

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107345

JIMMY HILL, EMPLOYEE

CLAIMANT

NORTHWEST ARKANSAS TRUCKING, INC., EMPLOYER

RESPONDENT

LEGION INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED JUNE 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 3, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

_____A hearing was conducted in the above-styled claim to determine claimant's entitlement to additional workers' compensation benefits.

On February 3, 2004, a prehearing conference was conducted in this claim from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues.

The prehearing order is herein designated a part of the record as Commission's Exhibit No. 1.

Claimant contends that as a result of the compensable injury of June 18, 2001, he is entitled to the payment of temporary total disability benefits for the period October 10, 2002 through November 7, 2003. Respondents contend that as a result of a 10% impairment to the

body of a whole assessed by Dr. Reza Shahim, claimant was paid permanent partial disability benefits at the rate of \$209.00 per week; that a portion of the period asserted by claimant for temporary total disability benefits overlap the point and time that permanently partial disability benefits were being paid. Respondents contend that all permanent partial disability benefits paid to the claimant should be applied toward the temporary total disability benefits that he is now claiming.

The testimony of Jimmy Hill, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

_____Jimmy Hill, the claimant, with a date of birth of December 1, 1961, has a 10th grade education. Claimant commenced his employment with respondent on November 16, 2000, as a mechanic. Claimant denies that he experienced low back complaints or restrictions on his physical activity relative to his low back prior to June 18, 2001. On June 18, 2001, while discharging employment duties claimant suffered an injury of his low back. Respondent-employer, Arkansas Truck & Equipment, Inc., is a northwest Arkansas business, located in Springdale, Arkansas. At the time of his June 18, 2001, injury, claimant was discharging employment duties at Van Buren Tractor Shop. Claimant resided in Alma, Arkansas, at the time of the June 18, 2001, injury. Regarding the mechanics of the June 18, 2001, injury, claimant's testimony reflects:

I was working on a freightliner. The air conditioner was out on it and I put a new compressor and stuff on the motor and I went in there to see if it would kick in and run like it was supposed to and it wouldn't so I had to go up under the dash with a

fuse box and relays were and I found a relay and it was blown so I changed it and when I was climbing out from underneath the dash I was on my back and I was sliding out the door. I put my hand up here on the seat and a hand up here on the windshield pole to pull myself up and that's when my feet slipped and I fell out of the truck on the steps and to the floor. (T. 10-11)

Claimant later moved to the Jacksonville, Arkansas area where he came under the care and treatment of Dr. Reza Shahim. Claimant underwent a two level lumbar microdiscectomy at L4-5 and at L5-S1, under the care of Dr. Shahim. The evidence in the record reflects that respondent paid appropriate medical and indemnity benefits to and on behalf of the claimant subsequent to his June 18, 2001, injury. Claimant noted that after the surgery he continued to experience pain in his low back attributable to the June 18, 2001, compensable injury. A February 14, 2002, clinic note of Dr. Shahim relative to the claimant reflects, in pertinent part:

The x-rays of the lumbar spine shows normal alignment. I also obtained an MRI of his lumbar spine which I reviewed today. There is no evidence of disc herniation or nerve root compression. Mr. Hill mainly complains of a "popping Noise" in his lower lumbar region with movement. I don't see evidence of instability or fractures to explain this. His MRI of the lumbar spine is very good. I think he is maximally treated at this point, and we plan on releasing him from my care with followup on a prn basis. (CX 2, p3)

On March 10, 2002, Dr. Shahim authored a report relative to the claimant's anatomical impairment as a result of the June 18, 2002, injury and subsequently surgery:

His impairment rating for an operated disc herniation of the lumbar spine is 10% impairment of whole person. I believe his symptoms are at least 80% injury-related at work. (CX 2, p4)

The testimony in the record reflects that after claimant was assessed with the 10% impairment, respondents commenced the payment of indemnity benefits to correspondent with the rating, \$209.00 per week. Respondent paid the afore benefits through October 9, 2002.

The credible testimony of the claimant reflects that following the release by Dr. Shahim, he continued to experience residuals of the injury. Claimant reported to respondent for work. Claimant candidly acknowledged that while he did not know whether he would be able to discharge employment duties, since had been released he would attempt to do so. Claimant was not allowed to return to the employment of respondent because he could not physically perform the job task requirements. The record does reflect a May 14, 2002, document from Dr. Shahim certifying that the claimant was temporarily disable. (CX 2, p5). Further, the evidence reflects that on May 20, 2002, claimant underwent an MRI relative to his low back pursuant to the directions of Dr. Shahim. (CX2, p6)

On June 18, 2002, claimant was evaluated by Dr. Reginald J. Rutherford, a Little Rock neurologist, pursuant to a referral of Dr. Shahim. After reciting a history of the claimant's injury as well as treatment received relative to same, the June 18, 2002, report of Dr. Rutherford, reflects that he had access to the claimant's prior pertinent medical. The June 18, 2002, report of Dr. Rutherford, relative to the claimant, concludes:

Mr. Hill's examination is abnormal referable to loss of the left ankle jerk which indicates abnormality of the S1 myotome. His MI study is abnormal but the changes are relatively nonspecific and indeterminate significance at this juncture. Arrangements will be made for EMG/Nerve Conduction Study to ascertain whether or not there is evidence of nerve root irritation. If identified, a selective nerve root block will follow. While this is outstanding, Mr.

Hill will be treated with Arthrotec 75 mg twice per day with food and Amitriptyline in escalating dosage commencing with 25 mg at bedtime to be increased after one week to 50 mg at bedtime. Clinical follow up will be scheduled on the date of electro-diagnostic testing. (CX 2, p70)

Pursuant to an agreement of the parties, on July 23, 2002, a change of physician order was entered relative to the claimant wherein Dr. Patrick Chan became the claimant's treating physician relative to the June 18, 2001, compensable injury. (Commission's Exhibit #2). Claimant's treatment under the care of Dr. Chan included additional diagnostic studies, medication, and injections. Claimant further testified that Dr. Chan recommended proceeding with a discogram. Claimant's testimony reflects that the treatment rendered to him by Dr. Chan did aid in the reaction of some of his symptoms temporarily. The testimony of the claimant reflects that Dr. Chan was unable to proceed with further medication treatment because respondent refused to authorize same. There is evidence in the record to reflect that Dr. Chan was not a member of the respondent _____. As a consequence of the afore, claimant's treatment was transferred from Dr. Chan to Dr. Edward Saer, a Little Rock orthopedic physician, relative to his June 18, 2001, compensable injury.

The record reflects that claimant has not worked since attempting to report back to work for respondent in March 2002, after his release by Dr. Shahim. Claimant noted that he has been evaluated by Dr. Saer on one occasion and appointment has been scheduled, pursuant to direction the directions of Dr. Saer, further, to undergo the discogram.

Claimant's testimony reflects that he has not receive any bills from Dr. Chan. There is evidence in the record to reflect that some of the bills incurred by Dr. Chan relative to his

treatment of the claimant, have been paid by respondent. Claimant has continued to receive active medical treatment under the care of Dr. Shahim, Dr. Chan, and Dr. Saer since March 10, 2002. Respondent herein stated the payment of temporary total disability benefits to the claimant on November 8, 2003.

Claimant asserts entitlement to the payment of temporary total disability from October 10, 2002 through November 7, 2003. As previously noted, respondent paid indemnity benefits to the claimant subsequent to March 10, 2002, to correspond with the 10% anatomical impairment assessed by Dr. Shahim. The afore indemnity benefits were paid at a weekly compensation benefit rate of \$209.00 per week. Claimant's temporary total disability compensation rate is \$279.00 per week.

On September 4, 2002, Dr Chan authored an off work slip relative to the claimant directing the claimant to remain off work until November 4, 2002. (CX 2,p11). On October 18, 2002, after have rendered medical treatment to the claimant relative to the June 18, 2001, injury, Dr. Chan authored a physician statement reflecting that the claimant was still within his healing period and unable to work. (CX 2, p19). A review of the medical in the record reflect that claimant was seen on a number occasions by Dr. Chan through September 2003. During the entirety of the afore period, Dr. Chan did not release the claimant to return to work, or authored any documents reflecting that the claimant was capable of returning to work. (CX 2, p19-25)

On November 6, 2003, claimant was evaluated by Dr. Edward Saer. Following his examination of the claimant and review of prior pertinent medical records, Dr. Saer concluded in his November 6, 2003, report:

He presents with a difficult problem because there

is not an easy solution. I would recommend diskography before considering any surgical intervention, to confirm the source of the discomfort is either or both the lower two lumbar levels, but also to confirm that the levels above are normal. He may benefit from further surgery, but I suspect that he will have a prolonged recovery and will need significant rehab after surgery. He will need a change in his job activities in any event, with or without surgery. (CX 2, p27)

After a thorough consideration of all of the evidence in this record, to include medical reports and the testimony of witnesses, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 18, 2001, the relationship of employee-employer-carrier existed among the parties.
3. On June 18, 2001, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$279.00/\$209.00, for TTD/PPD benefits.
4. On June 18, 2001, the claimant sustained an injury arising out of and in the course of his employment.
5. The claimant was temporarily totally disabled for the period beginning October 10, 2002 and continuing through November 7, 2003.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of June 18, 2001.
7. The respondents have controverted the payment of temporary total disability benefits for the period October 10, 2002 through November 7, 2003, and any unpaid bills of Dr.

Patrick Chan.

CONCLUSIONS

The compensability of the claimant's June 18, 2001, injury in the employment of respondent is not disputed. Claimant asserts that as a result of the afore compensable injury he is entitled to the payment of temporary total disability benefits, in addition to prior periods, for the period October 10, 2002 through November 7, 2003. Further, claimant maintains that he incurred unpaid medical bills for treatment under the care of Dr. Patrick Chan, have been controverted. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

There is no evidence in the record to reflect that the claimant suffered any limitations or restrictions on his employment activity relative to his low back prior to the June 18, 2001, injury in the employment of respondent. Claimant underwent surgery under care of Dr. Reza Shahim and was assessed with a 10% whole body impairment on March 10, 2002.

The evidence in the record reflects that claimant continued to experience pain in his lower back and lower extremities attributable to the June 18, 2001 injury subsequent to March 10, 2003. Further, the evidence discloses that on May 14, 2002, Dr. Shahim authored a certificate relative to the claimant indicating that claimant was temporarily disable. The evidence preponderates that claimant continued to receive active medical treatment relative to the June 18, 2001, injury subsequent to March 10, 2002, both under the care of Dr. Shahim and other medical providers.

Claimant earned wages sufficient to entitle him to weekly compensation benefits at the

rates of \$279.00, per week for temporary total disability benefits and \$209.00 per week for permanent partial disability benefits. Subsequent to the March 10, 2002, rating by Dr. Shahim, respondent initiated the payment weekly indemnity benefits to correspondence with the claimant's impairment at the permanent partial disability rate. Nonetheless, the evidence preponderates that claimant continued to require and receive medical treatment relative to the June 18, 2001, compensable injury subsequent to March 10, 2002.

The claimant is entitled to temporary total disability during his healing period if he shows by a preponderance of the evidence that he had a total incapacitate to earn wages. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W. 2d 878 (1996). The healing period is defined as the period for the healing of the injury resulting from an accident. Ark. Code Ann. §11-9-102(12). The healing period continues until the claimant is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition then the healing period has ended. Conversely, so long as the underlying condition has not become stable and further treatment measures are provided to address the underlying condition, the healing period has not ended.

In the instant claim, the evidence preponderates that the claimant has not reached the end of his healing period relative to the June 18, 2001, compensable injury in the employment of respondent. Subsequent to the March 10, 2002, assessment by Dr. Shahim, claimant continued to receive active medical treatment relative to his June 18, 2001, compensable injury. Pursuant an agreement of parties, a change of physician order entered on July 23, 2002, changing the claimant's authorized treating physician from Dr. Regional Rutherford to Dr. Patrick Chan.

(Commission's Exhibit No. 2). Prior to the change of treating physician order, claimant had been evaluated by Dr. Rutherford pursuant to a referral by Dr. Hamlin. Dr. Rutherford, in his June 18, 2002, set forth recommendations to address the claimant's complaints attributable to the June 18, 2001, compensable injury. Once under the care and treatment of Dr. Chan, claimant did receive active medical treatment relative to his compensable injury. Dr. Chan also recommended a discogram and other diagnostic studies to address and identify the course of the claimant's symptoms. Claimant treatment was subsequently transferred from Dr. Chan to Dr. Saer, once it was ascertain that Dr. Chan was not a part of the respondents MCF. Dr. Saer continued to recommend the discogram in addressing the claimant's compensable injury. Claimant has not been released to return to work by any physician subsequent to May 14, 2002. The claimant has sustained his burden of proof by a preponderance of the evidence that he remain within his healing period and totally incapacitated from engaging gainful employment since May 14, 2002, to include the period October 10, 2002 through November 7, 2003. Respondents have controverted the payment of temporary total disability benefits to the claimant during the afore period. Respondents have paid indemnity benefits to the claimant for 45 week period at a reduced rate of \$209.00 during a portion of the time frame covered by the present claim for temporary total disability. Respondents may claim credit for the sums paid against their obligation relative to the payment of temporary total disability benefit to the claimant.

It is undisputed that the treatment rendered to the claimant under Dr. Patrick Chan was authorized pursuant to an order agreed to by the parties and entered by the Commission relative to a change of treating physician. Respondents subsequently learned that Dr. Chan was not a member of their MCO and claimant's treatment was transferred to Dr. Edward Saer. The

evidence preponderates that the medical treatment rendered to the claimant under the care of Dr. Patrick Chan, was reasonable, necessary, and related to the June 18, 2001, compensable injury. Respondents are liable for the incurred unpaid medical treatment rendered to the claimant under the care of Dr. Chan pursuant to Rule 30 of the Commission.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at a weekly compensation benefit rate of \$279.00, for the period covering October 10, 2002 through November 7, 2003, as a result of the claimant's compensable injury of June 18, 2001. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the discharge of the aforementioned obligation.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of June 18, 2001.

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable Steven McNeely, on the controverted portion of this Award, pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge