

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F208147

**ELTON WAYNE COTTON,
EMPLOYEE**

CLAIMANT

**ARK. DEPARTMENT OF HEALTH,
EMPLOYER**

RESPONDENT

**ARKANSAS INSURANCE DEPT.,
PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED NOVEMBER 9, 2004

Hearing conducted August 18, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. J. Gary Davis, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Richard S. Smith, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the establishment of a compensable injury to the claimant's cervical spine, based upon medical evidence, supported by objective findings.

The claimant contended that he suffered such an injury July 2, 2002, and should be awarded benefits, including reasonably necessary medical and related expenses and temporary total disability benefits from July 15, 2002, through July 15, 2003. An attorney's fee for controversion was also requested. Other possible issues, specifically including temporary total disability benefits after July 15, 2003, were reserved.

The respondents contended that the claim is not compensable because a compensable injury cannot be established by medical evidence, supported by objective findings, as required by the Act.

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 at all pertinent times, including July 2, 2002, when the claimant's average weekly wage was \$730.69.
3. The preponderance of the evidence shows that the claimant suffered a compensable injury to his cervical spine on that date and is entitled to benefits, specifically including reasonably necessary medical and related expenses and, further, that as a result of his compensable injury, he remained in his healing period and was totally incapacitated to earn wages from July 15, 2002, until July 15, 2003, for which he is entitled to temporary total disability benefits.
4. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

The claimant, 57 years of age at the time of the hearing, was employed as a state plumbing inspector by the respondent employer for a period of more than 19 years. During his employment, on July 2, 2002, he was attempting to inspect property for a water leak under a low porch when he injured his neck. He stated that he had a camera and was attempting to squat or hunker down and look under the porch and take a picture which, he demonstrated, caused his head and neck to be

extended forward and upward in an awkward position. During that time, he felt something like a crick in his neck which he stated did not feel right and became worse as the day progressed. He testified that he was really hurting that night and within the next day or so he began to have problems in his left arm, including his hand beginning to go to sleep.

When he reported the problem to the employer, he was told to go to the doctor but found that Dr. Mark Vice was on vacation and not available until July 15, 2002. When Dr. Vice saw the claimant, he noted that he had radiculopathy and headache and recommended that he be off work until further notice. He noted that the claimant had pain at the base of his neck and radiation down his left arm, rather severe headaches, and numbness in his arm as well.

The note distinguishes the claimant's current neck injury from his earlier problems with headache, stating that his neck and arm pain started when he was at work and that he had had "complete resolution" of his earlier pain and headache for which he had been seen at St. Vincent's in June. The note also stated that the claimant was not having neck pain with the earlier episode back on June 12.

After cranial and cervical spine MRI scans were negative on July 23, 2002, Dr. Vice recommended an appointment with a neurologist if the claimant still had pain and numbness. He concluded that the claimant had no ruptured disc.

The claimant's symptoms continued and he was referred to neurologist Dr. Kathy Chenault who had a nerve conduction study performed on his left arm which indicated a mild chronic left ulnar neuropathy at the elbow and no electrophysiological evidence for cervical radiculopathy, according to Dr. Julia M. McCoy. Thereafter, on August 30, 2002, Dr. Chenault twice mentioned

muscle spasms, once indicating the claimant was positive for muscular spasms and again when she included cervical muscle spasms in the diagnosis.

When Dr. Vice next saw the claimant on September 3, 2002, his diagnosis included polyneuropathy. On September 23, 2002, he indicated that there was no possibility of the claimant returning to work on a part time basis with job duties altered within reason to better fit his needs. On October 2, 2002, UAMS neurologist Dr. Naim Haddad examined the claimant, reviewed his systems, and added Bextra to the Aspirin and Vicodin that the claimant was already taking. He opined that the claimant may have cervical spondylosis with possible left C7 or 8 radiculopathies and he requested an EMG/NCS to be performed at UAMS. Dr. Haddad also saw the claimant October 30 and in a November 4, 2002, note, wrote that the claimant's EEG study prior to his clinic visit was normal. Dr. Haddad opined that the claimant had cervical spondylosis with possible left C8/T1 radiculopathy. His recommendations included adding Flexeril, a muscle relaxant, to the claimant's medication. There was no indication of a change in the claimant's off-work status. When Dr. Vice saw the claimant November 6, 2002, he continued him off work until further notice. Dr. Vice continued the claimant's off work status when he saw him in December, January, 2003.

In February, 2003, Little Rock neurosurgeon Dr. James R. Adametz saw the claimant for his neck and left arm pain and assessed his condition as cervical spondylosis, noted that it might be nerve root compression on the left to account for the claimant's left arm pain, he permitted the claimant to return to regular duty March 24, 2003. However, when Dr. Vice saw the claimant March 11, 2003, he took him off work again due to his condition and requested that an additional neurosurgeon review the claimant's condition.

On April 23, 2003, Dr. F. Richard Jordan, a North Little Rock neurosurgeon wrote that the claimant's MRI showed cervical spondylosis at multiple levels with disc space narrowing. He also noted a tight and tender left anterior scalene and suggested the clinical diagnosis of a left anterior scalene syndrome. He indicated that a left anterior scalenotomy was scheduled for April 30, 2003, to try to help with some of the left upper extremity symptoms. Again, the claimant's off-work status was not changed. When Dr. Vice saw the claimant May 28, 2003, he noted additional symptoms in his leg and remarked that he had significant impairment due to his neck pain and radiculopathy.

On June 3, 2003, Dr. Jordan wrote than an MRI showed a mild HNP at C5/6 with facet arthropathy at C5/6 and C6/7. Dr. Jordan noted the claimant's medication which included Flexeril and stated that the claimant's options included epidural steroid injection and an anterior cervical discectomy with fusion at C5/6. On June 17, 2003, Dr. Vice wrote claimant's counsel stating that the claimant was not able to work as a result of his neck pain and radiculopathy. A July 15, 2003, letter from Dr. Jordan to claimant's counsel stated that the claimant experienced severe pain in his neck at work, and has been diagnosed with marked left anterior scalene spasm as well as multilevel cervical spondylosis from C4 to C7 with an HNP at C5/6. He indicated that the claimant had no prior history of neck or arm problems before the incident at work and stated that within a degree of medical certainty the treatment for the claimant's neck and left arm problems are a result of the incident at work in July, 2002. Nothing in the medical record indicated that the claimant should have been permitted to return to work. This is consistent with his testimony at the hearing.

The record shows that the claimant has other health problems which pre-existed the incident at work. For example, respondents have included an August 20, 1997, record showing the he had bilateral ear occlusion which required irrigation, that produced a large amount of wax. Thereafter,

in August, 2000, the claimant had lower abdominal pain which was considered to be diverticulitis. More recent records indicate that the claimant has had problems with syncope and headache for which he received medical care. However, his treating physicians do not relate these conditions to the problems with his neck and left arm. As noted above, Dr. Vice, in his July 15, 2002, note, took care to communicate that the claimant's neck problems were not related to headache for which he had been seen earlier at St. Vincent's and stated that the claimant was not then having the neck pain which he experienced after the incident at work. When the entire record is reviewed, the preponderance of the evidence supports a finding that the claimant sustained an injury based upon the medical record supported by objective findings and is entitled to the benefits above described.

AWARD

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

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

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.

RICHARD B. CALAWAY
Administrative Law Judge