

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F000433**

**JAMES R. HATHCOCK, JR.  
EMPLOYEE**

**CLAIMANT**

**CITY OF LITTLE ROCK, ARKANSAS,  
EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES,  
BENEFITS ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED MARCH 12, 2004**

Hearing conducted March 10, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Kenneth A. Olsen, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Ms. Betty J. Attorney, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for additional benefits for his admittedly compensable back injury.

The claimant contended that he should be awarded additional benefits for medical care, beginning in October, 2001, and including surgery performed December 21, 2001, as well as additional temporary total disability benefits from the time of the surgery, December 21, 2001, until he returned to work July 9, 2002. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant's compensable injuries of January 4, 2000, were minor and not causally related to his need for treatment as of October, 2001. Specifically, they noted that the claimant received treatment in January, 2000, underwent an MRI scan at that time, and that his condition was thought to be a strain. They noted further that he was released to return to work

without restriction January 25, 2000, and that the condition revealed by an MRI scan in October, 2001, was not related to his condition in January, 2000. They further contended that his treatment was not authorized, as required by Rule 30, and, further, that his condition as of October, 2001, is related to his prior back problems which previously required medical attention, including surgery performed August 18, 1997, by Dr. Ronald N. Williams. They specifically contended that, contrary to the requirements of Rule 30, the claimant did not request additional treatment after January 25, 2001, until February 22, 2002.

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; the claimant suffered compensable injuries arising out of and in the course of his employment January 4, 2000; his average weekly wage was \$653.18; and that the respondents accepted the claim as compensable and paid benefits, including temporary total disability benefits from January 5, 2000, through January 25, 2000.
3. The preponderance of the evidence fails to show that the claimant's medical care beginning in October, 2001, was reasonably necessary in connection with his compensable injury.
4. The preponderance of the evidence fails to show that the claimant continued in his healing period and was totally incapacitated to earn wages from December 21, 2001, until July 9, 2002, as a result of his compensable injury.

## DISCUSSION

On January 4, 2000, the claimant was injured during his employment as a police officer for the City of Little Rock when an ambulance he was standing in was struck from the rear by another vehicle. The impact caused him to be thrown around inside the ambulance, striking his left knee on a gurney and his right side on a bench. He was taken to the emergency at Baptist Medical Center where his complaints included back pain, pain in the right lower ribs, and pain in the left knee. Diagnostic studies included a CT scan of the claimant's cervical spine and x-rays of his cervical spine, lumbar spine, left knee, chest, left leg, and rib detail films, right side. The emergency room physician, Dr. Marvin Leibovich, diagnosed acute cervical and lumbar strains and took the claimant off work.

The claimant testified that from the date of the incident until January 10 his symptoms did not change in character or intensity. He was then seen by Dr. Kenneth R. Johnston who extended his off-work status and recommended physical therapy and medication. Dr. Johnston had the claimant undergo an MRI scan January 19, 2000, which revealed that the lordotic curvature was maintained; disc desiccation at L5-S1 with mild posterior bulging; mild to moderate facet hypertrophy at L3-4 and L4-5 without disc bulge or neural foraminal stenosis; right hemilaminectomy changes at L5-S1; mild posterior bulging without significant canal or neural foraminal stenosis; and that the S1 nerve roots exit unimpeded. On January 14, 2000, Dr. Johnston assessed the claimant's condition as lumbar disc disease, cervical strain resolving, and thoracic contusion resolving. By January 24, 2000, after the MRI scan, he described the claimant's condition as low back pain - improved and wrote that he could return to regular duty January 25, 2000, but must continue physical therapy three times a week for two more weeks.

Accordingly, the claimant returned to work and continued his physical therapy. He testified that he was still having back pain and problems with his neck, ribs, and knees. However, the medical record indicates that the claimant did not return to the doctor for his back problems until October 8, 2001, although he did return for other unrelated ailments including psychiatric problems and gastroesophageal reflux prior to that. On October 8, 2001, he saw Dr. Kenneth R. Johnston whose note described the claimant's back symptoms and stated that the claimant did not know of any exacerbating accidents or incidents precipitating his problems. The claimant was next seen October 12, 2001, by Dr. William F. Blankenship whose note indicated that the claimant's complaints had been present for about five months and that the onset was "spontaneous". His diagnosis was degenerative disc disease of the lumbar spine and thoracic spine pain. Among his recommendations was an MRI of the lumbar spine. Thereafter, he had the claimant undergo lumbar epidural injection therapy at Baptist Hospital, which subsequently failed to alleviate his symptoms.

The claimant was then seen by neurosurgeon Dr. Scott M. Schlesinger and, later, by orthopedic surgeon Dr. Wayne L. Bruffett. On December 21, 2001, Dr. Schlesinger and Dr. Bruffett performed surgery, a lumbar decompression and laminectomy at L5-S1 by Dr. Schlesinger and a posterolateral spinal fusion at the same level by Dr. Bruffett.

Although the claimant's surgeons initially attributed the claimant's need for medical care to his January, 2000, injury, in their deposition, when presented with additional facts about the claimant's medical history, both physicians changed their positions. For example, Dr. Schlesinger testified that he was not aware of the claimant's visit to Dr. Barry Ford complaining of back pain December 21, 1999, approximately two weeks before his compensable injury in January, 2000. He also stated that the fact that he had been released January 24, 2000, to regular duty and did not see

a physician for back pain for several months would certainly argue against the surgery being tied to the claimant's work injury. Similarly, when presented with a more complete history of the claimant's back problems, Dr. Bruffett testified that he could not say what caused the claimant's recurrent disc.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Here, the record indicates that the claimant had a significant history of previous back problems which had required surgery in 1997 by Dr. Ronald N. Williams. The record also shows that the claimant was having significant back symptoms and pain in both legs in December, 1999, just prior to the compensable injury in January, 2004. Following his compensable injury in January, 2000, he was released to return to work and did not seek medical care for his back until several months later. Following his surgery, when deposed, his surgeons were unable to attribute his need for treatment in October, 2001, to his compensable injury of January, 2000. Thus, as contended by

the respondents, the preponderance of the evidence indicates that the claimant's back injury of January 4, 2000, was minor so that the preponderance of the evidence fails to show that his treatment in October, 2001, and his period of temporary total disability was sufficiently related to his compensable injury.

For the foregoing reasons, this claim for benefits should be, and it is, respectfully denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge