

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F202280**

<b>CHRISTOPHER CLARK, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BRANDON MOVING &amp; STORAGE, EMPLOYER</b>	<b>RESPONDENT</b>
<b>GALLAGHER BASSETT SERVICES, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 1, 2004**

Hearing before Administrative Law Judge J. Mark White on March 9, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James Stanley, Attorney at Law, North Little Rock, Arkansas.

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

**STATEMENT OF THE CASE**

On March 9, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on January 5, 2004, and a Prehearing Order was entered that same day. A copy of the January 5, 2004, Prehearing 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 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 December 14, 2001; that on December 14, 2001, the claimant sustained a compensable injury to his back; that Respondents accepted the December 14, 2001, injury as compensable and paid benefits; and that the claimant earned sufficient wages to entitle him to the maximum compensation rates.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional temporary total disability benefits; whether the claimant is entitled to additional medical treatment to include psychological treatment and payment of unpaid medical bills; change of physician; and controversion and attorney's fees.

The claimant contends that he is now entitled to further treatment and to temporary total disability benefits from January 23, 2002, to a date yet to be determined.

Respondents contend that all appropriate benefits have been paid with regard to this claim; that additional medical treatment is not reasonable and necessary; and that they are entitled to an offset for unemployment benefits received by the claimant.

## 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 that he was totally incapacitated from earning wages at any point after January 23, 2002.
4. The claimant has therefore failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from January 23, 2002, to a date yet to be determined.
5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to psychological treatment.
6. The claimant has proven by a preponderance of the evidence that the

treatment provided by Little Rock Emergency Doctors on December 17, 2001, was reasonably necessary in connection with the claimant's injury, and the respondents are liable for this bill.

7. The claimant has proven by a preponderance of the evidence that he is entitled to a change of physician and to at least one visit with that new physician at the respondents' expense.
8. The respondents have controverted the claimant's entitlement to additional benefits, with the exception of the claimant's entitlement to a change of physician.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer as a truck driver and furniture mover. On December 14, 2001, he sustained a compensable injury to his back when he reached over to pick up a piece of paper in the cab of his truck. He was in Oxford, Mississippi at the time. He sought treatment at an emergency room there, but because of a delay in treatment he arranged for transportation back to Little Rock where he was treated at Baptist Medical Center. He reported the injury to his employer that day.

He continued to work in spite of his injury, but he sought treatment from a chiropractor, Dr. John D'Onofrio. He was referred to Dr. D'Onofrio by his supervisor, Chris Ray. He was later treated for a short time by Dr. Earl Peeples. All of the diagnostic studies contained within the record, including x-rays and a bone scan, were normal. After the treatment by Dr. Peeples, the respondents controverted further treatment.

The claimant left his employment with the respondent-employer on January 7. The claimant alleged that on that day, he fell from a ladder and injured his left wrist while rearranging cargo in his truck at a truck stop near Beebe, Arkansas. Ray testified, however, that the claimant had represented to him and to the respondent-employer that he was in Oklahoma at the time, and that the claimant had asked for and received an advance of money to cover certain expenses in Oklahoma. Ray also testified that he had been investigating the claimant for possibly stealing fuel from the respondent-employer. Ray and the claimant agree that on January 7, the claimant abandoned his truck with its cargo without informing the respondent-employer and never returned to work. It should be noted that neither party has made an issue of the compensability of the alleged left wrist injury, and it is not considered herein.

The claimant then went to work for another trucking company, but he was

terminated for "dishonesty." He has received unemployment benefits; he initially denied representing to the Employment Security Division that he had no disabilities limiting his ability to work, but he later acknowledged his signature on forms representing as such. He also initially denied, and then later admitted, making job contacts while receiving employment benefits.

The claimant testified that he continues to have pain in his back radiating down his left leg. He has sought treatment on a few occasions, but he testified he cannot afford to obtain additional treatment. He has been diagnosed with depression, which he attributed to his inability to work, and he testified he underwent a nervous breakdown in February of 2003.

On August 13, 2003, the claimant underwent a vocational rehabilitation evaluation, which found that with training he "may reasonably be expected to function by means of skilled to professional employment."

## **II. Adjudication**

### **A. Temporary Total Disability**

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 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 claimant seeks temporary total disability benefits from January 23, 2002 to a date yet to be determined. Neither party has introduced any medical evidence showing that a doctor has directed the claimant to be off from work at any time subsequent to January 23, 2002. The claimant continued working for the respondent-employer after his injury, and he admitted that he did not quit because of his injury. He likewise admitted that he was terminated from his next employer and did not quit because of his injury. He collected unemployment benefits, and in so doing he represented to the Arkansas Employment Security Division that he was capable of working. He testified that he has sought work. He testified that his injury would prevent him from returning to a truck-driving job, but at no point did he testify that he could do no other job.

In short, while the claimant may be unable to do his old job, there is no evidence of record to suggest or establish that he can do no job. I find that the

claimant has failed to prove by a preponderance of the evidence that he was totally incapacitated from earning wages at any point after January 23, 2002. I therefore find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from January 23, 2002, to a date yet to be determined.

### **B. Additional Treatment**

The claimant contends he is entitled to psychological treatment for his depression. To be compensable, a mental illness or injury must be caused by physical injury, and it must be diagnosed by a licensed psychiatrist or psychologist in accordance with the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). ARK. CODE ANN. § 11-9-113(a). In his testimony the claimant attributed his depression to his inability to do his job; there is no evidence in the record to show a direct causal connection between his depression and any physical injury. Moreover, although a "Bill Owens, M.D." diagnosed the claimant with depression in accordance with the DSM, there is no evidence in the record to show that Dr. Owens is a licensed psychiatrist or psychologist. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to psychological treatment.

The claimant also contends the respondents have failed to pay a bill to Little Rock Emergency Doctors in the amount of \$153 for services rendered at Baptist Medical Center in the claimant's visit of December 17, 2001. The payment record introduced by the respondents fails to show any payment for this bill, although it does show the respondents paid Baptist Medical Center itself for its charges for that same date of service. The respondents have introduced no evidence or argument to show that the treatment provided by Little Rock Emergency Doctors was unreasonable or unnecessary. Because of this, and because the hospital's bill for the same visit was paid, I find that the claimant has proven by a preponderance of the evidence that the treatment provided by Little Rock Emergency Doctors on December 17, 2001, was reasonably necessary in connection with the claimant's injury, and the respondents are liable for this bill.

### **C. Change of Physician**

A claimant is entitled to a one-time change of physician upon a petition to the Commission. ARK. CODE ANN. § 11-9-514(a)(3). This right is absolute, and the Commission has no discretion in granting it. *Collins v. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W.3d 204 (2002). Pursuant to the Commission's holding in *Gordon v. Wal-Mart, Inc.*, Workers' Compensation Commission F107611 (March 17, 2003), the

claimant is entitled to at least one visit with the new physician at the respondents' expense. Nothing in the record indicates the claimant has already exercised this one-time right. I therefore find that the claimant has proven by a preponderance of the evidence that he is entitled to a change of physician and to at least one visit with that new physician at the respondents' expense.

I am aware that the granting of a change of physician is non-discretionary and should be expedited. Before this hearing I twice asked the Commission's Medical Cost Containment Division to process this claimant's change of physician request. The Division has thus far refused to grant the claimant's request until after I have rendered an opinion deciding the remaining issues. I note that the respondents have in no way controverted this request, and any delay is not attributable to them. After the entry of this Opinion, this file will be forwarded to the Commission's Medical Cost Containment Division for processing of the claimant's change of physician request.

#### **AWARD**

The claimant has proven by a preponderance of the evidence that he is entitled to payment of the bill from Little Rock Emergency Doctors for services provided on December 17, 2001; that he is entitled to a change of physician; and that

he is entitled to at least one visit with his new physician at the respondents' expense. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. ARK. CODE ANN. § 11-9-715. Moreover, although an attorney's fee may be granted on a controverted change of physician request, ARK. CODE ANN. § 11-9-715(c), the respondents herein have not controverted the claimant's entitlement to a change of physician. Therefore, no attorney's fees are awarded herein.

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.**

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