

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F109011

ROBERT B. BOONE, EMPLOYEE

CLAIMANT

ARK OREGON PNEUMATICS, INC., EMPLOYER

RESPONDENT

CONTINENTAL CASUALTY COMPANY, CARRIER

RESPONDENT

AMENDED OPINION FILED JULY 21, 2003

A hearing was conducted on April 24, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Monticello, Drew County, Arkansas.

The claimant was represented by Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

The respondent was represented by Michael J. Dennis, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

The hearing was held on April 24, 2003, in Monticello, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. There is no agreement on the claimant's average weekly wage.
3. The claimant sustained a compensable right shoulder injury on June 21, 2001.
4. Temporary total disability and medical benefits were paid for the shoulder injury through May, 2002, the date of claimant's final visit to Dr. Charles Pearce.

The issues to be litigated at the hearing were limited to the following:

1. Did claimant sustain a compensable neck and back injury on June 21, 2001?

2. Is claimant entitled to medical benefits and temporary total disability benefits subsequent to May, 2002, for his right shoulder compensable injury?

(The claimant alleges that he is entitled to temporary total disability from May, 2002 to a date to be determined (less days that he worked, T-29) for his right shoulder injury.)

3. Is claimant entitled to reasonably necessary medical treatment and temporary total disability for his neck and/or back injury? Is claimant entitled to treatment from Dr. Carl Covey subsequent to November 27, 2002, and is his treatment reasonably necessary?

4. Is claimant entitled to an attorney's fee?

5. If claimant sustained a compensable neck and back injury, is claimant entitled to a designation of a treating physician, as named by the Arkansas Workers' Compensation Commission? (The claimant is currently being treated by Dr. Carl Covey in Little Rock, Arkansas.)

The claimant testified at the hearing that he 35 years old. He had a prior left shoulder surgery in 1983, and a prior left knee surgery, based on a wreck while operating a recreational vehicle. The claimant is a welder and worked with the respondent/employer for six weeks prior to his injury. The claimant testified that he walked over to pick up a piece of metal and a log struck him between his shoulder and neck. He testified as follows:

“A. It hit me like from coming from behind like coming in like that (indication). It busted the corner of my hard hat. Like I say, it was about that big around (indicating) and it hit me. It caught the corner of my hard hat and busted it. Like I say, most of it hit me there (indicating). It didn’t hit me straight down, it hit me at an angle.

Q. When you said about that big around, you gestured but would that be something like 15 inches across?

A. A basketball. About a basketball.

Q. Now, when that happened, when you were struck, what happened to you?

A. It knocked me to my left side into the concrete on my knee and elbow into the concrete.

Q. When you hit the concrete was it a soft landing or a jolt.

A. It was a jolt.

Q. Before that incident that day, did you have any problems with your right arm, right shoulder, neck, low back, spine, anything?

A. No, sir.”
(T-15)

The claimant was treated in the emergency room and released. While there, he complained of pain in his right upper back, right shoulder and right jaw. He was referred to South Arkansas Orthopaedic and Sports Medicine Center, in El Dorado, Arkansas. The claimant saw Dr. Greg Massanelli, an orthopaedic surgeon, on June 25, 2001. (Cx-1, p. 34) He complained of pain in the top of his right shoulder and pain down his thoracic spine. The doctor prescribed physical therapy, and the records reflect that he focused on the claimant’s primary complaints, which involved his right shoulder. The claimant testified that he complained of pain in his neck, and he was not able to turn his head or his shoulder. In August, 2001, Dr. Massanelli performed

arthroscopic surgery on claimant's right shoulder. He underwent a long period of physical therapy. According to the claimant, the claimant's physical therapy was not successful. To quote the claimant: his "shoulder locked up."

According to the claimant, he wanted a change of physicians from Dr. Massanelli. He then contacted the respondent/carrier and was referred to Dr. Charles Pearce, an orthopaedic surgeon. He continued to complain of increased neck pain and stiffness. Dr. Pearce ordered an MRI of the claimant's neck and ordered physical therapy for the low back and neck. According to the claimant, the physical therapy greatly helped the claimant's back and leg problems. He testified, however, that his back and legs bother now. He stated that extensive walking bothers him. The claimant testified that no other injuries caused his neck or back pain.

Dr. Pearce saw the claimant until May, 2002. According to a letter written May 17, 2002, by Dr. Pearce, it was his opinion that claimant's neck symptoms were related to his compensable injury. On that date he rated claimant at being at maximum medical improvement concerning the right shoulder. He advised additional treatment for claimant's neck. An MRI of his cervical spine in May, 2002, showed foraminal narrowing on the right at C-5 and on the left at C6-7 due to degenerative disc disease and broad - based bulges. He stated that claimant's shoulder problems had, for the most part, resolved. He did not assess the claimant a permanent impairment rating. (Cx-1,p. 53)

According to the claimant, he went to see his family physician, Dr. Randall McKiever, on his own, for his neck, back and shoulder. Dr. McKiever referred the claimant to Dr. Peek, and Dr. Peek referred the claimant to Dr. Carl Covey. According

to the claimant, neither Dr. McKiever, Dr. Peek, nor Dr. Covey's bills have been paid. The claimant testified that he did return to work, (for three weeks) for an auto parts store in Monticello, Arkansas. He stated that working aggravated his back injury and caused his blood pressure to rise. He also testified that his neck hurts when he is delivering parts, because he has to get in and out of trucks and twist and turn. The claimant testified that he is not able to work because of his neck problems. He testified that since February 17, 2003, he missed three weeks of work (up to the date of April 28, 2003, the date of the hearing).

The claimant testified that he is now being treated by Dr. Carl Covey for his neck. He is receiving some injections in his neck, which seems to help the claimant.

The claimant's wife, Lashelle Boone, is 31 years of age and has been married to the claimant for ten years. She testified that the claimant had no neck, low back or right shoulder problems prior to this compensable injury. She confirmed the claimant's testimony concerning statements to Dr. Massanelli regarding his other problems, such as his back and neck pain. She testified she saw the bruise on his right shoulder and the bruise extended up to the lower part of his neck. She testified that it was about the size of a football.

The medical records in this case reflect that the claimant went to the emergency room after he was injured on June 21, 2001. **The emergency room record states that the claimant complained of having pain in the "right side of the neck."** (Cx-1, p. 1) Further examinations and an MRI showed that the claimant had shoulder impingement and a partial rotator cuff tear. A note from Dr. Massanelli, dated

November 26, 2001, indicates that the claimant had been complaining of numbness in his ulnar nerve distribution on the right hand; but only on November 26, 2001, did Dr. Massanelli make a note of the previous complaints. Respondent's Exhibit 1, page 10, a note from a physical therapist dated February 22, 2002, reflects that the claimant had been complaining of neck pain **prior to** February 22, 2002. The note also indicates that the physical therapist had been working to relieve claimant's neck pain in some previous therapy sessions. The claimant's shoulder pain was resolving, but he continued to complain of neck pain. He had over four weeks of physical therapy on his neck. The claimant made statements that he had neck pain from the start. A May, 2002, MRI showed straightening of the normal cervical lordosis and bulging cervical discs.

An MRI of the claimant's lumbar spine completed on May 6, 2002, showed the following:

- “1. Slightly exaggerated normal lordotic curvature in the lumbar spine, a finding that **may certainly be associated with some degree of paravertebral lumbar muscular spasm** versus patient positioning.
2. Very minimal degenerative changes L3-L4 intervertebral disc and only very minimal L3-L4 posterior annular disc bulging.
3. Moderate degenerative changes L4-L5 and L5-S1 intervertebral discs and only very mild smooth-margined posterior annular disc bulging only L4-L5 disc and L5-S1 disc respectively.”
(Cx-1, p. 18)

The claimant was not assigned an impairment rating for his shoulder injury.

In July, 2002, the claimant saw Dr. Yeshwant Reddy, a board certified

physiatrist, specializing in non-operative spine care. Dr. Reddy's review of the MRI showed "straightening of the normal cervical lordosis with multi-level regions of degenerative disc disease and broad based bulges." (Cx-1, p.21) He recommended a series of cervical and lumbar epidural steroid injections that would help him with his cervical and lumbar spine pain. Dr. Reddy stated:

"At this point, I cannot relate his lumbar degenerative disc disease to his work-related injury. It is also quite difficult for me to relate it to his work-related injury for the cervical degenerative disc disease as well."

_____(Cx-1, p. 23)

The claimant saw Dr. McKiever, his family physician, who noticed that the claimant had "torticollis" (a twisted neck). Dr. McKiever stated that the claimant's neck problems were secondary to his compensable injury in June, 2001. Dr. McKiever referred the claimant to Dr. Richard Peek, an orthopaedic surgeon. Dr. Peek stated:

"With review of Dr. Reddy's records, as well as therapy reports and discussion with his family doctor as well as discussion with the patient, the neck was injured when the log struck the right shoulder and also injured the neck. He did not have complete relief with the shoulder surgery.

He holds his head in a flexed position because he has primarily left-sided neck pain, so foraminal stenosis injection out to help that."

_____(Cx-1, P. 33)

He recommended cervical traction and cervical injections. The claimant's physical therapist, on October 7, 2002, gave the following opinion:

"Based on my professional interaction with Mr. Boone, it is my assessment that his current episode of spinal pain (cervical/lumbar) is related to the accident that occurred on 06/21/01."

(Cx-1, p. 34)

The claimant ultimately saw Dr. Carl Covey, an orthopaedic specialist. His report of November 6, 2002, stated:

“He has continued to have significant problems with neck pain. He had an MRI scan that documents narrowing of the neural foramen at C5-C6 and C6-C7, more on the right than left. He has also had lumbar spine imaging that documents degenerative disease moderate at L4-L5 and L5-S1.

Apparently he saw Dr. Peek in consultation then saw Dr. Reddy in consultation. Apparently Dr. Reddy rendered an opinion that the cervical spine and the lumbar spine problems were unrelated to his work injury. **I find it rather odd that the cervical symptoms were not related to the injury since he was asymptomatic before this injury.**”
(Cx-1, p. 56)

Dr. Covey also stated in his November 6, 2002, report:

“It is very difficult for me to relate the mild lumbar degenerative disease to this work injury, but it is fairly minimally symptomatic.

It is quite apparent that this cervical spine disease is related to the accident. He may have had some mild degenerative disease, but now he has much more advanced disease without a history of previous injury and completely asymptomatic before the injury.”
(Cx-1, p. 58, 59)

The claimant introduced as evidence a letter addressed to the Arkansas Workers Compensation Commission,(Cx 3, p. 1), dated November 27, 2002, wherein his attorney requests a change of physicians to Dr. Carl Covey. Prior to that time, there is no indication that the claimant had received a one time change from an order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed at all relevant times.
2. The preponderance of the evidence reflects that the claimant’s average weekly wage was \$570.00.
3. The claimant sustained a compensable right shoulder injury on June

21, 2001.

4. Temporary total disability and medical benefits were paid for the shoulder injury through May, 2002, the date of claimant's final visit with Dr. Charles Pearce. Subsequent to that date, claimant was no longer in a healing period and totally incapacitate from earning wages for the shoulder injury.

5. The preponderance of the evidence reflects that the claimant sustained a compensable neck injury, but did not sustain a compensable back injury On June 21, 2001.

6. The preponderance of the evidence reflects that the claimant is not entitled to temporary total disability or medical benefits for the compensable right shoulder injury subsequent to May, 2002.

7. However, the preponderance of the evidence reflects that the claimant is entitled to medical treatment and temporary total disability from May, 2002, until a date to be determined for the compensable neck injury of June 21, 2001 (less the days he worked.) Claimant is entitled to reasonable and necessary medical treatment from Dr. Carl Covey from the date of his request for a change of physicians from the Commission, November 27, 2002, to a date to be determined. Dr. Covey's treatment is reasonably necessary.

8. The claimant's authorized treating physician is designated by the Arkansas Workers Compensation Commission to be Dr. Carl Covey, and the claimant is entitled to reasonably necessary medical treatment from Dr. Covey from November 27, 2002.

9. The preponderance of the evidence reflects that the claimant is

entitled to an attorney's fee for controversion.

DISCUSSION

The preponderance of the evidence in this case reflects that the claimant was hired on May 20, 2001. (Rx-1) The claimant worked during a six week period of time. His total wages for six weeks amounted to \$3,423.00, dividing \$3,423.00 by six weeks renders an average weekly wage of \$570.00.

The claimant alleges that he sustained a compensable neck injury on June 21, 2001. To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in A.C.A. § 11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence, A.C.A. § 11-9-102(5)(A)(i) (Supp. 1999).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim and compensation must be denied.

The emergency room record of June 21, 2001, stated that the claimant was having pain in his right shoulder and the right side of his neck. It is obvious that the claimant was suffering from shoulder pain. Dr. Massanelli found that the claimant had a large contusion on his shoulder and a subsequent MRI showed shoulder impingement

and a partial torn rotator cuff. Dr. Massanelli performed arthroscopic surgery in August, 2001. As stated previously, subsequent to claimant's shoulder surgery, treating physicians noted that he had earlier mentioned ulnar nerve numbness in his right hand, but the treating physician was only mentioning it at a later date. Respondent's Exhibit 1, page 10, a physical therapy note, reflects that the claimant had complained of neck pain and stiffness in the past, but the physical therapist had only mentioned it in the current report. Such notations corroborate the claimant's statement that he was telling the doctors about the neck problems all along.

A later MRI of the claimant's neck showed straightening of the normal cervical lordosis, along with bulging discs in claimant's neck. A finding that there is straightening of the normal cervical lordosis is an objective finding, Lester v. Arkansas Dept. of Health, (2001, AWCC 180, Claimant Number E908113, Full Commission Opinion filed September 17, 2001). Dr. McKiever related to claimant's neck problems as secondary to his compensable injury. The claimant's physical therapist stated that claimant's cervical and lumbar pain was related to claimant's accident that occurred on June 21, 2001.

Dr. Carl Covey stated that the claimant had mild degenerative disc disease in his lumbar spine. However, it was his opinion that the claimant's cervical spine disease was related to the accident. He stated that the claimant's degenerative disease is much more advanced since the accident.

I find, by a preponderance of the evidence, that the claimant did not sustain a compensable lumbar spine injury, but that he did sustain a compensable cervical spine injury on June 21, 2001. It is well settled that the Commission has the

authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. Hope Livestock Auction Co. v. Knighton, 67 Ark. App. 165, 992 S.W. 826 (1999). The record reflects objective evidence that the claimant was, in fact, injured on June 21, 2001. The claimant's treating physician's opinions, the report of bruising in the neck/shoulder area, coupled with a reported decrease in the claimant's lumbar lordosis is sufficient objective medical evidence of claimant's injury. I find that the claimant has met his burden of proof concerning the cervical spine injury, but not concerning the lumbar spine injury. I give Dr. Carl Covey's opinion great weight in this case. It was his opinion that claimant did not sustain a lumbar spine injury, but did sustain a cervical spine injury.

The claimant reached maximum medical improvement for his shoulder in May, 2002. He was released to return to work in May, 2002, by Dr. Charles Pearce. He was not given a permanent impairment rating. However, about that time, the claimant's cervical spine MRI showed bulging and degenerative disc disease, which Dr. Pearce stated was the cause of his neck pain. He stated, on May 23, 2002, **"In regard to his shoulder, I think that he can return to his regular duties. However, he needs an assessment by a spine or pain specialist as it pertains to his neck, prior to the full release without restriction."**

The preponderance of the evidence in this case reflects that the claimant is not entitled to any additional benefits for his shoulder subsequent to the treatment by Dr. Pearce in May, 2002. However, the preponderance of the evidence reflects that the claimant was in a healing period and totally incapacitated from earning wages, except

for the days he worked, from May 23, 2000, to a date to be determined, because of his neck. Likewise, because the claimant sustained a compensable neck injury, he is entitled to medical treatment for the neck from his authorized treating physicians subsequent to June 21, 2001. At the request of the claimant, the claimant's authorized treating physician for his neck injury is hereinafter designated to be Dr. Carl Covey. In November, 2002, Dr. Covey recommended cervical epidural steroid injections. It is clear that Dr. Covey is of the opinion that the claimant has not reached maximum medical improvement for his neck injury. The preponderance of the evidence reflects that the claimant requested a change of physicians to Dr. Covey on November 27, 2002. The respondent is responsible for all of Dr. Covey's treatment subsequent to November 27, 2002 and subsequent to this Order designating Dr. Covey as the authorized treating physician for claimant's compensable injury. See Bingle v. Quality Inn, 2002 AWCC 154 (E907878.) August 6, 2002. I also find that the treatment he received from Dr. Covey was reasonably necessary, as is future treatment recommended by Dr. Covey.

AWARD

The claimant is awarded the benefits specifically described herein, along with the attorney's fee pursuant to the Arkansas Workers' Compensation Law. This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DON N. CURDIE,
Administrative Law Judge

DC