

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F011654

MICHAEL BELL, EMPLOYEE

CLAIMANT

**IDEAL CONSTRUCTION COMPANY, INC.,
EMPLOYER**

RESPONDENT

**NATIONAL FIRE INSURANCE COMPANY
OF HARTFORD, INSURANCE CARRIER**

RESPONDENT

OPINION FILED OCTOBER 16, 2003

Hearing before Administrative Law Judge Dail Stiles on September 12, 2003, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. William Kirby Mouser, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

A hearing was held on September 12, 2003, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury on September 30, 2000. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$240.00 for temporary total disability and \$180.00 for permanent partial disability benefits. It was further stipulated that respondents accepted an injury to the claimant's neck and paid temporary total disability benefits from September 30, 2000 to October 14, 2001. Respondents have accepted and paid a ten percent whole body physical impairment rating as a result of the claimant's injury to his neck.

The claimant contends that he sustained injuries to his head and to his low back on September 30, 2000. The claimant contends he is entitled to a reinstatement of temporary total disability benefits commencing on or about October 14, 2001 and continuing through a date yet to be determined. The claimant

contends that he never reached maximum medical improvement, and that payment of the ten percent whole body physical impairment rating was premature. The claimant further contends that he is entitled to some unpaid medical benefits, including unpaid mileage. The claimant also contends he is entitled to ongoing medical treatment including a referral by some physician in the authorized chain of treating physicians for a workup and diagnostic testing for complaints with his head.

The respondents controvert any additional benefits contending that the claimant's healing period ended on or about June 28, 2001. Respondents contend there are no objective findings in the medical evidence to support a claim of compensability for head complaints or low back injuries.

STATEMENT OF THE CASE

The claimant was working as a flagman for the respondent employer on September 30, 2000. The claimant was struck by an automobile and was immediately transported to a local hospital where he then was evacuated by air to U.A.M.S. in Little Rock.

On October 3, 2000, the claimant had a diskectomy and fusion at C2-3 performed by Dr. T. Glenn Pait and Dr. Wade Ceola.

The claimant ultimately came under the treatment of Dr. Sonia Williams who became the claimant's primary treating physician. Dr. Williams is a physiatrist at U.A.M.S.

The claimant stated that he has had trouble with his head and low back since the injury of September 30, 2000, and that he was complaining specifically about his back from the outset. His back complaints are not documented until November 9, 2000, and then not specifically a back complaint but rather a complaint of pain along the anterior aspect of his right thigh. The claimant continued to make some complaints of pain in his right leg. The claimant was seen

by Dr. Earl Peeples, an orthopedist, on June 28, 2001, for purposes of an independent medical evaluation.

Dr. Peeples stated in a deposition, which was taken on July 15, 2003, and introduced into evidence, that when he saw the claimant on June 28, 2001, the claimant had reached maximum medical improvement, and Dr. Peeples felt he could return to work. Dr. Peeples did state that he felt the claimant would have benefitted from possibly a couple of weeks of physical rehabilitation toward the view of getting him out of his cervical collar. Dr. Peeples stated at the time he saw the claimant on June 28, 2001, he felt the claimant had developed at least a psychological dependence on the cervical collar, and that he did not need the collar when Dr. Peeples saw him. Dr. Peeples opined that the claimant's physical impairment rating as a result of his cervical surgery was ten percent to the body as a whole.

Dr. Peeples did state in his deposition that the claimant had complained to him of having pain in his right thigh and a painful paresthesias in the right upper leg. Dr. Peeples stated that he did not feel, based on the history taken from the claimant, that his complaints of right thigh pain were related to the compensable injury of September 30, 2000.

Dr. Peeples was asked about a lumbar MRI study that had been performed on the claimant on October 2, 2002. There was a report from Dr. Angtuaco dated October 2, 2002, in which he stated that he found on the lumbar MRI a condition called epidural lipomatosis. Dr. Peeples said that condition just referred to a layer of fat and that it was congenital or developmental, and that it was not related to a traumatic injury.

The deposition of Dr. Sonia Williams, a physiatrist at U.A.M.S., was taken on February 28, 2003, and introduced into evidence at hearing. Dr. Williams,

in her deposition, had apparently never seen the results of the lumbar MRI. Dr. Williams suspected that the claimant may have a closed head injury, although she testified that no testing had been done relative to that nor had any testing been done to confirm or deny the existence of some objective lumbar difficulty.

Dr. Williams stated when she first saw the claimant and reviewed the plain x-ray film of the cervical spine and the lumbar spine, that what she observed could have been described as “age-related changes.” Dr. Williams stated:

. . . I would say he had, subsequent to the accident, lower back and lower leg complaints. And we have reason to think that, in part, it's related to arthritis-related changes that, you know, predated the accident, but certainly could have been aggravated by the accident.

Dr. Williams was of the opinion when her deposition was taken on February 28, 2003, that the claimant had not reached maximum medical improvement at that time and suggested that he would not reach maximum medical improvement until he had full range of motion in his neck.

FINDING OF FACT

The claimant does not demonstrate by a preponderance of the evidence of record that he has closed head injuries or low back injuries as a result of his compensable injury of September 30, 2000.

DISCUSSION

Ark. Code Ann. §11-9-102(4)(D) states:

A compensable injury must be established by medical evidence supported by “objective findings” as defined in subdivision (16) of this section.

Ark. Code Ann. §11-9-16 states:

“Objective findings” are those findings which cannot come under the voluntary control of the patient.

In the instant case, the claimant simply does not meet the required burden of proving by a preponderance of the evidence that he has sustained closed head injuries or low back injuries as a result of his compensable injury of September 30, 2000. Dr. Sonia Williams speculates that the claimant may have some head injuries and may have some low back injuries as a result of his compensable injury, but her opinion never rises above speculation or conjecture. There are no objective diagnostic test results which support her opinion.

I believe from a review of all the medical evidence and the claimant's testimony, that in all likelihood he has sustained some wage loss disability, but that issue is not before me.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge