

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312511

THEODORE CHASE	CLAIMANT
FARMERS COOP, INC.	NO. 1 RESPONDENT
FARMLAND MUTUAL INS. CO. INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED OCTOBER 25, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents No. 1 represented by DAVID LANDIS, Attorney, Jonesboro, Arkansas.

Respondent No. 2 represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 26, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 10, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant earned an average weekly wage of \$550.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's neck problems on or about October 17, 2003.

2. Related medical.

3. Temporary total disability from November 12, 2003, to the date the claimant returned to work.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he suffered from preexisting bulging discs, however, on October 17, 2003, while riding in a rough riding vehicle owned by the respondent, and in the course of his employment therewith, the claimant did suffer a herniated disc although he did not realize the same initially and thought he was suffering from heart problems. However, an MRI scan revealed herniated disc, he reported the injury as compensable and filed this claim. Claimant is entitled to payment of reasonable necessary medical expenses related to his injury. TTD from November 12, 2003, to a date yet to be determined as well as statutory attorney's fees.

In regard to the foregoing issues Respondents No. 1 contend that the claimant did not sustain an accidental injury to his cervical spine arising out of and in the course of his employment. Pleading in the alternative, if it is determined the claimant did sustain an accidental injury arising out of and in the course of

his employment, it would appear there is Second Injury Fund involvement.

In regard to the foregoing issues Respondent No. 2 contends that its liability is premature.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and a document from Cooper Clinic marked Claimant's Exhibit No. 2. Respondents submitted the claimant's deposition marked Respondent No. 1's Exhibit No. 1 and a hand written note from Tanya White marked Respondent No. 1's Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he is a truck driver for the respondent and had been for the past four years. The claimant testified that he hauls feed to farms with a route that would be around 300 to 350 miles round trip.

The claimant testified that on October 17, 2003, he was making a delivery in the Oden, Arkansas area and as he was backing in he hit a telephone pole which broke his hydraulics. The claimant testified that he called the respondent and was instructed to return to Waldron to have his hydraulics repaired. The claimant testified that after the repairs he returned to the Oden area to deliver dairy feed and as he was pulling in he got on some grass and due to the way the feed was loaded into his truck, his truck began to buck and during this process he felt pain in his neck.

The claimant testified that he eventually did get the feed unloaded. The claimant testified that on his drive back to the respondent business, his left arm and neck were hurting. The claimant testified that it was about 8:00 or 8:30 in the evening when he finally got to his house and when he did he took a long bath or shower. The claimant testified that the next morning it was hard for him to get out of bed and he just laid around the whole weekend and tried to relax. The claimant remembered that it was on a Friday when he made this delivery and since the office was not open on Saturday he did not report to the respondent that he had hurt himself.

The claimant testified that he went to work Monday morning because his discomfort had eased some, although he complained to everyone there that his truck was beating him up. The claimant testified that he had been complaining about his truck being rough when the drivers would gather together in the morning. The claimant again testified that his symptoms had eased some and he was unaware that he was injured, just thinking he had a sore muscle not really knowing what had happened.

The claimant testified that he already had a doctor's appointment scheduled for a wellness physical on Thursday and when he went in he reported to the doctor that his arm was waking him up a night hurting and his neck was hurting. The claimant testified that at the time he was afraid he was having heart problems because he had always heard that your left arm will start hurting if you are having a heart attack and he also had been experiencing high

cholesterol. The claimant testified that he told Dr. Beachy what had happened and an MRI was scheduled. After reviewing the MRI the claimant was then referred to Dr. Queeney. The claimant agreed that he was taken off work on November 12, 2003, and underwent surgery on December 16, 2003. The claimant testified that Dr. Queeney released him to return to work on March 18, 2004.

The claimant agreed that prior to his October 17, 2003, event he had been suffering from bulging discs and had been receiving treatment by a variety of doctors for this problem.

The claimant testified that after his injury in October 2003, he complained to his supervisor, Greg Koenigseder, as well as all the other drivers. The claimant explained that every morning around 7:30 a.m. the drivers stand around dispatch getting their loads and instructions for the day and that was where he complained about his problems. The claimant testified that he also complained a little bit to Lavell but he would see her in the middle of the day when he would come in. The claimant testified that Lavell is Lavell Turner and she is kind of a dispatcher/secretary.

On cross examination, the claimant agreed that he had a pinched nerve in his neck for which he received treatment back in the 90s and he was also treated for arthritis in his knees in the 90s. The claimant also agreed that he had been in an automobile accident in the year 2000 at which time he was treated by Dr. Beachy for pain throughout his shoulders and neck. The claimant testified that it was this event where he sustained the bulging discs. The claimant testified that he was in another automobile

accident and this accident was while he was working for the respondent. The claimant testified that he did not receive any injuries except for just soreness and that he does not remember being seen by a doctor. The claimant stated that he would not argue with a doctor's note that indicated that he was seen September 10, 2001, for complaints of joint pain, low back and hip pain nor does he recall any diagnostic tests being done on his back such as a CT at that time. The claimant testified that he also does not remember being seen by Dr. Beachy on January 2, 2003, for joint, low back and hip pain but he would not argue with the doctor's notes. The claimant indicated that he did hurt his mid back while working in April 2003. The claimant testified that he was seen by the respondent's doctor for this event and was eventually given a full release with no disability. The claimant testified that as to his October 2003 event, he had been complaining about his truck beating him up for about three weeks and had mild neck problems, like a pain in the neck, but as to his left arm and neck becoming numb and feeling like it was cramped all the time, that was not until after October 17, 2003. The claimant testified that he did not report an injury until after his MRI indicated that he had a herniated disc. The claimant testified that over a period of weeks before October 17, his truck had been bouncing him around, rocking him back and forth and pounding him up and down and his neck was bothering him. The claimant indicated that after his event on October 17, 2003, he developed arm pain which was severe enough to wake him up at night and his neck pain

continued to bother him. When the claimant was shown Dr. Beachy's report following his October 17 event, the claimant was asked if he saw where the doctor had indicated that he had reported an accident and the claimant responded, "I didn't know I had an accident." The claimant stated, "I didn't know I was injured until they found out I had a herniated disc." The claimant was asked, "And so if you don't know that you were injured, you really don't know when it happened?" The claimant responded, "Well, I believe I know when it happened." And continued testifying that it was after his long day of work when he was bucked around in his truck, he was pretty sure that was when it happened. The claimant was asked if he had ever reported to anyone at the respondent business that he had an injury on that date and the claimant responded that no he did not know he was injured.

On redirect examination, the claimant stated that he definitely remembers he delivered the feed on a Friday and it was on his way home that his arm started hurting and he began rubbing it as well as rubbing his neck. The claimant stated again that he did not have pain in his arm until after the bucking motion of the truck. The claimant was asked about Dr. Beachy's office note of November 24 and the claimant stated that he believes he reported to the doctor that his problems happened at work while he was driving his truck.

Richard Greg Fisher testified that he was employed by the respondent and had been so employed for three years. This witness testified that he knew the claimant as a co-worker and that he is

familiar with the truck that the claimant drives. Mr. Fisher testified that he has driven the truck that the claimant had been driving and that it was the roughest truck the respondent had. This witness stated that the truck rides rough and it bucks you, that its pretty rough riding. Mr. Fisher testified that all the drivers meet in the office before they get their dispatches and does remember the claimant griping about his truck all the time. Mr. Fisher testified that he does not know the exact date but he does remember the claimant complaining about hurting and he complained for a while and then the next thing he knew the claimant was off work. Mr. Fisher testified that Richard Ivey drove the truck after the claimant was off work and also complained of the rough ride.

Richard Ivey testified that he replaced the claimant while he was off work. Mr. Ivey testified that he had never talked to or seen the claimant before this hearing date. Mr. Ivey described the truck which he and the claimant had both driven for the respondent as a 1978 Model Leaping Lena Ford further explaining that it was all over the road and that he basically had to fight it all the time. Mr. Ivey stated that the truck would buck and jerk, buck and jerk and that the seat was worn out. Mr. Ivey testified that he felt like he had been beaten every day after he got out of that truck.

Danny Hickey testified that he was employed by the respondent and had known the claimant for probably six years. Mr. Hickey stated that he is a driver for the respondent but he has never

driven the truck that the claimant had driven. This witness testified that he recalls the claimant gripping and complaining about his truck when the drivers would gather together in the mornings waiting for their assignments. Mr. Hickey stated that the claimant said that his truck rode rough and it needed new shocks. Mr. Hickey testified that the claimant had complained for approximately three to four weeks, agreeing that it was sometime in the fall of last year. Mr. Hickey stated that the claimant said his neck was bothering him. When asked if the claimant told him why he thought his neck started hurting and Mr. Hickey responded, "I guess, the truck, the ride in the truck."

Carolyn Jane Harvey testified that she was the claimant's exwife but they are still friends. Ms. Harvey testified that she and the claimant were married during the time frame that he worked for the respondent and ultimately had to take off work to have surgery. Ms. Harvey testified that she remembers the claimant coming home on a Friday evening late and reporting to her that his neck was hurting and stating that he probably pulled a muscle or something. Ms. Harvey testified that the claimant just sat around all evening until time for bed and she noticed that he had a hard time sleeping throughout the night. This witness stated that the claimant could barely get up in the morning and had to be helped out of bed. Ms. Harvey remembers that that Saturday the claimant's neck was real stiff and he was hurting really bad and did not do anything the entire weekend except sit or lay around to try and get comfortable. Ms. Harvey remembers that the claimant was scheduled

for a wellness checkup and he thought he was having a heart attack at the time. Ms. Harvey testified that the claimant was hurting very bad and that his left arm was in tremendous pain and that this pain went all the way up to his neck. Ms. Harvey testified that the claimant had never complained about anything like that and agreed that his symptoms progressed up to the point where he had to have surgery.

Levell Turner testified that she works for the respondent in the office doing the paperwork, working with the drivers and sometimes working dispatch. Ms. Turner testified that she does recall that last fall the claimant came in making complaints about his neck and that she thinks that this is the first time that she can remember him complaining about his neck. Ms. Turner testified that the claimant also complained about his truck riding very rough and that this was about the same time that he was complaining about his neck hurting.

Tonya White was called to testify on behalf of Respondent No. 1. Ms. White testified that she works for the respondent in their human resource department and she is the person that handles workers' compensation claims. Ms. White testified that she worked with the claimant in filling out his workers' compensation claim remembering that he told her that he had been having back problems for quite some time and it had progressively gotten worse. Ms. White testified that upon her insistence the claimant came up with a date of injury close to the date of his doctor's appointment. Ms. White testified that the claimant had no idea when his problems

began that it came on after a long period of time that it was a slow working type situation. Ms. White testified that the claimant did tell her about his truck bouncing around. Ms. White testified again that the claimant picked a date prior to his seeing the doctor remembering that he said that it started getting really severe about that time. Ms. White testified that the claimant did keep her informed during the period of time he was off work and that he returned to work for the respondent in March 2004 and has been working continuously since then.

On cross examination, Ms. White testified that the notes which she took in an interview with the claimant on November 6, 2003, set forth that he reported that he had continued bouncing of cab which caused jerking of his neck resulting in a herniated disc.

Greg Koenigseder testified that he was the store manager, truck dispatcher and overseer of the drivers for the respondent. Ms. Koenigseder testified that the claimant did come to him and talk to him about a neck problem he was having stating that his neck had been hurting and that he had a stiff neck and needed to go to the doctor. This witness testified that the claimant did not give him a specific date when he was injured but that he did tell him that his truck was rough riding and had complained about this several times. Mr. Koenigseder stated that the claimant complained about his neck over a period of several weeks noting that it was getting worse.

Mr. Koenigseder said that he does recall that the claimant called in reporting that he had knocked the hydraulics out of his

truck and was needing to get them repaired, although he could not remember when it was.

The medical records set forth that the claimant was seen on March 2, 2000, following a motor vehicle accident with complaints of pain between his shoulder blades and the posterior neck area, particularly with extension and flexion of his neck. Dr. Allen Beachy prescribed Flexeril and Celebrex for him at that time. A CT scan of the claimant' cervical spine made on March 9, 2000, revealed that he had multilevel disc bulges slightly asymmetric to the right at C4-5 and to the left at C6-7 and he also had mild stenosis at C5-6 and C6-7. On March 20, 2000, Dr. Beachy writes that he has seen the claimant for his neck strain, noting that the claimant is improved but still has some posterior discomfort. Dr. Beachy recommended that he continue with his medications and that he might put him back into physical therapy. Dr. Beachy writes on April 10, 2000, that the claimant stated that his neck is ok and like it was before the accident. Dr. Beachy writes that the claimant still has some problems with stiffness in his neck at night and recommended that he continue to take some Flexeril for this problem. The claimant was treated on September 10, 2001, by Dr. Beachy for mechanical low back strain following a coughing spell. Dr. Beachy recommended medications and noted that he has some bronchitis syndrome which he also treated. On January 6, 2003, the claimant was seen by Dr. Beachy with complaints of low back pain and pain radiation into his right hip area. Dr. Beachy recommended that the claimant undergo a CT of the lumbar spine,

gave the claimant exercises as well as prescribed medications. A CT scan was made on January 7, 2003, which revealed a small central protrusion at L3-4 as well as a moderate left para central protrusion at L4-5 and a small left sided protrusion at L5-S1. The claimant was seen at Cooper Clinic on April 28, 2003, by Dr. Matthew McLellan reporting that he was leaning up and twisting to hook up a trailer when he pulled his mid back. It is noted that the claimant does not complain of low back problems as he had had previously, noting that his low back is not bothering him at that time. The doctor writes that currently the claimant complains of pain just below his shoulder blades on the right side. Upon examination, Dr. McLellan sets forth that the claimant has mild back pain and spasm and recommended that he take Celebrex as well as apply heat to the area and restrict his lifting. The claimant was seen at Pro Med on May 8, 2003, complaining of mid back pain, reporting that he had pulled his back again that day. The doctor notes that the claimant has mid back pain and spasm and recommended x-rays, physical therapy and medications. X-rays of the claimant's back made on May 8, 2003, show that there is no acute bony abnormality evident in the claimant's thoracic spine but there is slight dextroconvexity. Dr. Ted Hood writes on May 23, 2003, that he has given the claimant a complete and full release as to the problems he was being seen for for his mid back problems.

The claimant was seen at the Cooper Clinic on October 23, 2003, for a wellness physical. The doctor notes that the claimant is complaining of tingling of the medial fingers of his right hand

at night and then also his left arm is tingling. The doctor writes that the claimant reports that his entire left arm seems to go to sleep and that his shoulders pop a lot. The doctor writes that the claimant has some aching of the shoulders and neck noting that he has had significant neck pain over the last three days with some pain radiating down into the left shoulder. After examination, the claimant was assessed, among other things, with paresthesias of the left upper extremity, quite possibly representing neural impingement as well as neck pain. Dr. Allen Beachy ordered an MRI of the claimant's cervical spine. The claimant underwent an MRI of his cervical spine on October 27, 2003, which revealed that he had mild to moderate channel stenosis at C5-6 secondary to spondylitic ridge formation with bulging disc and spur, moderate size left posterolateral disc herniation at C6-7, a broad disc bulging at C7-T1 producing mild channel stenosis and mild disc bulges at other levels as well as at C4-5 there is a moderate bulge eccentric to the right. Dr. Beachy writes on November 24, 2003, that he has seen the claimant following his MRI which revealed a good sized herniated disc at C6-7 lateralizing to the left. The doctor notes that the claimant's symptoms certainly are consistent with the MRI findings. Dr. Beachy writes that the claimant has been off since November 12, 2003, and notes that physical therapy has been of little help to the claimant and in fact he has gotten worse over time and is in constant pain. The doctor discusses the claimant's medication as well as the claimant's appointment with Dr. Queeney

on December 4, 2003. Dr. Beachy recommended that the claimant try cervical traction and put him on Decadron dose pack and Vicoden.

The claimant was seen by Dr. Joseph Queeney on December 4, 2003. The claimant relayed a history to the doctor of his problems starting on October 9, 2003, while he was driving a truck. After examination, Dr. Queeney diagnosed the claimant with having a herniated nucleus pulposus at C5-6 and at C6-7 as well as left upper extremities radiculitis and recommended that the claimant undergo a C5-6 and C6-7 anterior cervical discectomy. The claimant underwent surgery on December 16, 2003, performed by Dr. Queeney for his radiculopathy in his left upper extremity due to herniated nucleus pulposus at C5-6 and at C6-7. Dr. Queeney writes on January 12, 2004, that the claimant was seen following his two level anterior cervical discectomy with interbody fusion utilizing allograft and anterior cervical arthrodesis with an Atlantis plate. Dr. Queeney notes that the claimant is doing well and currently declines physical therapy so he is to do home exercises. Dr. Beachy writes to the claimant's attorney on February 13, 2004, that in his opinion the claimant certainly did have preexisting degenerative disc disease that most likely was aggravated by his work conditions including the bouncing in the seat while driving his truck. Dr. Beachy stated that certainly other everyday activities could have contributed to his problem but, in the doctor's opinion, he thinks the claimant's work activities were probably at least 70 percent the cause of his injury. Dr. Queeney writes on March 18, 2004, that he has seen the claimant and he is

anxiously wanting to go back to work and the doctor writes that he is doing fine from a surgical standpoint. Dr. Queeney writes that, in his opinion, you never herniate a normal disc that most likely the claimant's problem resulted from repeated injuries throughout his life time and noting the claimant's history it is most likely that the actual herniation occurred while the claimant was on his job.

In the claimant's deposition he testified that currently he is able to perform all of his job duties although it is kind of painful to drive. The claimant testified that he was an outdoor person and was active in hunting and fishing as well as hiking and that he was unable to hunt last year because it was right after or during his surgery and he did not know how riding in a boat would affect his neck problem because he had not tried. The claimant testified that he does drive on the interstate highway but most of his driving is on secondary roads or even just pig trails. The claimant testified that he attributed the rough ride in his truck to the shocks never being changed in his truck, noting that it was a short wheel-based truck and, in his opinion, it was not rated for the trailer that he was pulling. The claimant testified that for the three months he was off work he received short term disability and that his medical expenses were run through his group policy because workers' compensation had denied his claim. The claimant testified that he has been taking Celebrex for the arthritis in his knees for a number of years.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a work related injury while working for the respondent on a Friday afternoon in the Oden, Arkansas area which was testified to be October 17, 2003. The claimant testified to complaining about the rough ride in his truck for several weeks prior to October 17, 2003, but testified specifically to a bucking event in his truck when trying to deliver a load of feet at a farm while trying to drive over some slippery grass. The claimant testified that on the drive back to the respondent's business he felt pain in his arm and when he returned to work on the following Monday he continued to complain about the rough ride of his delivery truck. The claimant, who I find very credible although not particularly a good historian nor sophisticated as to medical problems, testified that he did not know what was wrong with him even though he was having continual pain down his left arm and problems sleeping at night. The claimant testified that due to his high cholesterol he was concerned about heart problems and testified that he was in fear that his left arm problems were early signs of cardiac failure. On October 23, 2003, the claimant reported to his treating physician, Dr. Allen Beachy that he was having tingling, numbness in his arm as well as significant back pain for several days. An MRI revealed herniated disc at two levels in the claimant's cervical area for which Dr. Queeney eventually performed surgery to correct. Both Dr. Beachy and Dr. Queeney have opined that the claimant's working conditions attributed greatly to his

herniated disc problem. I further find that the claimant is entitled to medical treatment for his compensable injury that is both reasonable and necessary to be paid by the respondent. It is also found that the claimant is entitled to temporary total disability from November 12, 2003, until his release by Dr. Queeney on March 18, 2004.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant earned an average weekly wage of \$550.00.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his neck on or about October 17, 2003, while working for the respondent. See discussion above.

5. The respondent should pay for all reasonable and necessary medical treatment for this claimant's compensable neck injury.

6. The claimant is entitled to temporary total disability from November 12, 2003, until his release by Dr. Queeney on March 18, 2004.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable neck injury while working for the respondent on October 17, 2003.

The respondent should pay for all reasonable and necessary medical treatment for his claimant's compensable injury.

The respondent should pay temporary total disability to this claimant from November 12, 2003, until March 18, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE