

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E901776

JAMES ELLENBERG, EMPLOYEE	CLAIMANT
HELLE LUMBER COMPANY, EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 18, 2003

Hearing before Administrative Law Judge Dail Stiles on November 21, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on November 21, 2003, to determine the claimant's entitlement to ongoing medical benefits and a reinstatement of temporary total disability benefits.

It was stipulated that the claimant sustained a compensable injury on February 10, 1999. His weekly indemnity rates are \$180.00 for temporary total disability and \$154.00 for permanent partial disability benefits. It was further stipulated that temporary total disability benefits were paid through October 8, 2003, and medical benefits were paid until some time in July of 2003.

The claimant contends that he is entitled to a reinstatement of temporary total disability benefits because he has not reached maximum medical improvement from his compensable injury of February 10, 1999. The claimant contends that he is entitled to ongoing or continuing medical treatment with physicians in the authorized chain of treating physicians, specifically, continued treatment with Dr. Herbert Hahn and Dr. Christopher Mocek.

The respondents controvert additional temporary total disability benefits contending that the claimant's healing period ended on or before October 8, 2003. The respondents controvert any additional medical treatment contending that treatment by Dr. Mocek and Dr. Hahn are for problems with the claimant's shoulders, which respondents contend are not causally related to his compensable injury of February 10, 1999.

STATEMENT OF THE CASE

The claimant testified that he was working for the respondent employer in a sawmill operation on February 10, 1999. The claimant ran under a catwalk to get a board unjammed from a conveyor belt. When he turned around to return to his work station, the claimant forgot about the catwalk and struck it with his head. The claimant was knocked backward and knocked unconscious.

Since the injury, the claimant has complained of difficulties with his neck, his shoulders and his low back.

The claimant has been treated by Dr. Herbert Hahn, an orthopedist, primarily for difficulties with his shoulders. Dr. Hahn has diagnosed the claimant as having rotator cuff tears bilaterally. Dr. Hahn has performed two surgeries on the claimant's right shoulder for a rotator cuff repair, the last being on April 21, 2003.

At the hearing, the claimant testified that he had had continual problems with his shoulders since the injury. The claimant said that he has obtained some relief in his right shoulder after the second surgery in April of 2003, but has ongoing problems with his left shoulder.

Dr. Hahn saw the claimant on June 30, 2003, and in an office note dated that same day, Dr. Hahn noted the claimant had a left shoulder rotator cuff tear and stated under the Plan section of his office note:

No injection today in left shoulder. He eventually will need rotator cuff repair, hopefully in distant future. He

is using ice packs on lower back pain and he may be ready for series of LESI. Return in one month.

The claimant has been treated by Dr. Christopher Mocek, a pain specialist, for approximately two years. Dr. Mocek has been treating the claimant for complaints with his neck, shoulders and low back pain.

On October 8, 2003, the claimant was seen for purposes of an IME by Dr. Reginald Rutherford, a neurologist. Dr. Rutherford stated, among other things, in a report dictated October 8, 2003:

Mr. Ellenberg has secondary problems of moderate degenerative arthritis both shoulders with accompanying pathology of the rotator cuffs and multilevel degenerative change of the lumbar spine of moderate degree. From the history provided by Mr. Ellenberg and the medical documentation provided, I am unable to draw a direct causal relationship between either of these problem areas and Mr. Ellenberg's cervical spinal cord injury.

Based on that report from Dr. Rutherford, the respondents ceased making temporary total disability payments to the claimant.

On October 23, 2003, Dr. Mocek was written by the claimant's attorney asking him to review Dr. Rutherford's report of October 8, 2003. In an October 30, 2003 letter to the claimant's attorney, Dr. Mocek took exception to Dr. Rutherford's overall report. It was Dr. Mocek's opinion that the claimant's problems with his neck, his shoulders and low back were all causally related to the claimant's compensable injury of February 10, 1999, and that while he agreed with Dr. Rutherford that no additional surgical intervention is indicated for the claimant's neck, he disagrees that the claimant has reached maximum medical improvement, and in fact is recommending a morphine infusion pump to control the chronic pain in the claimant's neck, shoulders, back and leg.

The claimant was asked at the hearing on direct examination if the two surgeries on his right shoulder had improved his right shoulder and arm, and he answered in the affirmative. He stated, "It's not quite healed up yet, but it's better."

The claimant was asked on cross-examination if he'd had an injury to his neck in 1992, and the claimant indicated that he had. The claimant stated that after an initial period of rehabilitation, he returned to work, and that his neck did not continue to bother him.

A review of the medical evidence does not indicate that the claimant was making complaints of shoulder difficulties prior to his compensable injury of February 10, 1999.

As noted above, Dr. Hahn, who has performed rotator cuff repair twice on the claimant's right shoulder, is contemplating surgery for rotator cuff repair on the left and is continuing to treat the symptoms of the left shoulder conservatively.

FINDINGS OF FACT

1. The claimant's continued physical difficulties with his shoulders are causally related to the claimant's compensable injury of February 10, 1999.

2. The claimant is entitled to a reinstatement of temporary total disability benefits commencing October 8, 2003 and continuing through a date yet to be determined. The claimant has not reached maximum medical improvement.

3. The claimant is entitled to continuing medical treatment with the physicians in the authorized chain of treating physicians, including Dr. Hahn and Dr. Mocek.

4. The respondents have controverted medical benefits subsequent to those medical benefits last paid by them in July of 2003.

5. The respondents have controverted temporary total disability benefits from October 8, 2003 going forward.

DISCUSSION

Temporary Total Disability

An injured employee is entitled to temporary total disability compensation during the period of time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(13)(Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998). When the underlying condition causing disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation. American Greetings Corp. v. Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998); Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The determination of when the healing period has ended is a factual determination for the Commission which will be affirmed on appeal if supported by substantial evidence.

In the instant case, the claimant is being actively treated by both Dr. Hahn and Dr. Mocek for ongoing difficulties with his shoulders, which this examiner finds are causally related to his compensable injury of February 10, 1999. The claimant has not reached maximum medical improvement in that he has not been as far restored as the permanent character of his injury will permit. See Georgia-Pacific Corp v. Carter, supra.

Reasonable and Necessary Medical Treatment

What constitutes reasonable and necessary medical treatment under the workers' compensation statute obligating the employer to provide such medical services "as may be reasonably necessary" for an injured employee is a question of fact for the Workers' Compensation Commission. Ark. Code Ann. §11-9-508(a); Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W.2d 463 (1997). Moreover, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989).

In the instant case, this examiner chooses to place the greater weight on those medical reports generated by Dr. Hahn and Dr. Mocek, who have treated and followed the claimant for the complaints specifically with his neck and shoulders, as opposed to that opinion expressed by Dr. Rutherford in his one-time assessment of the claimant on October 3, 2003.

AWARD

Respondents are directed to pay the claimant additional temporary total disability benefits in accordance with the findings of fact above.

Respondents are directed to pay the claimant ongoing reasonable, necessary and related medical expenses as set out in the findings of fact above.

Respondents are directed to pay the claimant's attorney, Mr. Kenneth Buckner, the maximum attorney's fee on this award pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge