

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205988

ANTHONY JENNINGS, EMPLOYEE	CLAIMANT
UNITED PARCEL SERVICE, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 1, 2003

Hearing before Administrative Law Judge Dail Stiles on October 30, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 30, 2003, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury on May 28, 2002, and that his earnings were sufficient to entitle him to weekly indemnity benefits of \$425.00 for temporary total disability and \$319.00 for permanent partial disability benefits. The claim was accepted as compensable and medical benefits and temporary total disability benefits were paid until some time in September of 2002. It is stipulated that the claimant's last day of work for the respondent employer was September 23, 2002.

The claimant seeks a change of physician to Dr. Thomas Ward, a physiatrist. The claimant seeks temporary total disability benefits from September 23, 2002 through a date yet to be determined.

The respondents contend that the treatment being rendered by Dr. Thomas Ward is unnecessary and unreasonable treatment as it relates to the claimant's compensable injury. The respondents controvert any temporary total

disability benefits. Respondents assert that if temporary total disability benefits are awarded, they are entitled to an offset for six months of short term disability payments made to the claimant. The claimant stipulates that respondents are entitled to an offset for any amounts paid to the claimant by way of short term disability benefits.

STATEMENT OF THE CASE

On May 28, 2002, as the claimant was pulling a hand truck or dolly loaded with packages, he felt a “pop” in his low back.

The claim was reported and accepted as compensable.

Treatment was instituted at Concentra Medical Centers.

The claimant was treated primarily with physical therapy and then referred to Dr. John Wilson, an orthopedist in Little Rock. Dr. Wilson first saw the claimant on June 12, 2002, and diagnosed the claimant as having a cervical and lumbar strain.

In a subsequent visit of June 24, 2002, Dr. Wilson noted that the claimant had mild muscle spasm in his lower dorsal and upper lumbar area.

On July 8, 2002, in an office note, Dr. Wilson noted that the claimant had returned with complaints of persistent pain in his lumbar spine; that the claimant was showing some mild improvement, and that the examination revealed muscle spasm and restriction of motion with straight leg raising. In his office note of July 8, 2002, Dr. Wilson states that an MRI of the lumbar spine was ordered.

An MRI of the lumbar spine was performed on July 11, 2002. In a report of July 11, 2002, Dr. Howard Cockrill stated that the MRI of the claimant’s lumbar spine was normal. The claimant continued with physical therapy.

On July 23, 2002, in an office note, Dr. Wilson stated that the claimant, “does not have objective evidence of permanent impairment as a result

of his injury.” Dr. Wilson released the claimant to return to work restricting his lifting to 25 pounds for two weeks and then returning to normal activities. Dr. Wilson released the claimant to return as needed.

The claimant testified that he attempted to return to work but that his back was causing him too much pain, and that he last worked on September 23, 2002.

The claimant stated that he then called Bonnie King, an adjuster in this matter, and asked for a second opinion, and was told that respondents would not authorize that. The claimant said he then returned to his family physician, Dr. Lewis, who referred him to Dr. Lon Burba at the Arkansas Neurodiagnostic Center. Dr. Burba first saw the claimant on September 24, 2002. Dr. Burba concluded after examining the claimant, that the claimant had a dorsal root irritation at L5, “but no electrical evidence of a radiculopathy and no evidence of polyneuropathy or myopathy.” Dr. Burba prescribed some drugs for the claimant and restricted his lifting to 10 pounds for the next 30 days. Dr. Burba also ordered an EMG.

In March of 2003, the claimant had been referred by Dr. Burba to Dr. Thomas Ward, a physiatrist with Little Rock Physical Medicine and Rehabilitation Associates. Dr. Ward saw the claimant first on March 3, 2003, and stated the following in a report dated March 3, 2003, under the Impression section of his report:

1. Combination of rotational twisting injury of the lower thoracic spine with effects of hypertrophy and what sounds like some muscular spasticity of the upper cervical spine and thoracic spine in compensation.
2. Leg length discrepancy, which will be corrected.

Dr. Ward went on to state in that report that he needed to obtain a brief EMG needle examination of the claimant’s upper neck muscles. Dr. Ward performed the EMG on March 6, 2003, and stated the following:

Loss of reciprocal inhibition affecting the normal physiologic function in paired agonist/antagonist muscles of the cervical spine. This occurs as a characteristic for the muscular maladaptation seen primarily in muscular dystonias and related muscle conditions.

Dr. Ward then diagnosed the claimant as having symptomatic torsional dystonia. Dr. Ward continued to treat the claimant with physical therapy, pain medications and muscle relaxants and has recommended some injections to the “psoas region” which was not done because the carrier has resisted that treatment.

FINDINGS OF FACT

1. The claimant is entitled as a matter of law to exercise his right on a one-time basis to change physicians. I will grant the claimant’s request to change to Dr. Thomas Ward retroactively.

2. The treatment rendered by Dr. Thomas Ward is found to be unreasonable and unnecessary treatment as it relates to the claimant’s compensable injury of May 28, 2002.

3. The claimant does not demonstrate by a preponderance of the evidence that he is entitled to temporary total disability benefits beyond that initial period of temporary total disability which respondents paid.

DISCUSSION

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 this case, the claimant has been diagnosed with a strain/sprain or soft tissue injury. There are no objective findings in the diagnostic tests which have been performed thus far to support a finding that the claimant is in need of continuing medical treatment for this injury he received back on May 28, 2002.

The claimant has had extensive physical therapy and according to Dr. John Wilson had benefitted from that. While Dr. Wilson initially found some muscle spasms on examination with the claimant, those spasms seemed to have resolved when further reviewing the medical reports.

Dr. Ward indicates in his medical reports that he suspects or believes that the claimant is having spasm but there is no notation in Dr. Ward's reports that he ever observed spasm while examining the claimant. The medical evidence viewed as a whole simply does not lend itself to the claimant's assertion that he is in need of continuing medical treatment for this compensable injury he sustained on May 28, 2002.

Temporary Total Disability

Temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. An injured employee is entitled to temporary total disability compensation when 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). Ark. Code Ann. §11-9-102(13) defines "healing period" as the period necessary for the healing of an injury resulting from an accident. The healing period continues until the employee is as far restored as the permanent character of his injury will permit. When the underlying condition causing the disability becomes

stable, and when nothing further will improve that condition, the healing period has ended. The claimant is no longer entitled to receive temporary total disability compensation, regardless of his physical capabilities.

Again, after reviewing the medical evidence in this case, this examiner finds that the claimant's condition had stabilized contemporaneous with the end of treatment by Dr. John Wilson in 2002.

The claimant simply does not meet his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits, nor has he established by a preponderance of the evidence that the treatment he has been receiving from Dr. Thomas Ward constitutes reasonable and necessary medical treatment as it relates to his compensable injury of May 28, 2002.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge