

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307186

DAVID FANT	CLAIMANT
ALAMO PCS HOLDINGS, INC.	RESPONDENT
ST. PAUL MERCURY INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 15, 2004

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

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 3, 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 October 31, 2003. 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 November 5, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 2001.

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

1. Compensability of the claimant's injuries to his back and neck.

2. Related medical.

3. Extend of permanent impairment.

4. Attorney'S fees.

In regard to the foregoing issues the claimant contends that on November 5, 2001, he sustained compensable injury to his cervical spine and his shoulders and lower back. The claimant contends that he is entitled to additional medical treatment and that he has sustained permanent injury as a result of his job related accident. The claimant contends that his attorney is entitled to an appropriate attorney's fee on benefits not previously paid.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury on November 5, 2001, or on any other date while employed by the respondent employer. Although the carrier initially paid some benefits, there were no objective findings of any compensable injury. The claimant's symptoms attributable to the alleged work-related incident resolved completely in January 2002. In April 2002 he began having new and different symptoms which the respondents contend are unrelated to the alleged work incident of November 5, 2001.

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 medical information marked Claimant's Exhibit No. 2. The respondents admitted the deposition of Dr. David A. Davis marked Respondents' Exhibit No. 1 and medical information marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was a cellular radio technician for the respondent and was responsible for the repair and maintenance of the radio equipment at the respondent's tower sites. The claimant testified that he had worked for the respondent approximately five years and is still employed with the respondent.

The claimant testified that on November 5, 2001, he was attempting to replace an eighty-pound power amplifier into a mounting. The claimant testified that the work space was very restricted and he was trying to place this piece of equipment on a mount some thirty to thirty-six inches out in front of him. The claimant testified that he was gripping the amplifier with both hands out in front of him when he lost his stance and fell backward with the amplifier falling onto his chest. The claimant testified that the piece of equipment cost approximately forty thousand dollars to replace, therefore, he was trying to protect the part during the fall. The claimant testified that he landed on his shoulders, the back of his head and neck when he hit the metal grid behind him. The claimant testified that he knew that he was hurt from the fall indicating that he had bruised his right shoulder, hit the back of his head and neck from the fall. The claimant

testified that his arm felt like he had injured his muscle and he had damaged his left hand when he racked his hand across the metal grad as he went down. The claimant testified that he thought that he had torn a muscle in his arm but at the time did not think that it was anything serious. The claimant also stated that his hand was hurting but he knew that it was superficial and would heal. The claimant testified that he did not think at that time that he was in need of medical treatment but as time when by his pain increased in his right arm to the point where he realized that he needed medical attention. The claimant testified that the next morning he reported to his immediate supervisor, Danny Young, that he had fallen at the site and had dislodged his thumb nail and ripped his hand up as well as pulled a muscle when he fell. The claimant was asked if he asked for medical treatment and the claimant testified that at that time he did not. The claimant testified that after a period of time his pain increased to the point where he reported to Mr. Young that he needed to see a doctor because he could not take the pain. The claimant testified that he reported to Mr. Young that he was going to the doctor and then went to his family doctor, Dr. Lachowsky. The claimant agreed that this visit was some four to five weeks after his fall.

The claimant testified that when he was first seen by Dr. Lachowsky he reported that he had pain in his neck, right shoulder and right arm. The claimant stated that he had a burning sensation in his wrist area, his fingers were numb and tingling in his right hand but primarily his problems were in his bicep area where he

just felt this intolerable crushing squeezing type pain. The claimant testified that some two to three months later after he had been seen by other physicians he woke in the middle of the night and realized that his condition had greatly improved on the right side. The claimant testified that his discomfort had not gone away but it had greatly improved and this lasted for approximately three days to a week. The claimant testified that then he again woke in the middle of the night and this time his left arm and shoulder was experiencing the same type symptoms that he had experienced with his right shoulder. The claimant testified that he had not experienced any new injury that he was aware of during this period of time. The claimant testified that it is his understanding that he has a herniated disc in his cervical spine. The claimant testified that he continues to have pain in both arms and neck. The claimant agreed that the pain in his neck that he was experiencing currently was in the same location as when he first saw Dr. Lachowsky.

On cross examination, the claimant agreed that when he fell he sustained an abrasion to his right shoulder and that it was in his right arm in the bicep area of his arm that he had the most intense pain. The claimant agreed that he was having pain in his right arm and not in his left at this time. The claimant also agreed that it was only his fingernails and fingers of his left hand that he scrapped and injured during the fall that was giving him problems initially on the left side. The claimant testified that these were superficial injures and have subsequently healed. The claimant

testified that when he fell he hit his shoulder, his back which included his neck and hit the back part of his head. The claimant testified, "That is where I hurt." The claimant agreed that the following day he reported to his supervisor that he had injured his right arm and torn some fingernails on his left hand. The claimant agreed that he did not tell his supervisor that he had hurt his neck nor was he experiencing problems with his left shoulder at that time. The claimant testified that when he first saw Dr. Lachowsky in early December he did not report to him having any problems with his left shoulder or left arm. The claimant agreed that Dr. Lachowsky had him undergo an MRI and referred him to a neurologist and to have an EMG. The claimant agreed that there was a period of time where he felt significantly better. The claimant agreed that his left side pain was not a gradual onset but a significant realization that he was having problems in his left shoulder and arm. The claimant agreed that he has been seen by Dr. Davis, Dr. Runnels and Dr. Greenfield. The claimant agreed that at the time of his deposition it was primarily his left side where he was experiencing the most discomfort but as of the date of this hearing his discomfort is shared equally in both sides. The claimant testified again that to his knowledge he has not had any new incident which would cause his symptoms to have changed since November 4, 2003. The claimant agreed that in 1999 he was hit in the head by a gate which resulted in him having a laceration over his eyebrow, having severe headaches, left wrist pain and a feeling of dizziness. The claimant agreed that he was seen immediately by

a doctor for these problems. The claimant testified that he has not missed any work due to his injuries except for doctor's visits and he is still working for the respondent and in fact has received a promotion.

On redirect examination, the claimant testified that the grid in which he was working was very sharp and would even snag or pull the threads in his shirt if he leaned up against it. The claimant testified that when he fell he hurt his upper right arm, neck area, back, head and his left hand when he racked it on the grid. The claimant agreed that he had stated in his deposition that he had hurt his neck and back in his fall. The claimant testified or agreed that he was still having pain in his neck when he saw Dr. Lachowsky on March 29, 2002, and that the pain has never gone away to date. The claimant did agree that the pain in his right arm has improved with time and that the pain in his left arm has changed with time but the pain in his neck has been constant.

The medical records set forth that the claimant was seen by Dr. Lachowsky on December 12, 2001, reporting that he injured his right trapezius area when lifted a weight five weeks ago. Dr. Lachowsky's notes set forth that the claimant developed pain in his neck, shoulder and pain running down his right arm with episodes of numbness, tingling and stinging in his right hand, primarily in this thumb and index finger. The doctor notes that the claimant has been using some Hydrocodone for relief of pain that he had left over from 1994. The doctor assessed the claimant with having a nerve root injury and recommended having x-rays of his cervical

spine. Dr. Lachowsky writes again on December 18, 2001, that he has reviewed the claimant's MRI which has several minor findings but that the most significant would appear to be a left posterior lateral disc protrusion which does slightly compromise the left C6/7 foramen. Dr. Lachowsky notes that this lesion of course is on the opposite side from his symptoms. The doctor referred the claimant to a neurologist. The claimant's MRI done on December 14, 2001, sets forth that the claimant has a small left posterior lateral disc protrusion at C6-7 with some narrowing at the left C6-7 foramen. It is also notes that the claimant has a small midline disc protrusion and spondylitic spurring at C5-6 with a probable tiny midline disc protrusion at 3-4 and 4-5. The claimant was seen on January 2, 2002, by Dr. Tonya Phillips where it is noted that the claimant has been having difficulties since the first part of November stating that he was lifting an eighty to ninety pound unit and started having pain in his neck. After examination, Dr. Phillips assessed the claimant with having possible muscular skeletal pain although with his diabetes compressive neuropathy cannot be ruled out. Dr. Phillips recommended an EMG nerve conduction study and prescribed Vioxx. On January 8 there was a call to the Cooper Clinic indicating that the claimant's medication, Vioxx, seems to be helping and wants to know if he can delay the EMG nerve conduction test. On March 25, 2002, the claimant's wife called to the Cooper Clinic reporting that the claimant was having more pain and they would like to be seen by another doctor instead of Dr. Phillips. Dr. Lachowsky writes on

March 29, 2002, that he has seen the claimant for his complaints of neck, shoulder and radicular pain in his right arm with episodes of numbness, tingling and stinging in his right hand. It is noted that the claimant has undergone an MRI and that subsequently he reports that he has developed pain in his left forearm and left second finger noting that he feels like he has a railroad spike in his spine pointing to his C7 area. Dr. Lachowsky notes that after taking the Vioxx the claimant's problems nearly resolved except for a little pain in his C7 region but that after one month he woke up with severe pain in his left scapular region and radial aspect of his left arm. Medications were prescribed. Dr. David Davis saw the claimant on April 30, 2002, for his complaints of right neck pain and right arm pain, numbness and burning over the dorsum of his right hand and wrist. Dr. Davis set forth a review of the claimant's medical history and symptoms. Dr. Davis conducted a physical as well as neurological examination of the claimant. Dr. Davis writes on May 17 that the claimant had right neck pain and right arm pain in November 2001 attributable to a lifting accident while on his job. Dr. Davis notes that the pain remitted after about two months and then in April 2002 he began to have neck pain and left arm pain. Dr. Davis writes that it does not seem likely that this pain is the result of his lifting accident while on the job on November 5, 2001. A magnetic resonance imaging study of the claimant's cervical spine was performed on May 30, 2002, which revealed that the claimant had at C6-7 disc space narrowing, a disc herniation to the left extending into the left C7 neuro foramen.

This test also set forth that at C5-6 there is a disc space narrowing, mild defused annular bulging, bilateral uncovertable arthrosis which is more pronounced on the right with associated bilateral C6 neuro foraminal narrowing and that at C4-5 there is mild left C5 neuro foraminal from uncovertable arthrosis. Dr. David Davis writes on May 31 that on examination that day the claimant had normal strength in the left arm and that his MRI done the day before showed a moderately large disc herniation at C6-7 on the left likely inducing a left C7 radiculopathy. Continued conservative management was recommended, a traction unit was prescribed as well as medication.

Dr. Davis writes on July 15, 2002, that he has seen the claimant for follow up for his continuing complaints of burning pain in his left arm and into his left hand. Dr. Davis notes that the claimant brought with him his prior MRI which does show a disc protrusion on the left at C6-7. The doctor notes that since the disc protrusion was noted on his original MRI scan it does seem to be a work related injury. Dr. Davis writes that because of the claimant's persistent left arm pain he is going to have a neuro surgical evaluation for possible surgery and he should continue the use of his traction unit.

The claimant was seen by Dr. Vincent Runnels on August 30, 2002, and the doctor writes that after examination and review of the claimant's MRI a cortisone injection was administered. Dr. Martin Greenburg writes on September 23, 2003, that the claimant had returned on September 15, 2003, after his cervical MRI which

showed two disc herniations at C5-6 and C6-7 noting that the claimant has bilateral C6-7 radicular pain syndrome. After examination, the claimant was assessed with cervical disc disease at C5-6 and C6-7 with bilateral C6 and C7 radicular pain syndrome. Cortisone injections were administered. Dr. Vincent Runnels writes on December 27 that the claimant was seen on December 13 for follow up noting that he was given a shot of cortisone on August 23, 2002, and got much better. Dr. Runnels writes that the severe pain in his left arm went away but if he coughs or sneezes he gets some left shoulder and neck pain. Dr. Runnels notes that overall the claimant is at least 40 percent better but should continue conservative treatment.

Dr. Vincent Runnels, in his deposition, testified that it was not unusual for a patient to have a history of pain initially in one arm but later move to the other arm. Dr. Runnels stated that if a patient had a midline component to the disc and the neuro foramen was narrow on both sides you might have some transition pain. The doctor testified that when the claimant's two fingers went numb that clearly meant that the seventh nerve root was pinched and that from the outset he thought that the claimant had a C7 disc. Dr. Runnels stated that it is not uncommon that when one herniates a disc that they do not experience pain right at first. The doctor testified that a compressed nerve tingles and an inflamed nerve hurts. The doctor explained that the second thing that has to happen is that the nerve has to become inflamed so often several days may pass when the patient herniates a disc

before he gets arm pain, however, he may have a tingling or what they call pins and needles. The doctor explained that when you first herniate a disc its not inflamed but it might just tingle. The doctor testified that the disc might not hurt at all but in a few days when the inflammation sets in then the pain starts. Dr. Runnels responded "sure" when asked is there generally any correlation between a cervical disc and shoulder pain? Dr. Runnels explained that the nerve travels down the arm, and so the shoulder is on the way to the hand, so the more it is compressed the further down the arm the pain goes. Dr. Runnels stated that he bet that the claimant's herniated disc was caused by his job related event. Dr. Runnels testified that it is not common, or routine but he has seen it several times when someone is having severe neck pain and tingling in one arm and then it will switch to the other arm. The doctor testified that if you look at the MRI it is difficult to see why it was tingling on the right but it is just something that you see. Dr. Runnels stated that he has known of people waking up and they do not know what they did the day before but now they are in pain. The doctor testified that, "But usually they lift something and they are straining at something."

On cross examination Dr. Runnels testified when asked about the possibilities of the claimant herniating a disc on November 5, 2001, but it not becoming symptomatic until at a later time when he began to experience pain into his left side, Dr. Runnels responded that he thought that the lifting incident in November 2001 tore the claimant's annulus and he may have had some right sided referred

pain. Dr. Runnels testified that, "The small disc that is mentioned in the original MRI could be a tiny tear, a fissure, with a little bit of disc herniating through it, and he turns over in bed and shoves some more out, enough to cause him to need surgery. That happens all the time." Dr. Runnels continued on by saying that he thought that it was all due from the November injury. Dr. Runnels also explained that a small herniated disc often turns into a larger herniated disc since that is the nature and history of herniated discs. On redirect examination, Dr. Runnels was asked for his medical opinion within a reasonable degree of medical certainty and he responded, "I think he initially tore the annulus when he lifted the panel. And he might have had two tears and had some referred pain on the right. He gets the MRI, it just shows a tiny bulge at C-7, but that's enough to cause him neck pain and pains on motion of his neck." Dr. Runnels also stated that if the claimant had never jerked his neck he thought he would not need surgery and even though it has been four or five months he thinks that this event set the claimant up for his need for medical treatment. Dr. Runnels testified that he thinks that it is reasonably necessary in order to appropriately treat the C6-7 level that the C5-6 level must also be addressed.

Dr. David Davis, in his deposition, agreed that the claimant's disc protrusion on the left would not account for his right arm pain. Dr. Davis testified that when he examined the claimant initially he had point tenderness in his muscles which is more compatible with a localized pain rather than a referred or

radicular pain. Dr. Davis indicated that point tenderness is not the type of symptom that you would see when the underlying problem is a nerve problem caused by a disc. Dr. Davis testified that when he initially examined the claimant he did not feel that the information set forth in the claimant's MRI were what was producing the claimant's symptoms. Dr. Davis explained that in the first place he felt as though the claimant's problems were muscular skeletal pain and secondly that the claimant's disc protrusion at C6-7 was not very impressive on the first MRI and was much more impressive on the second MRI and these differences can arise from a change. Dr. Davis again stated that from his initial review the claimant's MRI did not look like it would be causing his problems. Dr. Davis indicated that on his initial visit he considered the claimant's problems to be muscular skeletal but now his problems in fact are a radicular type problem. Dr. Davis did agree that the disc bulge shown on the first MRI was in the same location of the disc bulge shown on the claimant's second MRI. Dr. Davis stated that there appeared to be a difference in the extent of the size of the disc defect but explained that many factors can vary the results of a test taken at two different time. Dr. Davis was asked, "Could it have been that there was a change in the disc itself?" He responded, "Yes." The doctor was then asked, "Are you prepared to say one way or the other?" Dr. David responded, "No." Dr. Davis testified that the claimant's MRIs indicated that he had pre-existing degenerative disc disease attributable to his age. Dr. Davis testified that when the claimant had his MRI done in Fort

Smith he had a disc protrusion at C6-7, which on that scan was not very impressive but either was worse than it seemed or got worse. Dr. Davis testified that if a doctor is going to do an anterior cervical fusion on somebody, you cannot do it and leave a degenerated disc right above the herniated disc because within a short period of time that disc will be herniated. Dr. Davis agreed that if the claimant's disc protrusion was caused by his November 5, 2001, incident then it would be fair to relate the claimant's symptoms to that work related injury. Dr. Davis also agreed that it would be easier for him to make that connection between the November 5, 2001, work related incident and the disc defect if in fact there had not been a period of four or five months before the claimant had symptoms consistent with the left disc defect.

On cross examination, Dr. Davis testified that he did not know that it would occur that if the left C7 nerve root was being pinched it would cause pain on the claimant's right side. Dr. Davis did agree that a herniation can cause muscles in a person's neck to spasm and, therefore, cause symptoms on the lateral side. Dr. Davis agreed that neck pain is a normal symptom associated with cervical disc herniation and that the identifying factor for the herniation is the presence of the pain radiating down into the arm. Dr. Davis also agreed that a patient does not always have radicular pain with a cervical disc herniation. Dr. Davis agreed that the fact that the claimant had neck pain in connection with his November 5, 2001, incident would be consistent with the disc defect occurring at that time. Dr. Davis stated that for the claimant's

single disc herniation with radicular symptoms according to the A.M.A. Guides, Forth Edition, he would assess the claimant with a 10 percent partial permanent impairment rating. As to restrictions, Dr. Davis would only recommend that the claimant avoid excessive cervical range of motion. Dr. Davis agreed that it was possible that the claimant's neck pain that he complained of in November 2001 was actually a symptom of a herniated disc.

After a complete review of all the evidence as well as a review of the party's briefs, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury to his neck and back on November 5, 2001, while working for the respondent. The claimant has testified to a work-related event on November 25, 2001, which resulted in the claimant injuring his right arm, left hand, neck and back while working with an eighty-pound piece of equipment in a very small restricted rather dangerous spot. The claimant testified that he reported this injury the next day but continued to work hoping that his problems would resolve. The claimant testified that with time his problems in his right arm and shoulder continued to worsen until he felt the need for medical treatment. The claimant has testified that at this point he reported to the respondent that he needed medical treatment as a result of his fall and he then was seen by Dr. Lachowsky. The MRI made in December revealed a herniation at the C7 level with degenerative changes present also. The claimant was treated by several medical providers and received conservative treatment for his neck and arm problems, all the while working for

the respondent. There is a difference of opinion between Dr. Runnels and Dr. Davis as to the etiology of the claimant's herniated disc, however, Dr. Runnels has explained in his deposition that it is not unheard of for someone to experience referred pain in an area different from where the true injury is located. Dr. Runnels has testified that within a reasonable degree of medical certainty, he thinks that the claimant initially tore the annulus when he lifted the panel and has experienced referred pain on the right. Dr. Runnels stated that, in his opinion, the claimant's need for medical treatment is as a result of the injury he experienced on November 5, 2001, while working with the eighty-pound piece of equipment. I find also that the claimant is very credible and note that he has continued to work for this respondent and not given in to any discomfort which he might have been experiencing as a result of his work related injury. Therefore, the respondent should pay for the medical cost for this claimant's compensable injury.

Both Dr. Davis and Dr. Runnels discussed what, in their opinion, the claimant's impairment rating should be for his neck and back problems. Dr. Runnels, based on the charts, assessed the claimant with having a 7 percent impairment rating for an unoperated herniated disc. Dr. Davis assessed the claimant with a 10 percent rating but indicated that he was relying more on the Fifth Edition rather than the Fourth of the A.M.A. Guides of Evaluating Impairment Ratings. Therefore, based on Arkansas law, I find that Dr. Runnels' assessment of 7 percent for this

claimant's unoperated neck and back problems is the appropriate impairment rating for his compensable injury.

FINDINGS & CONCLUSIONS

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

2. On November 5, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 2001.

4. The claimant has proven by a preponderance of the evidence that he sustained a work related injury to his neck and back on November 5, 2001, while working for the respondent. See discussion above.

5. The respondents should pay for all reasonable and necessary medical care for this claimant's compensable injury.

6. The claimant has proven by a preponderance of the evidence that he is entitled to a 7 percent impairment rating for his compensable injury. See discussion above.

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 injury to his neck and back on November 5, 2001, while working for the respondent.

The respondents shall pay for all reasonable and necessary medical care for this claimant's compensable injury.

The claimant has proven by a preponderance of the evidence that he is entitled to a 7 percent impairment rating for his compensable injury which the respondents shall pay.

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.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE