

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F400909**

**ROBERT BILLINGSLEY, EMPLOYEE**

**CLAIMANT**

**LEWIS FOOD CENTER, UNINSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED OCTOBER 27, 2004**

Hearing before Administrative Law Judge J. Mark White on September 9, 2004, in Texarkana, Miller County, Arkansas.

Claimant appeared *pro se*.

Respondent failed to appear.

**STATEMENT OF THE CASE**

On September 9, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on July 12, 2004, and a Prehearing Order was entered that same day. A copy of the July 12, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection.

The parties stipulated in the July 12, 2004, prehearing conference that the employee/employer relationship existed at all relevant times, including January 7, 2004; and that the claimant earned an average weekly wage of \$210, entitling him to a compensation rate of \$140. Though the respondent did not appear at the hearing, the respondent did agree to these stipulations in the prehearing conference

and has not withdrawn from them since.

The issues to be presented were whether the claimant sustained a compensable injury on January 7, 2004; and whether the claimant is entitled to associated medical and indemnity benefits.

The claimant contends that he sustained a compensable injury on January 7, 2004, while employed by the respondent; that he is entitled to temporary total disability benefits for his time off from work; and that he is entitled to payment of his medical expenses.

Respondent contended at the prehearing conference that the Commission does not have jurisdiction of this claim; that the claimant did not sustain a compensable injury; and that the claimant is entitled to no benefits.

It should be noted at the outset that the respondent failed to appear at the hearing. As set forth in the record, the respondent's manager/owner had ample notice of the scheduled hearing and agreed to the date of the hearing. The respondent failed to ask for a continuance of the scheduled hearing. No communication was received from the respondent or its manager/owner after the hearing.

As set forth on the record, the respondent has established a pattern of refusing to cooperate with this process. I find that the respondent by its absence has

waived any further procedural rights it may have had in this matter, including the right to a hearing, the right to present evidence, and the right to call, examine, or cross-examine witnesses.

### **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 claimant and to observe his 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 proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and caused by a specific incident identifiable by time and place of occurrence.
4. The claimant has proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services.

5. The claimant has proven by a preponderance of the evidence that the existence and extent of his injury is established by medical evidence supported by objective findings.
6. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable injury on January 7, 2004.
7. The claimant has proven by a preponderance of the evidence that the medical treatment he received for his compensable injury was reasonably necessary in connection with the compensable injury.
8. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
9. The respondent has controverted this claim in its entirety.

## **DISCUSSION**

### **I. History**

The claimant began work for the respondent as a night floor cleaner in December 2003. The claimant testified that the floor buffer he was provided by the respondent was an older model with a propane-powered engine and a pull starter. The claimant testified that on January 7, 2004, when he pulled the rope starter, it “yanked” him back into the buffer, causing his chest to hit the machine’s handlebars.

He said that he lay down in the floor for thirty minutes because of the pain – he later testified that he was alone in the store at the time.

He testified that he went home, and that the next morning he was unable to get out of bed. On January 10, he had his mother called Lawrence Lewis, the manager/owner of the respondent, to inform him of the injury. The claimant then went to the emergency room for treatment, though he testified that he primarily went to get a doctor's note so he could return to work.

The ER doctor, a Dr. Jacobsen, ordered x-rays of the claimant's chest. The radiologist who reviewed the x-rays opined that the x-rays were normal. Dr. Jacobsen evidently disagreed, in that he circled the phrases "rib fracture" and "shown on x-ray" on his notes. The claimant testified that on this first visit, Dr. Jabobsen showed him the x-ray and showed him the fracture on the x-ray. Dr. Jacobsen provided medication and released the claimant to light duty. The claimant testified that the respondent refused to allow him to return to work.

The claimant returned to the emergency room on February 2, where he was treated by a Dr. Jones. X-rays were once again taken, and this time the radiologist noted a fracture of the right 7<sup>th</sup> rib – Dr. Jacobsen had likewise specifically noted in his January 10 note that the fracture was of the right 7<sup>th</sup> rib. Dr. Jones prescribed medication, and the claimant's mother filled the prescription at a local pharmacy.

## II. Adjudication

The Commission is statutorily presumed to have jurisdiction of all claims for compensation that come before it. ARK. CODE ANN. § 11-9-707. The question of jurisdiction is a mixed one of law and fact, but the question of whether a rebuttable presumption of jurisdiction has been overcome by the evidence is a question of fact. *Baker v. Frozen Food Express Transport*, 336 Ark. 451, 987 S.W.2d 658 (1999), citing *Ester v. National Home Ctrs., Inc.*, 335 Ark. 356, 364, 981 S.W.2d 91, 95 (1998). It is thus the respondent's burden to overcome a prima facie presumption by a preponderance of the evidence. Cf. *Country Pride v. Holly*, 3 Ark. App. 216, 624 S.W.2d 443 (1981) (application of different prima facie presumption in workers' compensation context). The respondent herein has presented no evidence to overcome this statutory presumption. Therefore, I find that the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

### A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that

the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The claimant testified that he was injured in a specific incident on January 7, 2004, while he was performing his employment duties for the respondent. I find that the claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and caused by a specific incident identifiable by time and place of occurrence. The medical records reflect that the claimant was diagnosed with a broken rib as a result of this incident. I find that the claimant has proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services. The existence of the broken rib is documented by x-rays as interpreted by the emergency room physician who treated the claimant. I find the claimant has proven by a

preponderance of the evidence that the existence and extent of his injury is established by medical evidence supported by objective findings.

The claimant has proven every element of a compensable injury. Therefore, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury on January 7, 2004.

### **B. Benefits**

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 introduced five medical bills for which he seeks payment or reimbursement:

- DeQueen Regional Medical Center, date of service January 10, 2004, \$375.50;
- Dr. Jacobsen/Sevier Emergency Physicians, date of service January 10, 2004, \$218;
- DeQueen Regional Medical Center, date of service February 2, 2004, \$291;
- Dr. Jones, date of service February 2, 2004, \$155

paid by claimant; and

- North Park Pharmacy, date of service February 2, 2004, \$25.52 paid by claimant.

The claimant introduced medical records corroborating that all of these bills are for treatment related to his compensable rib fracture, and he specifically testified that each bill was for such treatment. There is no evidence in the record to show that this treatment was not reasonable or necessary. Given the claimant's testimony, and given the treatment recommendations of his doctors, I find that the claimant has proven by a preponderance of the evidence that the medical treatment he received for his compensable injury, including the five bills outlined above, was reasonably necessary in connection with the compensable 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).

After his injury, the claimant's doctor placed him on light-duty work. There is no evidence in the record to show that the claimant was ever totally incapacitated

from earning wages as a result of this injury. 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 proven by a preponderance of the evidence that he sustained a compensable injury on January 7, 2004, and that he is entitled to payment of his medical expenses as outlined above. The respondent is hereby directed and ordered to pay the outstanding medical bills submitted herein and to reimburse the claimant for all payments previously made for his medical treatment.

Because the respondent herein has previously refused to accept certified or registered mail from the Commission, copies of this Opinion shall be sent to the respondent both by certified mail and by first-class mail. Because the respondent herein is uninsured, a copy of this Opinion shall be forwarded to the Commission's Operations and Compliance Division.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge