

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F107496**

**DONALD J. COOLEY, EMPLOYEE**

**CLAIMANT**

**AMTRAN CORPORATION, EMPLOYER**

**RESPONDENT**

**IC CORPORATION, CARRIER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 18, 2003**

The hearing was conducted on August 27, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

The claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by John D. Davis, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on August 27, 2003, in Little Rock, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.

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

1. Is claimant entitled to an order changing her authorized physician to Dr. Charles Clark, or to another physician?

2. Did respondent accept the claim as being compensable, and therefore, precluded from denying compensability?

3. Both claimant and respondent made it abundantly clear on the record

that neither party desired the Administrative Law Judge to address traditional elements of compensability pursuant to A.C.A. § 11-9-102, based on the testimony. (The claimant asserts that since the respondent accepted the claim, compensability exists, and additional benefits should be analyzed based on the finding that respondent accepted compensability. Respondents assert that they treated the claim as “medical only,” and therefore, if the respondents did not “accept” compensability, the claim is not compensable, since neither claimant nor respondent wanted a traditional compensability analysis.)

4. Is claimant entitled to an independent medical evaluation?
5. Did respondent controvert the claim?
6. Is claimant entitled to an attorney’s fee?

At the outset, it is specifically noted that the claimant alleges that he sustained an injury on January 1, 2001. On February 19, 2003, the claimant filed a Form AR-C for “additional benefits” in the form of “additional medical expenses.” The respondents responded in a Form AR-2 on March 3, 2003, stating, “After conducting a thorough investigation, we have concluded that the alleged injury is not compensable under the Act.” (Rx-1 & 2)

The claimant testified that he is 36 years old and a high school graduate. On January 1, 2001, the claimant injured his back and shoulder. (Rx-1 is a Form AR-C, which the claimant signed indicating that the date of his injury was January 1, 2001.)

The claimant testified as follows:

“Q. What specifically were you doing to cause that (the injury)?

A. I was running an air drill. I was putting seat rails on the school bus

floors, and we had to push the buses down the line until they get their chain.

Q. And did you feel a sensation in your back and your shoulder at that time?

A. Yeah. My shoulders knotted up and my back knotted up, burning.

Q. Okay. And was it one particular shoulder as opposed to the other?

A. It is my right shoulder because I am right-handed and I usually push with my right arm.

Q. Okay. Now, following that circumstance, Tracy, you sought some medical treatment, did you not?

A. Yes, sir.

Q. And where did you first seek medical treatment?

A. Dr. Long.

Q. Dr. Long is the company doctor?

A. Yes, sir.”  
(T-21)

Dr. Long had an office on respondent/employer’s premises. Subsequent to the injury, the claimant continued to work and often saw Dr. Long for treatment. The claimant testified that during the time that he was injured he would often ride his horse, even though his back would bother him (T-39). For approximately seven months the claimant was prescribed physical therapy, pain killers and muscle relaxers.

In June, 2001, the claimant underwent an MRI, which stated “changes of very early disc degeneration with minimal bulging discs at L5-S1.” (Cx-1, p. 9)

In October and November, 2001, the claimant underwent physical therapy. In October, 2001, the claimant was laid off by respondent/employer, but it is

noted that he continued to go to physical therapy after he was laid off.

In April, 2002, the claimant obtained a new job at Weyerhaeuser Incorporated, which he still had as of the hearing date. He is the foreman of a wood yard and often operates a log loader.

The record reflects that in June, 2002, the claimant received a phone call to return to work at Amtran. He told the respondent/employer that he was working at another job. The claimant testified that in August, 2002, (after the layoff,) he saw Dr. Long (on the respondent/employer's premises,) and obtained medication for his back injury.

In January, 2003, claimant called respondent/employer and obtained an appointment to see Dr. Long, the on-premises physician. When the claimant went to see Dr. Long, he was denied admittance. He then telephoned the respondent/employer's nurse, who had scheduled the appointment with Dr. Long. Ms. Renee Turner told him that the claim had been denied and the case was closed.

In February, 2003, the claimant filed a claim for additional medical treatment through a Form AR-C.

The claimant testified that he continues to have problems with his back and shoulder every day. He wants to go back to the doctor. He states that he is in pain most all of the time. He is not able to squat or bend. The claimant did testify that he saddles and rides his horse. (T-41) The claimant also has 22 head of cattle. The claimant has a horse trailer and a pickup. He takes his daughter to horse races. He testified as follows:

“Q. Do you take your daughter to the barrel races and things?”

A. Yes, sir.

Q. You have to hook and unhook your trailer when you do that?

A. Yeah.

Q. So is it a fair statement to say that you engage in activities away from work that involve lifting and bending and stooping and things like that?

A. Well, not - - with my gooseneck I don't have to bend over because it is all right here. I mean, I just back up and I crank it down; I pull one little pin on the stand, and it flops up, and I crank it on up.

Q. Okay.

A. Then it is hooked up.

Q. Well, besides putting your gooseneck on. Do you have to get in the bed of your truck to do that?

A. Uh-uh. (Shaking head from side-to-side.)

Q. You don't have to climb in the bed of your truck to do that?

A. No, I don't. To unlock it you have to, but I usually have my wife or somebody to climb up in there because it is so hard to get into. I have them go up there, and they will pull the pin and open it up.

Q. Do you have to dolly it down and dolly it up?

A. Yes.

Q. So that involves - - you don't have hydraulics? You have to do that by hand?

A. No. I have to crank it, yes (indicating).

Q. And you were using your right arm to do that?

A. I use both arms.

Q. You have to use both arms to do that?

A. Yes.

Q. Has riding horses caused you to have any pain in your back?

A. I told you, my back hurts all the time.

Q. Okay. But my question is, does riding - - does getting up on a horse and riding a horse cause you to have pain in your back?

A. It hurts when I am on it.

Q. Does it hurt more when you are on it?

A. I don't know. I don't think so.

Q. You don't think so? What about lifting your saddle and putting it on the horse? Does that - -

A. It is a strain.

Q. Strain on your back?

A. I mean, it is just heavy, just setting her up there.

Q. It is heavy to put that saddle up on the back of that horse, isn't it?

A. It ain't that bad, I don't think. It is no heavier than the rails at Amtran. It is not as heavy as them. And I don't have to carry it near as far as I had to carry the rails."

(T-43, 44, 45)

Renee Turner, Health and Safety Assistant and Workers' Compensation Claim's Administrator for respondent/employer, testified that according to her records, Dr. Long, the respondent/employer in-house physician, referred the claimant for an MRI in June, 2001. In November, 2001, the company experienced a lay-off of approximately 400 employees. Even though laid off, the claimant remained an employee subject to being recalled under the union contract. According to Ms. Turner, the claimant was able to use the on-site medical facility, even though he had been previously laid off. (T-50) In June, 2002, the claimant was recalled to return to work. He did not accept the

recall. According to Ms. Turner, under the union contract, the claimant's employment is terminated if he does accept the recall offer.

Ms. Turner testified that between November 5, 2001, and June, 2002, the claimant visited the on-site clinic on two dates: November 27, 2001, and January 31, 2002. Ms. Turner testified that from January 31, 2002, until June 4, 2002, the claimant did not visit the on-site medical clinic. A medical record of June 4, 2002, (Cx-1, p.27), reflects that the claimant complained of right shoulder and lower back pain. On June 11, 2002, the claimant complained of tenderness in the lumbar area. It was noted that the claimant "continues to work regularly. He is also able to ride his horse weekly."

Ms. Turner testified:

"Q. Okay. Now, you also were aware of the notation that he had been riding horses. Is that correct?

A. Yes.

Q. So when the claim was filed, the company took the position that his condition, whatever it was at that time, was not related to anything that he had done at Amtran. Is that correct?

A. Yes."  
(T-53)

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#### **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 did not sustain a compensable injury pursuant to A.C.A. 11-9-102. The preponderance of the evidence reflects that the respondent controverted the claim pursuant to the Arkansas Workers Compensation law, and did not "accept" (or admit) compensability for all

purposes. Since the claimant did not sustain a compensable injury, the claimant is not entitled to a change of physicians or an independent medical evaluation.

### **DISCUSSION**

It was clear from the prehearing filings, (Commission's Exhibit 1 and 2), that the claimant's allegations presumed an "admittedly compensable injury" to his spine. The claimant alleges that he was treated by company physicians and referred to physical therapy, all of which was paid by respondent. The claimant was terminated from his job in June, 2002. Subsequent to the termination, the claimant was not allowed to go back to Dr. Clark. Based on that, the claimant wishes to change physicians, or wishes to have the Arkansas Workers' Compensation Commission order an independent medical evaluation.

A.C.A. § 11-9-102(4)(A) defines compensable injury:

"An accidental injury causing internal or external physical harm to the body... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence."

A compensable injury must be established by medical evidence supported by objective findings. A.C.A. § 11-9-102(4)(D).

\_\_\_\_\_Of course, as reflected by the prehearing filings, the Prehearing Order and discussion on the record at the hearing, the claimant is not alleging a traditional compensability argument. The claimant alleges that respondents accepted compensability and cannot, now, deny additional medical treatment by simply filing a notice of controversion. In other words, claimant argues: "Since compensability was accepted, the only issue is: "Was treatment reasonably necessary?"

When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary total disability benefits. A.C.A. § 11-9-102(5)(F)(i) (Repl. 2002). Nothing has been presented which reflects that the claimant is entitled to medical benefits, including a change of physician, or order for an independent medical evaluation, when it has not been shown that there has been a compensable injury. Under the statute, the claimant alleges that since respondent paid for the claimant's medical treatment ordered by respondent/employer's in-house physician for many months after the accident, compensability has been established. The claimant's theory is that since compensability has been established, (because respondent accepted compensability), claimant is entitled to a change of physicians and a payment of an evaluation by the authorized treating physician. The claimant also argues that since compensability has been established, the Arkansas Workers' Compensation Commission has the authority to order independent medical evaluation.

The claimant has the burden of proving that he sustained a compensable injury. In this case, if claimant is not successful in demonstrating that compensability was accepted by the respondent, he has not proven compensability by a preponderance of the evidence. I do not find that the respondent "accepted" compensability, in the traditional sense, for all purposes. Therefore, the claimant is not entitled to benefits.

The preponderance of the evidence reflects that this claim was initially accepted as a medical only claim after claimant was injured on January 1, 2001. Respondent provided medical treatment. The exhibits show that the claimant filed a claim, (AR-C), on February 19, 2003, for "additional benefits" ( "additional medical

expenses,") approximately two years after the injury. The respondent controverted that claim on March 3, 2003. The claimant alleges that the only reason that respondent controverted the claim for additional medical treatment was because claimant had obtained additional employment and turned down the request by respondent to return to work. The claimant's theory is that respondent's excuse for controverting the claim for additional medical expenses was insufficient and should not bar his right to further medical treatment. Respondent's Exhibit 2, the Arkansas Workers' Compensation Commission Form AR-2 filed by the respondent/employer on March 3, 2003, reflects that the reasons for controverting the claim for additional medical benefits stated: "After conducting a thorough investigation, we have concluded the alleged injury is not compensable under the Act." A.C.A. § 11-9-803 states as follows:

"Each employer desiring to controvert the right to compensation shall file with the Workers' Compensation Commission on or before the 15<sup>th</sup> day following notice of the alleged injury or death, a statement on a form prescribed by the Commission that the right to compensation is controverted and the grounds therefore, the names of the claimant, employer, and carrier if any, and the date and place of the alleged injury or death."

The record reflects that the claim for additional medical expenses was filed February 19, 2003. The employer's intent to controvert the claim was filed within the statutory period of time. A.C.A. § 11-9-803 also states:

"Failure to file the statement of controversion shall not preclude the urging of any defense to the claim subsequently filed, nor shall the filing of a statement of controversion preclude the urging of additional defenses to those contained in the statement of controversion."

I do not find any statutory or other legal requirement that the respondent must assert specific reasons for controverting a claim, nor has claimant shown any

legal authority for the proposition that merely paying medical expenses for many months after a claimant's accident amounts to acceptance of the claim for any and all purposes thereafter, including continued medical care and indemnity benefits. Garrett v. Rehabilitation, Full Commission Opinion filed May 9, 2002 (F005689.)

The claimant, in this case, has not proven that the respondent accepted the claim as compensable. The respondent denied compensability and controverted the claim in its entirety as of March 3, 2003. (The testimony showed actually that the claimant was told in January, 2003, by Ms. Renee Turner, that his claim was denied and the case was closed.) Since the claimant has not shown that the respondent accepted compensability throughout the entire history of this claim, and since the issue of traditional compensability, ( A.C.A. § 11-9-102), was not an issue, the claimant has not sustained his burden of proof that he sustained a compensable injury under the Arkansas Workers' Compensation law. Having failed to prove compensability, the claimant is not entitled to a change of physicians or an independent medical evaluation. A.C.A. 11-9-510 (Repl. 2000;) see Johnson v. Wal-Mart Stores, Full Commission Opinion filed June 8, 2000 (E705919.)

The claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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DON N. CURDIE,  
Administrative Law Judge

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