

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F307539**

**STEPHEN O. BLAKE,  
EMPLOYEE**

**CLAIMANT**

**LITTLE ROCK TOOL  
SERVICE, INC.,  
EMPLOYER**

**RESPONDENT**

**ZURICH AMERICAN  
INSURANCE CO.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED DECEMBER 22, 2004**

Hearing conducted December 14, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Terence C. Jensen, Attorney at Law, Benton, Arkansas, appearing for the claimant and

Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for additional medical and temporary total disability benefits for his admittedly compensable back injury.

On May 10, 2003, the claimant suffered injuries to his neck and low back when he stepped off a nine inch platform at work onto a wet floor, slipped, and fell backward, landing partially on the platform with his neck. He reported the injury to his supervisor but no forms were filled out that day. Over the weekend, his condition became worse and on Monday he complained about it again at work. He was not offered medical care for two or three days but eventually could not stand the pain and consulted a physician, the company doctor at Concentra, Dr. Scott Carle.

The claimant changed physicians to Dr. Chrysti L. Williams and was also seen by Little Rock neurosurgeon Dr. Scott M. Schlesinger. After MRI scans showed pathology in the claimant's low

back and a herniated disc at C5-6 in his neck, Dr. Schlesinger performed surgery at C5-6 on December 9, 2003. Benefits paid by the respondents included temporary total disability benefits for 39 weeks following the neck surgery and ending May 6, 2004, when they received Dr. Schlesinger's letter of March 1 indicating the claimant had permanent impairment of 9%.

The claimant's back was also injured in the fall at work. He contended that as a result of his back injury he should be awarded additional temporary total disability benefits for two periods, the first, from May 6, 2004, until May 26, 2004, and the second, from the date he was laid off light duty work October 20, 2004, until a date to be determined. The claimant contended that he has not reached the end of his healing period for his back injury. He further requested additional medical care by Dr. Schlesinger, including physical therapy, recommended by Dr. Schlesinger in June, 2004. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents denied that the claimant is entitled to additional benefits for his back injury. First, they contend that the claimant is not entitled to temporary total disability benefits because he reached the end of his healing period April 5, 2004, consistent with the opinion of Dr. Bruce Safman. They contended that additional medical care recommended by Dr. Schlesinger is not reasonably necessary.

The record was closed at the conclusion of the hearing. It included documentary evidence and the testimony of the claimant and his wife, Sheila B. Blake.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed on May 10, 2003; the claimant suffered compensable injuries to his neck and low back on that date; his average weekly wage was \$644.00; and as a result of his compensable neck injury, the claimant underwent surgery and suffered permanent anatomical impairment of 9% to the body as a whole.

3. The preponderance of the evidence shows that the claimant reached the end of his healing period as to his back injury on or about April 5, 2004, and is not entitled to additional temporary total disability benefits for the periods requested.

4. The preponderance of the evidence shows that the claimant is entitled to continuing reasonably necessary medical care by Dr. Scott Schlesinger, at the expense of the respondents, including physical therapy recommended by Dr. Schlesinger.

### **DISCUSSION**

Because the claimant has requested benefits for temporary total disability, it is his burden to show that he remained in a healing period and suffered a total incapacity to earn wages as a result of the compensable injury. Arkansas State Highway & Transportation Dept. v. Breshears, 272 Ark. 242 (1981). Entitlement to medical benefits can be demonstrated by showing that they are “reasonably necessary in connection with” the compensable injury, without necessarily proving that the claimant was in a healing period. Ark. Code Ann. §11-9-508.

The report of the MRI scan of June 18, 2003, indicated that the claimant had pathology in his lumbar spine, including a right paracentral posterior disc protrusion at L5-S1 and lumbosacral

degenerative disc disease; possible mild superimposed posterior disc protrusion at L4-5. Thus, even though the claimant's cervical spine injury was considered a more pressing problem, his physicians have acknowledged the existence of pathology in his lumbar spine. For example, when he was examined by Dr. Jim J. Moore, October 7, 2003, Dr. Moore agreed with Dr. Schlesinger's recommendation for cervical spine surgery but also diagnosed the claimant as having a lumbar HNP.

In February, 2004, after the surgery to his neck, the claimant was seen by Dr. Bruce L. Safman at the direction of the respondents. It was Dr. Safman's opinion that the claimant had a small lumbar disc bulge, degenerative in nature, although his primary focus was, again, the claimant's cervical spine pathology and surgery. When Dr. Schlesinger saw the claimant in followup March 1, 2004, and assigned his impairment rating for his cervical spine, he indicated that the claimant should have lumbar epidural steroid injection therapy. However, the claimant's testimony and the reports of Dr. Safman seem to indicate that he did not gain significant benefit from this treatment, and Dr. Safman found the claimant to be at maximum medical improvement April 5, 2004.

A functional capacity evaluation dated April 14, 2004, indicated that the claimant was able to work at the light-medium physical demand level for an eight hour day with restrictions against deep forward bending and frequent performance of either forward bending, squatting, or kneeling. On April 26, 2004, Dr. Safman also placed the claimant on a thirty pound occasional lifting and a twenty pound frequent lifting limitation, based on the functional capacity test. At that time, Dr. Safman stated that he would not see the claimant in the future and would not see him on a routine basis. The claimant testified that he was not satisfied with Dr. Safman and only saw him because the respondents refused to allow him to continue with Dr. Schlesinger. Nevertheless, even though

the claimant continues to experience discomfort for which he is entitled to additional medical attention, the preponderance of the evidence shows that he was at maximum medical improvement April 5, 2004.

Because the claimant is entitled to medical care that is reasonably necessary in connection with his compensable injury and Dr. Schlesinger continues to be willing to provide appropriate care, the claimant is entitled to continue his treatment with Dr. Schlesinger, particularly in light of the disinclination of Dr. Safman to see the claimant in the future or on a routine basis. The record further shows, as the claimant testified, that Dr. Schlesinger recommended a course of physical therapy when he saw the claimant in June, 2004, with the respondent's permission, and this appears to be reasonably necessary and consistent with the claimant's continuing symptoms.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge