

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303963

ISRAEL A. BETANCOURT, EMPLOYEE

CLAIMANT

JW MANUFACTURING, EMPLOYER

RESPONDENT

GALLAGHER BASSETT SERVICES, TPA

RESPONDENT

OPINION FILED MARCH 2, 2004

Hearing before Administrative Law Judge J. Mark White on February 5, 2004, in Hope, Hempstead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 5, 2004, the above-captioned claim came on for a hearing in Hope, Arkansas. A pre-hearing conference was conducted on August 4, 2003, and a Prehearing Conference Order was entered that same day. A copy of the August 4, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed between the parties on July 2, 2002; that the claimant earned an average weekly wage of \$451, which computes to a temporary total disability rate of \$301; and that the claimant sustained an injury on July 2, 2002, for which he received medical treatment on July 3, 2003.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional medical benefits, and whether the claimant is entitled to temporary total disability benefits from the date he last worked through the date he returned to work for another employer.

The claimant contends that he injured his leg in July of 2002; that he is entitled to additional medical treatment and disability benefits related to this injury; that he was sent to the company doctor in March, 2003, and the company doctor prescribed therapy; that he is entitled to medical benefits related to this treatment; that the doctor removed him from work with no lifting or pulling; that he last worked on March 27, 2003, for the respondent-employer; and that he obtained employment from another employer in July, 2003, which falls within the restrictions of no lifting or pulling.

Respondents contend that the claim was initially accepted as a medical-only claim; that the claimant sought medical treatment on July 3, 2002, which was paid for by respondents; that claimant did not seek additional medical treatment until he

was laid off in April, 2003; and that the additional medical treatment associated with the claimant's left hip is not reasonable and necessary and not the liability of the carrier.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence a causal connection between his injury and the additional medical treatment he seeks.
4. The claimant has, therefore, failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment.
5. The claimant has failed to prove by a preponderance of the evidence that he

was totally incapacitated from earning wages from March, 2003, to July, 2003.

6. The claimant has, therefore, failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
7. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant testified that he injured his back while working for the respondent-employer on July 2, 2002. His employer provided medical treatment the next day; the doctor's treatment note records the claimant complained of pain in his left hip, with pain occasionally shooting down his left leg. The doctor gave her impression as, "L hip pain possible tendinitis vs. bursitis," and recommended conservative treatment. The claimant apparently missed a follow-up visit with this doctor.

About eight months passed before the claimant again saw a doctor for this injury. He testified that in this interim period he asked his employer for permission to return to the doctor for treatment, but his requests were denied. He sought treatment from a Dr. Ferguson on March 12, 2003, with a complaint of "L hip pain, repetitive motion" since July. Dr. Ferguson listed his assessment as "tendonitis

[sic].” The claimant saw Dr. Ferguson twice more that March and also underwent some physical therapy. He saw Dr. Mark Floyd on April 3 and related a history of experiencing hip pain since July. Dr. Floyd gave his impression as, “Persistent left hip and back pain with radiation of pain into the foot, etiology of this undetermined. Wonder if not related to maybe a sciatica problem with his repetitive [sic] type movement, doubt if a bursitis of the hip, this is also a possibility.”

On March 27, 2003, the claimant’s employment was terminated by the respondent-employer. The claimant testified he was fired because he had missed work to go see the doctor. Jason Harrison, the respondent-employer’s plant supervisor, conversely testified that the claimant was terminated for not following orders. Harrison also testified that he had never prohibited the claimant from obtaining medical treatment in the eight-month gap from July, 2002, to March, 2003. Linda Ross, a floor supervisor for the respondent-employer, corroborated Harrison’s testimony that the claimant was fired for not following orders. Harrison and Ross also testified they had seen the claimant digging a ditch near his home after his alleged injury. The claimant denied this allegation.

After he was terminated, the claimant testified that he sought other employment. He went to work full-time for Mission Plastics on June 23, 2003, and as of the date of the hearing he was working full-time for another employer.

II. Adjudication

A. Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). The claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

The medical records reflect that the claimant's reported symptoms are the same as those reported shortly after his original injury. The claimant testified that from the time of his injury until the present, he has continued to experience these same symptoms. However, the medical records also reflect that some eight months passed from the claimant's initial medical treatment to his next visit with a doctor for this injury. The claimant testified that his employer would not allow him to obtain treatment through workers' compensation, but the claimant also testified that he had group health insurance. The claimant did not explain why he failed to use his group health insurance to obtain treatment in this eight-month interval. Moreover, the record contains no evidence of any objective findings of injury; while

such findings are not required to prove a claim for additional medical treatment, the absence of such findings is a fact of at least some probative value. *Cf. Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W.2d 1 (1999).

Because of the eight-month gap in treatment, because the claimant failed to seek treatment through his group health insurance during that time, and because of the lack of objective findings, I find that the claimant has failed to prove by a preponderance of the evidence a causal connection between his injury and the additional medical treatment he received subsequent to July, 2002. I therefore find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment.

B. Additional Temporary Total Disability

The injury at issue herein is to the hip, an unscheduled injury. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The claimant testified that his doctor placed him on light duty as a result of his injury. However, nothing in the record indicates that the claimant was ever taken off of work completely as a result of his injury. He continued to work for the respondent-employer after his injury up until his termination. After he was terminated, he continued to look for work and eventually began working at a job within his restrictions. Given these facts, I find that the claimant has failed to prove by a preponderance of the evidence that he was totally incapacitated from earning wages from March, 2003, to July, 2003. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional benefits. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge