

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209095

CLARENCE HUTSON, EMPLOYEE	CLAIMANT
CITY OF DUMAS, EMPLOYER	RESPONDENT NO. 1
ARKANSAS PUBLIC ENTITIES IC WCT/ GALLAGHER BASSETT SERVICES (TPA), INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JANUARY 22, 2004

Hearing before Administrative Law Judge Dail Stiles on December 19, 2003, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Kenneth A. Harper, Attorney at Law, Monticello, Arkansas.

Respondents No. 1 represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. Terry Pence, Attorney at Law, Little Rock, Arkansas.

A hearing was held on December 19, 2003, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury on July 17, 2002, and that the claimant's earnings were sufficient to entitle him to a weekly temporary total disability rate of \$192.00.

It was stipulated that respondent No. 1 has paid intermittent periods of temporary total disability and attendant medical benefits.

At the hearing, the Second Injury Fund moved to be dismissed from this claim since there is no claim for wage loss disability. It was stipulated by the parties that the Second Injury Fund should be dismissed and accordingly, the Fund was dismissed from this claim.

The claimant contends that he is entitled to temporary total disability benefits commencing August 8, 2002 for one week and again for a period commencing April 28, 2003 and continuing through September 5, 2003. The claimant also contends he is entitled to ongoing reasonable and necessary medical benefits.

The respondents controvert any additional temporary total disability benefits and controvert continuing medical treatment as being unreasonable and unnecessary.

At the hearing, the claimant stated that he did not receive any temporary total disability payments in July of 2003. The respondents stated that they had paid the claimant temporary total through July 15, 2003. The respondents were given an opportunity to furnish documentation within 21 days of the hearing relative to what had been paid. Under cover letter of December 30, 2003, Mr. Frye, representing the respondents, furnished payment records which show that checks were cut, and the last check being cut on July 8, 2003 for \$384.00 for a two week period from July 2 through July 15, 2003. Mr. Frye also noted that all of those checks had been cashed. There was no response from the claimant contesting that documentation.

It was also noted early in the hearing that there is a child support lien in this file in the amount of approximately \$6,100.00.

The claimant asserted that he had come current on his child support payments. The claimant was given 21 days from the date of the hearing to offer documentation from the Lincoln County Office of Child Support Enforcement to demonstrate that he had indeed taken care of that obligation. No documentation was forthcoming.

STATEMENT OF THE CASE

The claimant was driving a garbage truck for the respondent employer on July 17, 2002. While dumping some refuse at the city dump, the truck overturned with the claimant. The claimant complained of sustaining injuries to his shoulder, leg and head. The claimant also stated that since his injury, he has experienced difficulties with high blood pressure and dizziness. The claimant denied having any hypertension problems prior to his compensable injury of July 17, 2003.

The claimant was initially treated by Dr. Heiles, a general practitioner in Star City.

In a letter dated August 6, 2002, Dr. Heiles stated that he first saw the claimant on July 18, 2002 and then saw him again on July 22, 2002. Dr. Heiles noted that the claimant was sent for an MRI on July 24, 2002, in Pine Bluff, and the results of that MRI were normal. Dr. Heiles noted that the claimant was to return to get a release to return to work, but he never returned to the clinic.

Subsequent to seeing Dr. Heiles, the claimant saw Dr. Lewellen, a general practitioner, on his own and was ultimately referred to Dr. Clark, an orthopedist in Pine Bluff.

Dr. Clark began treating the claimant on August 8, 2002, and diagnosed the claimant as having tendinosis or swelling and inflammation at the rotator cuff. Dr. Clark treated the claimant conservatively but ultimately decided that decompression surgery on the rotator cuff was appropriate. That surgery was ultimately performed on May 7, 2003, after being cancelled at the instance of the claimant on two separate occasions.

Dr. Clark's deposition was taken on December 3, 2003, and introduced into evidence.

Dr. Clark stated that after the rotator cuff surgery, he felt that the claimant could return to his work activities without any restriction. Dr. Clark stated that at no time during his treatment of the claimant did the claimant complain of back, neck or knee problems. Dr. Clark stated that by July 16, 2003, he felt the claimant could return to work, although, he had ordered a functional capacity evaluation.

The functional capacity evaluation was postponed on at least two separate occasions because of the claimant's hypertension. When he would report to take the functional capacity evaluation, his blood pressure was too high for him to take the test. The functional capacity evaluation was ultimately performed on September 5, 2003.

Although, the claimant denied having any problems with hypertension or dizziness prior to his compensable accident of July 17, 2002, documentary evidence introduced by the respondents demonstrates that that is not accurate. The claimant applied for Social Security disability in 1998 and was pursuing that claim on through 2000. A hearing before a Social Security Administrative Law Judge was held on March 7, 2000. In an opinion filed June 9, 2000, it was stated, inter alia:

The claimant testified he is unable to work due to problems with his eyes, hypertension, and neck, back and leg pain. He stated he takes medication but has dizziness and headaches daily. He also stated he wears a leg brace.

FINDINGS OF FACT

I. The claimant is entitled to one week of temporary total disability benefits commencing August 8, 2002, and terminating after one week.

2. The claimant does not demonstrate by a preponderance of the evidence that he is entitled to an additional period of temporary total disability benefits from April 28, 2003 through September 5, 2003.

3. The claimant does not demonstrate by a preponderance of the evidence that he is entitled to ongoing medical treatment as a result of his July 17, 2002 compensable injury.

DISCUSSION

Temporary Total Disability

An injured employee is entitled to temporary total disability compensation during the period of time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(13) (Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998). When the underlying condition causing disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation. American Greetings Corp. v. Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998).

In the instant case, Dr. Heiles kept the claimant off work for one week from the date of the claimant's compensable injury. The claimant contends he is entitled to a second period of temporary total disability benefits commencing April 28, 2003 and continuing through September 5, 2003. The respondents were given an opportunity post-hearing to offer documentation of payments made to the

claimant during that period, and the documentation shows that payments were made from May 7 through July 15, 2003.

There is nothing in the medical evidence that demonstrates to this examiner that the claimant would be entitled to temporary total disability benefits from April 28, 2003 until May 7, 2003, when temporary total disability benefits were reinstated by the respondents.

The period from July 15, 2003 until September 5, 2003, is a period in which the functional capacity evaluation was scheduled and rescheduled a couple of times. The reason for the rescheduling was claimant's hypertension. Although the claimant denied having any problems with hypertension prior to his compensable injury of July 17, 2002, the evidence in this case reflects that that is not the case. So the reason for the delay on the completion of the functional capacity evaluation was a medical problem the claimant was having that is not related to the compensable injury of July 17, 2002. In addition, Dr. Clark is clear in his deposition that, as far as he was concerned, the claimant was capable of returning to work on July 16, 2003.

Continuing Medical Benefits

The claimant contends he is entitled to ongoing medical benefits for his compensable injury of July 17, 2002. What constitutes reasonable and necessary treatment under the workers' compensation statute obligating the employer to provide such medical services "as may be reasonably necessary" for an injured employee is a question of fact for the Workers' Compensation Commission. Ark. Code Ann. §11-9-508(a); Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W.2d 463 (1997).

In the instant case, Dr. Clark, who became the claimant's primary treating physician for the injuries he sustained as a result of his compensable injury

of July 17, 2002, opined in his deposition that the claimant had no permanent impairment rating as a result of his injuries. Dr. Clark further opined that the claimant should be able to return to work with no restrictions whatsoever and clearly indicated that the claimant did not need any additional treatment for his shoulder, and no other complaints were made by the claimant to Dr. Clark.

The claimant simply does not meet his burden of demonstrating by a preponderance of the evidence of record that he is entitled to ongoing medical treatment as a result of his compensable injury of July 17, 2002.

AWARD

Respondents are directed to pay the claimant temporary total disability benefits in accordance with the findings of fact above. Because there is a child support lien in this case, this one week of temporary total disability benefits is to be paid pursuant to the provisions of Ark. Code Ann. §11-9-110.

Respondents are directed to pay the claimant's attorney, Mr. Kenneth Harper, the maximum attorney's fee on this award.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge