

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111495

CARL GAGE	CLAIMANT
POWELL & POWELL MILLING, INC.	RESPONDENT
TIG PREMIER INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 4, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 16, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 14, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. Prior opinions are res judicata and the law of this case.

3. Medical expenses have been paid to June 23, 2003.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical since June 23, 2003.

2. Additional temporary total disability from date of termination to a date to be determined.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that Dr. Foster has indicated that the claimant needs an MRI to definitively tell whether he needs any additional treatment and whether he is entitled to receive TTD. The claimant, therefore, requests a hearing to determine if he is entitled to TTD and whether he has reached MMI.

In regard to the foregoing issues the respondents contend that all appropriate benefits have been paid with regard to this claim. Additional medical treatment is no longer reasonable and necessary. Further, the medical records do not establish entitlement to TTD benefits.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical evidence marked Respondents' Exhibit No. 1 and non-medical evidence marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was a driver delivering feed for the respondent. The claimant testified that on May 21, 2001, he was in the process of making a feed delivery and when he came around a corner, there was a truck in the road completely stopped.

The claimant testified that in order to keep from hitting the truck, he drove off the left side of the highway and his truck turned over. The claimant testified that the next day he went to the emergency room because he was hurting and was given pain medications and x-rays were taken. The claimant testified that he continued to work for the respondent as a driver until March 2003.

The claimant testified that from the date of his accident, he began to lose time off work for physical therapy and doctor's appointments. These appointments were approximately three times a week, either a half a day or a full day for three to four months and then dropped down to twice a week and eventually all the way down to once a week by May 1, 2003. The claimant testified that he never submitted any of this time off work to the respondent for reimbursement.

The claimant testified that in March 2003 the respondent asked for a letter from his doctor setting forth his restrictions. The claimant agreed that Dr. Valley was treating him at that time. The claimant testified that he began seeing Dr. Valley at the request of Dr. Foster. The claimant testified that the respondents had sent him to Dr. Foster earlier in the year. The claimant testified that he continued to work for the respondent and he continued to have problems with his back from the time of his accident until he was terminated. The claimant testified that about the third week of March the respondents talked to Dr. Valley and as a result of this conversation, he was told to go home until he was released by his doctor.

The claimant testified that since he was sent home he has applied for work with Tyson as well as Wal-Mart. The claimant testified that he currently is not able to work because of his back pain and he is unable to lift anything. The claimant testified that for the two years he worked for the respondent following his accident, he did some lifting noting that his duties were basically the same after the accident as they were before. The claimant testified that he has not been able to work since his termination due to his pain and his prescribed pain medication.

The claimant testified that he has been receiving steroid epidural injections in his back administered by Dr. Valley but this treatment was ineffective and has been discontinued. The claimant agreed that he continued to work, even though he was in pain, after his accident but further stated that he was taking medications to ease his discomfort and when on these medications, he should not have been working. The claimant testified that he was taking Lorcet and Ultracef. The claimant testified that these medications make him tired, stating that, "I can liken it to being drunk." The claimant testified that he is still on these medications.

On cross examination, the claimant agreed that the various medical providers which he has seen for his back injury have indicated that he does not have a herniated disc in his lumbar spine but he does have degenerative disc disease and has sustained a lumbar strain. The claimant testified that after he completed his physical therapy, he quit missing as much work. The claimant testified that just prior to his termination, he was working ten to

twelve hours per day. The claimant testified that since his termination he has worked for his father in the chicken houses earning \$116.00 for each of the three times he worked. The claimant agreed that he also does babysitting for his uncle earning \$50.00 a week taking care of a two year old and a three-year-old. The claimant testified that he also does some catalog sales with his mother. The claimant testified that he had not presented medical off work slips to his employer since it was his employer who set the appointments for his doctor's visits. The claimant testified that the few off work slips which he did present were given to either Alan Walker or Jack Shaw who are supervisors with the respondent.

On redirect examination, the claimant testified that since his accident he has only had one MRI.

Alan Walker testified on behalf of the respondents stating that currently he is a dispatcher but on May 21, 2001, he was the feed mill manager/supervisor. Mr. Walker testified that he hired the claimant to drive a tractor trailer for the respondent and deliver feed. Mr. Walker testified that the time cards which are used by the respondent do not accurately reflect the month in which the claimant worked but they do accurately reflect the hours which the claimant worked. Mr. Walker testified that during the period of time the claimant worked for the respondent from the date of his accident till his termination in March 2003, he did his regular duties without any modifications or restrictions. This witness testified that the claimant's job, while working for the

respondent, involved driving a feed truck from the mill to the various farms, sometimes climbing to manually open the lid on a feed bin and delivering fifty pound bags of grit. Mr. Walker testified that on March 13, 2003, the claimant came in and reported that he had a doctor's appointment the following day which was a Friday. This witness testified that he asked the claimant to bring something from the doctor stating the medications he was on as well as his work restrictions. Mr. Walker testified that the claimant never presented this information to the respondents and he never did come back to work after March 13, 2003. Mr. Walker testified that he did talk to the claimant the following Monday and that the claimant had told him that he could no longer drive because the medication which he was on made him drowsy. Mr. Walker testified that he asked the claimant to bring something from his doctor stating this but the claimant never complied. This witness testified that he next talked to the claimant when he called in on or about April 17 inquiring about his Cobra insurance asking if he had been terminated.

On cross examination, Mr. Walker testified that the claimant informed him that his medications affected his driving. In the claimant's presence, he called Dr. Valley and based on the information he received from Dr. Valley, he told the claimant that he could no longer drive for the respondent until he brought something in from the doctor releasing him to return to work. Mr. Walker testified that according to what the claimant had told him he was not able to drive because of his medications. This witness

testified that based on the information received from Dr. Valley, he was lead to believe that the claimant should not operate a vehicle with his medications and that was why he was no longer working as a driver for the respondent. Mr. Walker again testified that it was the claimant who reported to him that his medications affected his ability to drive and this is what sparked the call to Dr. Valley inquiring about the claimant's medications.

The medical records set forth that the claimant was seen at the Carroll Regional Medical Center on May 22, 2001, with complaints of low back pain following a motor vehicle accident. X-rays were taken which were normal and medications were prescribed. The claimant continued to be seen by medical providers for continuing complaints of low back pain as well as numbness and tingling in his right leg and into his shoulder. The claimant underwent an MRI on July 13, 2001, which indicated that he had no herniated disc. Dr. Christopher Arnold writes on September 27, 2001, that he has seen the claimant for recheck of his right sided low back pain, noting that the claimant underwent an MRI that was negative. Dr. Arnold writes that the claimant reports his radicular symptoms are improving but he has severe sharp stabbing pain in his right lower back. After examination, Dr. Arnold diagnosed the claimant with low back pain secondary to prior spinal strain. Dr. Arnold writes again on October 9, 2001, that he has seen the claimant following his lumbar spine bone scan which was negative. Dr. Arnold writes that the claimant's low back pain is of unknown etiology but thinks that it is primarily muscular in

nature and recommended that he be seen by a neurosurgeon. Dr. Doug Foster writes on November 1, 2001, that he has seen the claimant on referral from Dr. Arnold. Dr. Foster reviewed the claimant's bone scan, MRI and performed a physical examination and then assessed the claimant with having a lumbar sprain. Dr. Marty Hurlbut writes on November 7, 2001, that he has seen the claimant for his low back pain. Dr. Hurlbut lists all the activities which increase the claimant's pain level. The doctor notes that the claimant's MRI did show mild degenerative changes but no herniated disc and that his bone scan was negative. After examination, Dr. Hurlbut notes that the claimant has low back pain, mild degenerative disc disease in his lumbar spine and lumbosacral sprain for which he recommended home exercises as well as to start the claimant on a MedX program. On December 27, 2001, Dr. Hurlbut saw the claimant noting that the claimant reports that he is feeling better and it was recommended that he continue on his strengthening program. Dr. Hurlbut writes on May 13, 2002, that the claimant reports that his therapy has helped with his moving and walking but has not helped his pain. The doctor notes that to his knowledge the claimant is on no current work restrictions and that he continues to work. Dr. Hurlbut recommended that they discontinue his therapy program and that a functional capacity evaluation be made with validity. Dr. Hurlbut also recommended that the claimant continue working with no restrictions and that he continue his home exercises.

The claimant underwent a functional capacity evaluation on May 16, 2002, at Healthsouth. After an extensive test, it was

determined that the claimant was able to be placed in the medium category of work for an eight-hour day with frequent lifting.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment since June 23, 2003. The last medical provider noted in this record is Dr. Marty Hurlbut who last saw the claimant on May 13, 2002, at which time he did not recommend any additional treatment, medications and recommended that he continue to work as he was working with no restrictions. Dr. Hurlbut did recommend a functional capacity evaluation which was in fact performed on May 16, 2002, resulting in a determination that the claimant was capable and able to work within the medium category for an eight hour day with frequent lifting. I also find that the claimant has failed to prove by a preponderance of the evidence his entitlement to additional TTD from the date of his termination in March 2003 to a date to be determined. There is no indication in this record that this claimant has been taken off work by any of his medical providers or that he has been given any restrictions which would limit his working ability. Again, the claimant's functional capacity evaluation indicates that he is able to work an eight hour day with frequent lifting. The claimant's testimony as well as the documentary evidence sets forth that this claimant was working full time for the respondent at the time of his termination in March 2003. Therefore, this claim for additional benefits should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. Prior opinions are res judicata and the law of this case.

3. Medical expenses have been paid to June 23, 2003.

4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment subsequent to June 23, 2003. See discussion above.

5. The claimant has failed to prove his entitlement to additional temporary total disability from the date of his termination in March 2003 to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence his entitlement to additional benefits in the form of medical treatment and temporary total disability. Therefore, this claim for additional benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE