

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F300408

PAUL ZACATELCO, Employee

CLAIMANT

USA TRUCK, INC., Self-Insured Employer

RESPONDENT

OPINION FILED OCTOBER 14, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant appearing pro se.

Respondents represented by J. RODNEY MILLS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On September 22, 2003, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 30, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on December 18, 2002.
3. The claimant sustained compensable injuries on December 18, 2002.
4. The claimant was earning sufficient wages to entitle him to the maximum compensation rates.
5. There is no dispute over medical.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Temporary total disability benefits from February 17, 2003 through a date yet to be determined.

The claimant contends that he is entitled to additional temporary total disability benefits from February 17, 2003 through a date yet to be determined.

The respondents contend that all benefits due and owing the claimant as a result of his compensable injury have been paid or are being paid. Claimant was released to return to light duty work and light duty work was made available to the claimant within the limitations or restrictions imposed by his treating physician, yet the claimant refused to return to work.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, 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. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 30, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for his compensable injury subsequent to February 17, 2003.

FACTUAL BACKGROUND

The claimant worked for the respondent as a long haul truck driver. Claimant suffered a compensable injury on December 18, 2002. On that date as claimant was closing the doors of his trailer after making a delivery, he slipped and fell on the pavement striking his back and rib cage area. Claimant reported the injury to the respondent and sought medical treatment from an emergency room in Indiana where claimant lived on

December 22, 2002. Claimant was initially diagnosed as suffering a contusion of the right rib cage. Later, claimant's diagnosis was changed to a fracture of the rib cage.

Following his treatment at the emergency room claimant was referred to Dr. Taylor for follow up treatment. After several visits with Dr. Taylor claimant was referred to Dr. Fiedor, an orthopaedic specialist, who saw claimant on one occasion.

The respondent accepted claimant's injury as compensable and paid compensation benefits including medical benefits and temporary total disability benefits through February 17, 2003.

Claimant has filed this claim contending that he is entitled to additional temporary total disability benefits beginning February 17, 2003 and continuing through a date yet to be determined.

ADJUDICATION

Claimant contends that he is entitled to additional temporary total disability benefits. In order to be entitled to temporary total disability benefits for an unscheduled injury, claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. *Arkansas State and Highway Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits. Even if claimant remained within his healing period subsequent to February 17, 2003, I find that claimant was not totally incapacitated from earning wages subsequent to that date. As previously noted, claimant initially sought medical treatment from the emergency room on December 22, 2002 and he was referred to Dr. Taylor for follow up treatment. Claimant's

first visit with Dr. Taylor occurred on December 24, 2002. At that time, Dr. Taylor completed a form indicating that claimant could not drive a truck. However, Dr. Taylor indicated that the claimant could work in a sitting position or in an upright position as long as twisting was avoided. Thereafter, on December 31, 2002, Dr. Taylor gave claimant those same restrictions with an additional restriction that he should sit/stand as tolerated. These same restrictions were continued at the time of office visits with Dr. Taylor on January 7, 2003; January 21, 2003; and February 5, 2003. On February 19, 2003, Dr. Taylor completed a new form indicating that claimant could return to work with limitations of not driving a truck and working in a sitting position beginning February 19, 2003 and continuing through February 26, 2003. At that time claimant was also referred to Dr. Fiedor, the orthopaedic specialist. Claimant was evaluated by Dr. Fiedor on February 20, 2003. Dr. Fiedor stated in his report of that date that claimant could work in a job which did not require him to do a lot of heavy strenuous work. He indicated that claimant had informed him that he could work at a terminal. As a result, Dr. Fiedor recommended that claimant return to a job where he could work in a terminal for four to six weeks before he could return to his job as a truck driver. Dr. Fiedor indicated that claimant should return for further treatment as needed and there are no medical reports subsequent to that date.

At this time in February 2003, the respondent offered claimant an office job at its terminal in Van Buren. Since claimant lived in Richmond, Indiana, claimant was to live in quarters where other drivers and students lived at the Van Buren terminal. Claimant acknowledged at the hearing that the job offered to him by the respondent was within his physical limitations and that he would have been able to perform that job. However, claimant chose not to accept the job at the respondent's terminal in Van Buren due to the distance and due to his desire to work as a truck driver, not as an office worker.

In short, the evidence indicates that as of February 19, 2003, claimant had been released to return to work with limitations by two treating physicians. Furthermore,

respondent had in fact offered claimant employment within his physical limitations. Accordingly, claimant was not totally incapacitated from earning wages; therefore, he is not entitled to additional temporary total disability benefits.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits subsequent to February 17, 2003. Claimant's claim for additional temporary total disability benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE