

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404346

HARL LEDFORD

CLAIMANT

SUPERIOR INDUSTRIES

RESPONDENT

CROCKETT ADJUSTMENT
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 5, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 28, 2004. 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 December 2, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a workers' compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

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

1. Compensability of the claimant's injuries to his left hip and low back.

2. Related medical.

3. The claimant's entitlement to temporary total disability from December 27, 2003, until March 9, 2004, and then from April 15, 2004, until May 13, 2004.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to additional medical benefits because he sustained a herniated disc for which he has not received adequate treatment. Additionally, the claimant's avascular necrosis may be compensable because even if it was not caused by the injury, it was likely aggravated by the injury to the point that the injury was the cause for the need for treatment. The claimant contends that surgery has been recommended and that he will be entitled to indemnity benefits while recovering from that surgery as well as some benefits for permanent disability. The claimant contends that he is entitled to an appropriate attorney's fee on any disability benefits not previously paid.

In regard to the foregoing issues the respondents contend that the claimant did not sustain an injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records and a letter marked Claimant's Exhibit No. 1, a letter marked Claimant's Exhibit No. 2 and Commission's Form AR-3 marked Claimant's Exhibit No. 3. The respondents submitted medical records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that on December 2, 2003, he was cleaning up and as he was putting away a piece of pipe he fell on his left side onto the concrete floor. The claimant testified that he immediately experienced extreme pain in his low back, left leg and left hip. The claimant testified that he immediately reported his incident to a supervisor, Danny Laney. The claimant testified that since he worked the second shift and this event happened at approximately 11:00 p.m., the respondent did not send him to the doctor until the next day. The claimant testified that he was sent to Dr. Moffitt's office but was seen by the doctor's nurse practitioner, noting that he was having pain in his left leg, hip and lower back. The claimant stated that he told the nurse practitioner that he had pain in his low back. The claimant stated that he was prescribed medications and returned to work on light duty.

The claimant testified that prior to December 2, 2003, he had sprained his back a couple of weeks before but that it had healed up and he was not having any problems with it. The claimant also

agreed that the sprain in his back at this earlier time was at a higher level than what his current problem is. The claimant testified that it had been a couple of years since he had had any medical treatment for his back prior to December 2, 2003.

The claimant testified that he does metal fabrication work for the respondent and is always picking up pieces of steel, angle iron and plate, noting that he handles at least fifty pounds to two or three hundred pounds in order to do his job. The claimant agreed that his job was a heavy physically demanding job. The claimant stated that at the time of his accident he had been working for the respondent six months. The claimant remembers that he went to Dr. Moffitt's office several times but did not get any better and was eventually seen by Dr. Cooper who tried to put a bone graph into the femoral end of his left hip. The claimant agreed that he underwent this surgery on January 17, 2004, and was taken off work at that time and did not return to work until Dr. Moffitt released him on March 9, 2004, at which time he did return to work for the respondent. The claimant testified that since he had been off of his left hip for several weeks it felt pretty good but within a couple of days it got inflamed again and continually got worse. The claimant remembers that he was still having back pain and he went back to Dr. Moffitt a couple of times and was prescribed physical therapy as well as referred to another physician. The claimant agreed that up to this point his treatment had been paid for by the respondent. The claimant testified that at this point while he was waiting to see another doctor, he was in so much pain

he went to the emergency room. The claimant testified that it was at the emergency room that he saw Dr. Raben and that he administered disc space injections as well as did an MRI. The claimant agreed that Dr. Raben on April 15, 2004, and that he remained off work until May 13, 2004. The claimant testified that he has continued to work since May 13, 2004, although he has missed a few days due to his pain. The claimant explained that he was still having extreme pain in his hip and down his left leg and in his low back. The claimant agreed that he understands that the MRI of both his hips indicate that he has avascular necrosis but stated he is only having pain and discomfort in his left hip. The claimant again stated that his left hip problems started on December 2, 2003, and that as a result of his injury he is on several medications, specifically, Oxycotin, Percocet, Carbamazepine and Imipram. The claimant testified that he is still working as well as taking his medications.

The claimant agreed that he drew short term disability during the time following his surgery in the amount of \$88 a week for a period of six weeks. The claimant agreed that he also drew short term disability for the one month he was off in April to May 13, 2004. The claimant also agreed, on cross examination, that his group health paid their portion of his medical bills to date. The claimant testified that while working for Halton Crane Service several years earlier he had fallen off of a trailer and sprained his back. The claimant testified that he was treated by Dr. Moffitt for approximately three weeks but that since that time he

has had no treatment by Dr. Moffitt up until the December 2003 event. The claimant testified that he has seen a chiropractor off and on all of his life and in the year 2003 was seen by Dr. Berger. The claimant agreed that he is doing the same job for the respondent as he was doing before his December 2, 2003, accident. The claimant agreed that he has gotten several raises since that time and he has had no problems with his right hip and that currently he did not have any appointments scheduled with Dr. Raben or Dr. Foster. The claimant agreed that a portion of his bills from Dr. Raben have been paid by his group health but that none of the bills to Dr. Berger have been paid.

On redirect examination, the claimant testified that he is doing the same job but receives help from his co-workers in order to get the job done. The claimant explained that his co-workers know that he is hurt so they help him out so that he will not have to lift or carry anything. The claimant again stated that prior to December 2, 2003, he did not have any reason to believe that he needed treatment for his left hip.

The medical records set forth that the claimant was seen at the Arkansas Occupational Health Clinic on December 3, 2003, by Max Beasley, a physician's assistant. Mr. Beasley notes that the claimant sustained a fall at work on December 2, 2003, which caused him to fall backwards and injure his left hip, noting that he denies any back but does report having some pain radiating from his left buttock down to his left knee. Mr. Beasley writes that the claimant denies previous problems with his left hip although

reports that he had bipolar disorder and takes medications for this as well as arthritis. X-rays taken at this time reveal no fractures or dislocations and the claimant was diagnosed with left hip and lumbar strain. Pain medication was prescribed and he was to return to work but to avoid bending or twisting at the waist and lifting more than ten pounds. Mr. Beasley writes on December 10 that he has seen the claimant who reports he is still having some pain in the left SI and left piriformis region and that he has pain particularly when he lifts his left leg during walking. Mr. Beasley recommended some exercises for the claimant and he was to continue with his restrictions. On December 17, 2003, Mr. Beasley saw the claimant for his continued complaints of pain at which time he recommended various medications, gave the claimant an injection of Depo Medro and referred him to physical therapy and to continue with his present work restrictions. Dr. Gary Moffitt writes on December 19, 2003, that the claimant has been to physical therapy and is complaining mostly of pain in the low back area on the left side. Dr. Moffitt writes that the claimant is thought to have a lumbar strain with radiculopathy and he was prescribed medication and was to continue with the same work restrictions. On December 23, 2003, Dr. Moffitt notes that the claimant seems stable, he says his pain is no worse but is not much better, even though the injections he received did help initially. Upon examination, Dr. Moffitt notes that the claimant does have some spasm and tenderness to palpitation in the left lumbar sacral area and Dr. Moffitt prescribed medications, instructed to walk, use heat and to

continue with the same work restrictions. Dr. Moffitt writes on December 30, 2003, that he would recommend that the claimant undergo an MRI and at this same time the doctor recommended that the claimant continue with the same work restrictions and a different pain medication was prescribed. On December 5, 2004, Dr. Moffitt notes that the recommended MRI was not approved by the respondent and that x-rays of the claimant's hip did not reveal any abnormalities. The doctor notes that since physical therapy was not helpful and he was continued on his recommended medications as well as work restrictions. On November 9, 2004, Dr. Moffitt notes that the claimant continues to have pain and difficulty with walking. The doctor writes that the claimant has had an MRI of his low back which revealed a small moderate disc bulge at L5-S1 and that there appeared to be some abutment of the left L5 nerve root lateral to the neuro foramen at this area. Dr. Moffitt writes that the claimant underwent MR testing of his hips since the doctor was concerned about their appearance on the x-rays and that the claimant was found to have bilateral avascular necrosis of the femoral heads with the left more involved than the right. Dr. Moffitt notes that there also could be present a stress fracture. The doctor notes that in light of the injury which the claimant sustained on December 12 it was not likely that that injury caused the claimant's bilateral avascular necrosis of the hips and also there had not been enough time for an AVN to occur. Dr. Moffitt does write that he thinks that the incident on the twelfth of December aggravated the claimant's pre-existing bilateral avascular

necrosis of the claimant's hips. Dr. Moffitt recommended that the claimant be seen by an orthopedic surgeon and he could continue to work with the same restrictions.

Dr. Scott Cooper writes on January 16, 2004, that he has seen the claimant for his avascular necrosis of both of his hips and had recommended a core decompression on the left. Dr. Cooper writes that he is not convinced that all of the claimant's symptoms are coming from his avascular necrosis, noting that he, the doctor, believes that the claimant became symptomatic after his injury, further noting that some of the claimant's symptoms may be spine related. Dr. Cooper notes that the claimant's MRI does suggest an L5,S1 disc bulge and recommended that a nerve conduction test be made. Dr. Cooper writes on March 8, 2004, that the claimant is doing well and he is not on his crutches, although he is walking with a bit of a limp. The doctor notes that the claimant is having absolutely no symptoms with his right hip and that the x-rays of the claimant's left hip show where they drilled and the bone graph was implanted. Again the doctor notes that the claimant is asymptomatic as to his right hip and does not feel he can afford the bone graphing even though he understands the risks of waiting. Dr. Cooper writes that the claimant is still hurting in his back and even down into his anterior leg, noting that he should return to Dr. Moffitt for further evaluation in regard to his back since this might be a workers' comp problem. The doctor notes that certainly the claimant's hip avascular necrosis does not appear to be a workers' compensation problem. Dr. Cooper again writes that

the claimant has some pain in his mid thigh on the left but that the pain in his left hip is considerably less. Dr. Gary Moffitt writes on March 9, 2004, that he has seen the claimant for his left hip and lumbar strain noting that he had a deforming surgical procedure on the left hip six weeks ago. Dr. Moffitt writes that the claimant reports that his leg pain improved significantly after his surgery but that he is still having a spot of soreness in the middle portion of his low back but the pain does not go into his legs. The doctor writes that he thinks the claimant has a lumbar facet strain and instructed him with exercises as well as given medications and released to return to work without restrictions. On March 24, 2004, Dr. Moffitt notes that the claimant has been in physical therapy but did not feel it was helping very much. The doctor notes that the claimant has developed significant pain in the SI region bilaterally although it is worse on the left, noting that it is a burning pain and severe. The doctor writes that the claimant is having difficulty walking and using his crutches, noting that he did not have any specific injury to cause this exacerbation of pain. Dr. Moffitt again diagnosed the claimant with having an SI strain and recommended physical therapy as well as medication. The doctor recommended that the claimant can return to work but should not lift, push or pull more than five pounds, be able to sit down when needed and to limit bending and twisting at the waist. Dr. Moffitt writes on March 31 that he though the claimant had SI problems but he has not responded to physical therapy and that the therapist is not finding significant signs of

a SI problem. Dr. Moffitt recommended that the claimant undergo a MRI and be referred to Dr. Luke Knox for his opinion. Dr. Moffitt recommended that the claimant continue to work with the same restrictions as well as to continue on his medications. The claimant underwent a MRI on April 8, 2004, to his low back. The results of this test indicate that there is dissection of the L5-S1 intervertebral disc with findings consistent with posterolateral/lateral disc herniation on the right at L5-S1.

Dr. Cyril Raben writes on April 20, 2004, that he has seen the claimant for his slip and fall accident of December 3, 2003. Dr. Raben reviewed the claimant's MRI done on April 9, 2004, as well as his January 2004 MRI and notes that there is still dissection of the bottom most disc with an area of hypointensity indicating a subannular herniation. After examination, Dr. Raben assessed the claimant with having disc derangement with subannular herniation, possible sciatica irritation, SI joint abnormality on the left and a previous decompressed avascular necrosis of his left hip. Dr. Raben recommended disc space injections and depending on the results of this treatment, perhaps an arthroscopically assisted micro diskectomy with annuloplasty versus an injection of the SI joint should be fail to relieve his symptoms with the first procedure. Dr. Raben wrote that most certainly, within a reasonable degree of medical certainty, the area of hypointensity (the subannular herniation) could have been caused by his on the job injury. Dr. Raben writes on May 10, 2004, that the claimant is about 50 percent better and that he is able to sit two hours, stand

four hours and walk for four hours and sleep eight hours. Dr. Raben notes that the claimant wants to return to work so the doctor gave him a return to work note starting on Thursday, cautioning the claimant that his return to work may cause an exacerbation of his symptoms. Dr. Raben recommended that the claimant continue working with his chiropractor. On May 18, Dr. Raben notes that the claimant is taking medications as well as seeing his chiropractor noting that the disc space injections he received gave him minimal relief of his back and leg pain. Dr. Raben writes that the claimant is wanting to proceed with surgical intervention and that he was being set for an arthroscopically assisted discectomy and annuloplasty at the L5-S1 level on the left. When Dr. Raben saw the claimant on May 25, 2004, it is noted that he has improved with the conservative treatment provided by his chiropractor and at this time is wanting to hold off on any surgical intervention. Dr. Raben writes on June 1, 2004, that the claimant was seen for a trial of RS electro therapy, noting that the claimant was instructed how to use the electro therapy unit. The doctor writes that the claimant seemed to get pain relief during the trial test of the unit. On June 8, 2004, the claimant was seen by Dr. Scott Cooper for his continued complaints of hip and back problems. Dr. Cooper notes that the claimant's synthetic bone graft has not completely incorporated but is looking better than it had before. X-rays taken that day did not reveal any fractures. The claimant saw Dr. Raben's nurse practitioner on July 6, 2004, for follow up of his ongoing back problems. A review of the claimant's

medications indicate that he is taking Methadone, Vioxx, Percocet, as well as Testosterone, noting that he has complications from these drugs ranging from constipation to exhaustion. The nurse practitioner writes that the claimant is seeing his chiropractor three times a week and is wearing a corset. It is noted that the claimant has a stabbing pain into the anterior aspect of his left hip with an ache down the anterior aspect of the thigh on the right as well a stabbing sensation in his low back more on the left and down the posterior aspect of his left leg. Arthroscopic diskectomy at the L5-S1 level was discussed again but it is noted that the claimant wishes to wait pending an outcome of his workers' compensation claim.

Dr. Stevan M. Van Ore writes to the claimant's attorney on September 9, 2004, setting forth that the claimant had bilateral avascular changes in both femoral heads found approximately one month after his fall. The doctor writes that this type of necrosis can show up in two weeks. Dr. Van Ore writes that the claimant also has a herniated disc at the L5-S1 with encroachment further noting that he didn't have either of these problems until his fall. Dr. Van Ore writes that within the realm of medical possibility this is all related, further writing that the claimant needs a total left hip and possibly a diskectomy.

After a complete review of the evidence and testimony in this matter, I find that that claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on December 2, 2003, and also aggravated a pre-existing left hip

problems while working for the respondent. The claimant has testified that while at work he fell on his left side onto the concrete floor, felt immediate pain, reported his fall to his supervisor and that medical treatment was provided to him by the respondent. Tests of the claimant's low back and left hip reveal that the claimant does have a herniated disc at the L5-S1 level and that he has avascular necrosis of his left hip. I find that the claimant's avascular necrosis was pre-existing, however, was non symptomatic until the claimant's fall after which he has been consistently symptomatic on the left side. The respondents therefore should pay for all treatment of the claimant's left hip problems. The respondents should also be responsible for the treatment of this claimant's low back problems and treatments recommended by his treating physicians. I further find that the claimant is entitled to temporary total disability from January 17, 2004 until March 9, 2004, and then again from April 15, 2004 until May 13, 2004. The claimant has testified that during these periods of time he did draw short term disability for which the respondents will be entitled to a credit for the amounts paid through these benefits. As to temporary total disability, the claimant underwent a graft to his left hip on January 17, 2004, and was not released by his physician following this surgery until March 9, 2004. Although it is not as clear as to when Dr. Raben took the claimant off work in April of 2004, the claimant has testified that he drew short term disability from the respondent from April 15, 2004 until May 13, 2004. Dr. Raben's records clearly set forth that the

claimant was released to return to work on May 13, 2004, indicating that he had been taken off work prior to that.

FINDINGS & CONCLUSIONS

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

2. On December 2, 2003, the relationship of employee-employer existed between the parties.

3. The claimant is entitled to a workers' compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left hip and his low back on December 2, 2003, while working for the respondent. See Discussion above.

5. The respondents shall be responsible for the medical treatment for this claimant's left hip as well as his low back subsequent to his December 2, 2003 fall.

6. The respondents shall pay temporary total disability to this claimant from January 17, 2004 to March 9, 2004, then from April 15, 2004 until May 13, 2004. The respondents will be entitled to credit for the short term disability benefits which this claimant received during these periods of time that he was off work due to his medical problems. Also, see Discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney will be 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 low back and left hip while working for the respondent on December 2, 2003.

The respondents shall pay for the cost of this claimant's medical treatment for his compensable low back injury, as well as his compensable left hip injury.

The respondents shall pay temporary total disability to this claimant from January 17, 2004 to March 9, 2004, then from April 15, 2004 until May 13, 2004.

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