

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101366

KENNETH ADAMS,
EMPLOYEE

CLAIMANT

PACE INDUSTRIES,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED FEBRUARY 18, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Mountain Home, Baxter County, Arkansas.

The claimant was represented by MR. FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by MR. JAMES D. SPROTT, Attorney at Law, Harrison, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 3, 2003 in Mountain Home, Arkansas. A prehearing order was entered in this case on July 31, 2003. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were submitted by the parties either in the prehearing conference, or during the course of the hearing, and are hereby accepted:

1. The employer/employee relationship existed between Pace Industries, Inc. and the claimant on December 26, 2000.
2. For purposes of the statute of limitations, the present claim was filed April 24, 2003.

3. The respondent has controverted any benefits not paid after November 13, 2002.
4. The claimant saw Dr. Ledbetter at Ozark Orthopedic on November 13, 2002, and that visit was paid on December 13, 2002.
5. The claimant's rate for temporary total disability benefits is \$410.00 per week.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited during the hearing to the following:

1. A period of unpaid TTD in 2001.
2. An unpaid pharmacy bill of \$94.47 from Sam Alexander Pharmacy on December 3, 2002.

DISCUSSION

1. TTD

The claimant sustained an admittedly compensable C-7 compression fracture in the cervical spine when he slipped and fell on ice on December 26, 2000. The claimant was paid various periods of TTD thereafter. By at least April 9, 2001 both the claimant's treating physicians and Pace Industries anticipated that the claimant would be able to return to work at least within four weeks of April 9, 2001. Unfortunately, the claimant fell and broke his wrist on

April 20, 2001. Because the claimant's neck injury was anticipated to resolve in short order, and since the claimant's wrist injury was not work-related, Pace Industries terminated the claimant's TTD shortly thereafter.

Unfortunately, the doctor's work release reports in the record indicate that the claimant's compensable neck injury did not resolve in the time period anticipated, and Pace Industries ultimately placed the claimant back on TTD status based on a July 2, 2001 report indicating that the claimant would be on regular duty status from his broken arm but was still on light duty status because of his neck.

Therefore, while I certainly believe that Pace Industries intended to treat the claimant fairly, based on the best available medical information available in April of 2001, I am nevertheless constrained, based on the July 2, 2001 continued light duty requirements to find that the claimant did in fact remain within his healing period and capable of no more than light duty work for his neck during the entire period of question between April and July of 2001.

While I recognize that the claimant's broken wrist also prevented the claimant from returning to regular work during a portion of the same period in question, as I understand

the law, a subsequent injury to a separate part of the body, which has no affect on the compensable injury, does not relieve the employer of liability for the period of temporary disability caused by the work injury so long as the second injury does not prolong the period of disability attributable to the work injury. See Graham v. Arkansas Trucking Services, Full Workers' Compensation Commission, Opinion filed February 1, 1995 (E202399); Kentle v. Delta Beverage Group, Inc., Full Workers' Compensation Commission, Opinion filed June 11, 1997 (E515760). Because the respondent had no light duty work available within the claimant's cervical related work limitations during the entire period in question, the claimant is entitled to the unpaid TTD at issue.

I note that during the course of the hearing, the parties clarified that the claimant asserts that the period of unpaid TTD extends from April 24, 2001 to July 19, 2001, and based on their documentary evidence, the respondents assert that the period of unpaid TTD at issue extends from May 2, 2001 to July 2, 2001. Although the attorneys were supposed to get together after the hearing and attempt to stipulate to the period of unpaid TTD, I have received no joint correspondence addressing the exact period of unpaid

TTD. After evaluating the witness testimony and the documentary evidence in the record on this factual issue, I find that the respondent's documentary evidence provided in the record represents a preponderance of the credible evidence in the record on this issue and establishes that the unpaid period of TTD is from May 2, 2001 to July 2, 2001.

2. Unpaid pharmacy bill from November 2002.

Claimant's Exhibit 2 indicates a bill of \$94.47 for a medication called "Bextra". This prescription was apparently filled on December 3, 2002. Coincidentally, Dr. Ledbetter's November 13, 2002 dictation indicates that he prescribed Bextra at that time for arthritis, that the arthritis is in the claimant's thoracic spine, and that the arthritis in the claimant's thoracic spine is not associated with the claimant's workers' compensation injury. Under these circumstances, I find that a preponderance of the credible evidence in the record establishes that the \$94.47 pharmacy bill for Bextra at issue is not causally related to the claimant's worker's compensation injury.

3. Statute of limitations and change of physician.

The claimant also seeks a change of physician, and the parties agreed that the statute of limitations issue raised

by the respondents would need to be addressed and resolved prior to this case being submitted to the Commission's Medical Cost Containment Division to address the claimant's change of physician request. However, I note that the respondents withdrew their statute of limitations defense during the course of the hearing. Because none of my findings in this case appear to have any bearing on the claimant's entitlement, or lack of entitlement, to receive a one time change of physician from the Commission's Medical Cost Containment Division, by copy of this opinion, I am referring this matter to the Commission's Medical Cost Containment Division to process the claimant's change of physician request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer/employee relationship existed between Pace Industries, Inc. and the claimant on December 26, 2000.
2. For purposes of the statute of limitations, the present claim was filed April 24, 2003.
3. The respondent has controverted any benefits not paid after November 13, 2002.
4. The claimant saw Dr. Ledbetter at Ozark Orthopedic on November 13, 2002, and that visit was paid on December 13, 2002.

5. The claimant's rate for temporary total disability benefits is \$410.00 per week.

6. The claimant proved by a preponderance of evidence that he is entitled to an additional period of unpaid temporary total disability compensation for the period from May 2, 2001 to July 2, 2001.

7. The claimant has failed to prove by a preponderance of the credible evidence that the unpaid \$94.47 pharmacy bill from Sam Alexander Pharmacy for Bextra is causally related to the claimant's work-related injury.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to the maximum statutory attorney's fees on benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715; and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge