

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC NO. F107458**

MARCUS STEEN, EMPLOYEE

CLAIMANT

VS.

**RODNEY BAGGETT D/B/A
BAGGETT CONSTRUCTION,
AN UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED AUGUST 22, 2003

Hearing held August 20, 2003, in Little Rock, Arkansas, before *ADMINISTRATIVE LAW JUDGE KAREN McKINNEY*.

Claimant, Mr. Marcus C. Steen, 12806 Quail Street, Apartment A, Little Rock Arkansas 72206, is not represented by counsel, but appears *pro se*.

Respondent, Mr. Rodney Baggett, d/b/a BAGGETT CONSTRUCTION, 114 Beverly Cove, McRae Arkansas 72102, is not represented by counsel.

STATEMENT OF THE CASE

The above-styled claim came on for a hearing in Little Rock, Arkansas, on August 20, 2003. Claimant appeared at the hearing; respondent did not. Respondent has failed to respond to any prehearing information or prehearing conference with regard to this claim. After reviewing the record as a whole, to include the medical reports, documents, and all other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and observe his demeanor, and without any contrary evidence presented on behalf of respondent, the following findings of fact and conclusions of law are made in accordance with A.C.A. § 11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Claimant was hired by respondent on June 25, 2001.
2. Claimant earned an average weekly wage of \$375.00, which computes to a temporary total disability rate of \$250.00 per week.
3. Respondent had a sufficient number of employees to bring it within the jurisdiction of the Arkansas Workers' Compensation Commission.
4. Claimant sustained a compensable injury on June 25, 2001, as the result of a specific incident when he fell during the course of his employment and sustained internal and external harm to the body which required medical services or resulted in disability and which is supported by 'objective findings'.
5. Claimant was within his healing period and totally incapacitated from earning wages from June 25, 2001, through June 25, 2002.
6. Claimant is entitled to all reasonable and necessary medical expenses incurred as the result of his compensable injury of July 25, 2001.
7. Claimant is entitled to temporary total disability benefits at the rate of \$250.00 per week for the period of June 26, 2001, through June 25, 2002.

CONCLUSION

Claimant was the only person to appear and offer testimony at the hearing held on August 20, 2003. Claimant testified that he was hired by respondent on June 25, 2001, to perform roofing and construction work. Claimant's contract of hire was for \$75.00 per day. Claimant further testified that respondent had

approximately 7 other employees on the date claimant was hired. While in the process of putting a metal tin down, claimant sank in the roof and fell approximately 35 feet onto a concrete floor. Claimant was transported by ambulance to Baptist Memorial Hospital in North Little Rock, Arkansas. The initial consultation report provides that the claimant “has suffered bilateral pneumothoraces as well as a left hip fracture. Claimant was immediately treated for a complex left hip fracture, which necessitated “decompression of compartment syndrome and open reduction and internal fixation of the left femoral fracture” surgery performed by Dr. Crow. Claimant remained within his healing period for one year while he learned to walk again, first with a walker, then with a cane, until he progressed to walking without an ambulatory aid.

Claimant has not received medical treatment for his compensable injury for approximately six months prior to the hearing. Claimant testified that Dr. Crow released him from his care, with a prescription for pain medication and instructions to take the medications when his leg hurt. Claimant testified that he does not continue to require medical treatment for his injury.

Claimant has not returned to work since his injury. However, claimant testified that he is physically capable of working as of the end of his one year healing period, but employers have not wanted to hire him.

The claimant's injury occurred after July 1, 1993, thus, this claim is governed by the provisions of Act 796 of 1993. The Full Commission has held that in order to establish compensability of an injury, a claimant must satisfy all the requirements set forth in Ark. Code Ann. § 11-9-102 as amended by Act 796. Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995 (E317744). When a claimant alleges that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence (1) the injury arose out of and in the course of his employment; and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. See Ark. Code Ann. § 11-9-102(4)(A)(i) and § 11-9-102(4)(E)(i) (Repl. 2002). He must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See Ark. Code Ann. § 11-9-102(4)(A)(i). Moreover, the claimant must establish (4) that the compensable injury is supported by 'objective findings' as defined in § 11-9-102(16)." Ark. Code Ann. § 11-9-102(4)(D); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 31 Ark. App. 804, 20 S.W.3d 900 (2000). If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish

the compensability of the claim, and compensation must be denied. Jerry D. Reed, supra.

Claimant has proven by a preponderance of the evidence that he sustained a compensable injury on June 25, 2001, which is the result of a specific incident when he fell off a roof during the course and scope of his employment. This incident resulted in internal and external harm to the body by way of bilateral pneumothoraces and a left hip fracture, which are supported by objective medical findings.

Claimant has the burden of proving by a preponderance of the credible evidence that medical treatment is reasonable and necessary. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion, Feb. 17, 1989 (D612291); B.R. Hollingshead v. Colson Caster, Full Commission Opinion, Aug. 27, 1993 (D703346). Employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of employees' injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Commission Opinion, Dec. 13, 1989 (D512553).

I find that the medical treatment and the associated bills for treatment were all reasonable and necessary in connection with claimant's compensable injury. Accordingly, I find that claimant is entitled to medical benefits for all Baptist Health

bills, American Orthopedic Clinic bills, Alliance Homecare Equipment bills, Pathology Labs of Arkansas bills, Pulaski Surgery Clinic Bills, and Anesthesiology Consultants of Arkansas bills, associated with his June 25, 2001, injury.

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 (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. When the underlying condition causing the 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, regardless of his physical capabilities. Moreover, the persistence of pain is not sufficient in itself to extend the healing period or to find that the claimant is totally incapacitated from earning wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Claimant has proven by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from June 26, 2001, through June 25, 2002, as he was within his healing period and totally incapacitated from earning wages during this period of time. Therefore, claimant has proven by a preponderance of the evidence that his is entitled to temporary total disability from June 26, 2001, through June 25, 2002, at the rate of \$250.00 per week.

AWARD

Claimant sustained a compensable injury on June 25, 2001. Claimant is awarded all reasonable and necessary medical expenses in connection with his compensable injury, including but not limited to payment of all Baptist Health bills, American Orthopedic Clinic bills, Alliance Homecare Equipment bills, Pathology Labs of Arkansas bills, Pulaski Surgery Clinic Bills, Anesthesiology Consultants of Arkansas bills, for this injury. Claimant is further awarded temporary total disability benefits at the rate of \$250.00 per week for the period from June 26, 2001, through June 25, 2002.

All sums herein accrued are payable in a lump sum without discount and this award shall draw interest at the maximum legal rate until paid.

IT IS SO ORDERED.

HON. KAREN McKINNEY
Administrative Law Judge