

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309815

RICKY D. BOLER, EMPLOYEE **CLAIMANT**

**COOPER TIRE & RUBBER CO.,
SELF-INSURED EMPLOYER** **RESPONDENT**

CROCKETT ADJUSTMENT, TPA **RESPONDENT**

OPINION FILED MARCH 17, 2004

Hearing before Administrative Law Judge J. Mark White on February 12, 2004, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Nelson V. Shaw, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

STATEMENT OF THE CASE

On February 12, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on December 8, 2004, and a Prehearing Conference Order was entered that same day. A copy of the December 8, 2004, 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 at all relevant times, including April 19, 2003; that on April 19, 2003, the claimant sustained a compensable injury to his back; that Respondents accepted the April 19, 2003, injury as compensable medical only and paid medical benefits; and that the claimant earned sufficient wages to be entitled to the maximum compensation rates.

The parties agreed that the issues to be presented were whether the additional medical treatment received by the claimant, including the surgery and related treatment by Dr. Shahim, was reasonably necessary in connection with the compensable injury; whether the claimant is entitled to additional temporary total disability benefits; and controversion and attorney's fees.

The claimant contends that he sustained a compensable injury to his back; that he is entitled to temporary total disability benefits; and that additional medical treatment, including surgery, was reasonably necessary in connection with the compensable injury.

Respondents contend that the claimant will be unable to meet his burden of proof under Act 796 regarding any causal relationship between the injury of April 19, 2003, to the low back and the more recent controverted treatments, examinations, surgeries and disability periods; that the medical treatments received by the claimant were not incurred as a result of and were not reasonable and

necessary treatments for a compensable injury; that the disability periods sustained by the claimant, if any, were not incurred as a result of a compensable injury; that the claimant has had a natural progression of a pre-existing low back problem; and that the respondents are entitled to an offset against any benefits paid by group health or other benefit plans.

It is noted that one of the respondents' witnesses was unable to attend the hearing due to illness. The parties were given thirty days from the date of the hearing in which to obtain the deposition testimony of this witness if needed; as of the date of this opinion, the parties have submitted no such deposition testimony.

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 his compensable injury of April 19, 2003, combined with or aggravated his preexisting back condition to bring about his need for the surgery performed by Dr. Shahim.
4. The claimant has proven by a preponderance of the evidence that the additional medical treatment he received, including surgery and follow-up treatment by Dr. Shahim, was reasonably necessary in connection with the compensable injury of April 19, 2003.
5. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the time he was off from work as a result of Dr. Shahim's surgery and follow-up treatment.
6. The respondents are entitled to an offset for benefits paid by group health or disability insurance, per Ark. Code Ann. § 11-9-411.
7. The respondents have controverted this claim in its entirety.

DISCUSSION

The claimant sustained a compensable injury to his back on April 19, 2003, while lifting equipment. He was treated at the emergency room of Wadley Regional

Medical Center, where he was diagnosed with a lumbar strain. He returned to the company doctor, Dr. Craig Ditsch, on April 21 for follow-up treatment. After the claimant was unable to successfully work full duty, Dr. Ditsch put him on light duty and ordered an MRI. The May 1 MRI revealed disc protrusions at L4-L5 and L5-S1 and degenerative changes at all levels of the lumbar spine. Dr. Ditsch treated the claimant conservatively and eventually referred him to a neurosurgeon, Dr. Reza Shahim. Dr. Shahim performed surgery on August 26, discectomies at L4-L5 and L5-S1. Dr. Shahim indicated that he "found significant canal stenosis at L4-5 due to disc protrusion and facet degeneration." The claimant worked light-duty until the surgery, and he returned to work on October 19, 2003.

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). Even if it is demonstrated that a preexisting condition is also a causal factor, the claimant has met his burden of proof so long as he proves that the work injury combined with or aggravated the preexisting condition to bring about the need for the treatment. *General Elec. Railcar Repair Servs.*

V. Hardin, 62 Ark. App. 120, 969 S.W.2d 667 (1998).

The record clearly establishes that the claimant has a long-standing history of lower back problems. MRI reports made in 1994 and 1996 revealed protrusions at both L4-L5 and L5-S1, among other findings, and the treatment at issue herein was for those same levels of the lumbar spine. However, there is no credible evidence in the record that the claimant had back problems sufficient to require medical treatment at any time from 1997 until his compensable injury of April 19, 2003.

The physician who read the 2003 MRI indicated that he also reviewed the pre-injury MRI of October 11, 1996. In his impression he identified disc protrusions at L4-L5 and L5-S1 “without significant change.” It is not clear whether or not this phrase is a reference to the 1996 study, saying that those levels were unchanged from 1996. It is likewise not clear whether that phrase refers only to the findings at L5-S1, or also to the findings at L4-L5. However, a reading of the specific findings of the MRI reveals several changes from 1996 to 2003. The 1996 MRI indicated that the protrusion at L4-L5 “extend[ed] toward the lateral recess”, narrowing the spinal canal “slightly.” The 2003 MRI, however, noted that the protrusion at L4-5 was “encroaching on the lateral recess and neural foramina,” with “mild to moderate central canal stenosis and left lateral recess stenosis and mild lateral recess stenosis

on the right. The neural foramina demonstrate mild to moderate foraminal stenosis." The 1996 study made no mention of the foraminal stenosis noted in the 2003 study. Moreover, the 1996 study indicated that the L4-L5 protrusion was extending into the left lateral recess, while the 2003 study indicated stenosis on both the left and right lateral recess. These objective changes between the 1996 and 2003 MRI studies suggest either that the claimant's degenerative condition worsened, or that his condition was aggravated or exacerbated by trauma. There is nothing in the record to credibly identify any cause of trauma other than the claimant's compensable injury.

Aside from these objective changes, the record also includes the opinion of the claimant's treating physician, Dr. Shahim, that the claimant's compensable injury "is a causative and aggravative cause of the lumbar disc disease." Dr. Shahim offered this opinion in reference to the diskectomies he performed at L4-L5 and L5-S1. There is nothing in the record to indicate that any other doctor has offered an opinion contradicting Dr. Shahim's opinion. In his letter, Dr. Shahim referenced the claimant's pre-existing back problems "in the mid 1990's," and one of Dr. Shahim's treatment notes specifically references the 1996 problems. Moreover, the 2003 MRI report which Dr. Shahim reviewed specifically mentioned the 1996 MRI. Thus, Dr. Shahim knew or had every reason to know of the claimant's long-standing history

of back problems and previous MRI's when he offered his opinion of causation.

The claimant testified that after 1996, he was not off work again due to a back problem until after his 2003 compensable injury; that he had been able to work full duty prior to his 2003 compensable injury; and that he had no back injuries or problems during that interim time frame. He testified that while his previous pain had caused some radiation into his left leg, he experienced pain and numbness radiating all the way down the left leg to his foot only after his 2003 compensable injury. I found the claimant to be a credible witness, in that his testimony was plausible, internally consistent, and consistent with the documentary evidence contained within the record.

Given the claimant's credible complaints of increased pain beginning with his compensable injury, the objective changes in his lumbar spine as documented by MRI reports, and the uncontradicted opinion of Dr. Shahim, I find that the claimant has proven by a preponderance of the evidence that his compensable injury of April 19, 2003, combined with or aggravated his preexisting back condition to bring about his need for the surgery performed by Dr. Shahim. I therefore find that the claimant has proven by a preponderance of the evidence that the additional medical treatment he received, including surgery and follow-up treatment by Dr. Shahim, was reasonably necessary in connection with the compensable injury of April 19,

2003.

Temporary Total Disability Benefits

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).

It appears undisputed that the claimant was off from work per his doctor's orders for his surgery and subsequent recovery. Because I find that the surgery was reasonably necessary in connection with the compensable injury, I therefore find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the time he was off from work as a result of Dr. Shahim's surgery and follow-up treatment.

The claimant testified that he has received benefits for this injury from his group health and group disability insurance; therefore, the respondents are entitled to an offset for benefits paid by group health or disability insurance, per Ark. Code Ann. § 11-9-411.

AWARD

The claimant has proven by a preponderance of the evidence that the additional medical treatment he received, including surgery and follow-up treatment by Dr. Shahim, was reasonably necessary in connection with the compensable injury of April 19, 2003; and that he is entitled to temporary total disability benefits for the time he was off from work as a result of the surgery and follow-up treatment.

The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Nelson Shaw, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge