001. A flight surgeon released him to return to work on January 30, 2001. The medical records reflect that the claimant sustained a deep vein thrombosis. The claimant was prescribed Coumadin for his deep vein thrombosis injury. The claimant was taken off work in relation to his thrombophlebitis of his right leg. (Cx-1, p. 94). A note dated February 21, 2001, showed that the claimant was "responding to treatment." (Cx-1, p. 96). On March 12, Dr. Storeygard's office left the claimant a message on his answer machine stating that it was okay for him to return to work. (Cx-1, p. 99). On March 23, 2001, Dr. Storeygard noted that the claimant was "back to flying again and is back to unrestricted activities." The claimant was continuing to do what he had done for the months following his injuries - take Coumadin. The notes reflected that the claimant's leg "looked fine" and "feels fine." (Cx-1, p. 99). The medical records reflect that the claimant was required to adjust his Coumadin dose on a regular basis with consultation from Dr. Storeygard. It does not appear that Dr. Storeygard removed the claimant from work because of his compensable right leg injury. The claimant ultimately discontinued Coumadin, at least as of November 26, 2001. (Cx-1, p. 108).

The examination of the records, however, reflects that Dr. Storeygar (on March 5, 2001,) said that the claimant's deep vein thrombosis on his right leg was "asymptomatic," but it also indicated that it was "under treatment." The months following that report reflects that the claimant was needing adjustment in his Coumadin. He was being treated for the deep vein thrombosis and "anti-coagulation." However, the record of March 12, 2001, stated that it was fine for the claimant to return to work. Two weeks later, there is a note where claimant is stating that he is flying again and is enjoying unrestricted activities.

The claimant testified that he returned to work as a pilot on May 2, 2001. This statement is contrary to the statement of March 23, showing the claimant was flying once again and performing unrestricted activities. This is consistent with the message of March 12, 2001, where the claimant's treating physician left a message on his answering machine that it was permissible for him to return to work. The claimant's right leg deep vein thrombosis (thrombophlebitis) was a scheduled injury. For scheduled injuries, a claimant is entitled to temporary total disability benefits until his healing period ends or until he returns to work, whichever occurs first. See: Wheeler Const. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The preponderance of the evidence reflects that the claimant returned to work on or about March 12, 2001. The claimant was released by his treating physician to return to work on March 12, 2001. The preponderance of the evidence reflects that the claimant is not entitled to temporary total disability subsequent March 11, 2001.

The claimant is entitled to an attorney's fee for benefits awarded herein.

**AWARD**

The claimant is entitled to benefits pursuant to A.C.A. § 11-9-524 (Repl. 2002). The Award shall bear interest at the legal rate until paid. The claimant's attorney, Mr. Ben Rice, is awarded an attorney's fee pursuant to the Arkansas Workers' Compensation law.

**IT IS SO ORDERED.**

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DON N. CURDIE,  
Administrative Law Judge

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