

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F212497

CHARLES NUNN, Employee	CLAIMANT
EXPRESS FLEET MAINTENANCE, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 29, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 14, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his back on October 23, 2002.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$208.00 for total disability benefits and \$156.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.

2. Claimant's entitlement to additional temporary total disability benefits.
3. Attorney fee.

The claimant contends that as a result of his compensable injury he is entitled to additional medical treatment. Claimant presented himself to the Siloam Springs Hospital emergency room and was referred to Dr. Runnels or a neurosurgeon of his choice. Claimant further contends he is entitled to additional temporary total disability benefits and an attorney fee.

The respondents contend the claimant is not entitled to additional medical treatment or temporary total disability benefits as a result of his compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 14, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits or medical treatment as a result of his compensable injury.

FACTUAL BACKGROUND

The claimant is a 29-year-old man who went to work in the respondent's maintenance department. Claimant's job duties required him to perform alignments, oil changes, tire changes, mounting and balancing of tires, brake work, and general

maintenance on trucks and trailers. The parties have stipulated that claimant suffered a compensable injury to his low back while breaking a bolt loose on a truck on October 23, 2002.

Following his injury the claimant sought medical treatment from Dr. Rebecca Lewis on October 24, 2002. X-rays were taken, claimant was given medication, and claimant was allowed to return to work at light duty. Claimant continued to be evaluated by Dr. Lewis and one week of physical therapy was ordered. On November 1, 2002, claimant was released to return to work at full duty by Dr. Lewis. Claimant returned to work for respondent and continued working until he was terminated on or about December 12, 2002.

Immediately before or after claimant's termination he was involved in an accident with another employee of the respondent after they had been drinking. This other employee wrecked the truck and claimant left the accident scene without waiting for the police. Claimant did not receive any additional medical treatment for his back until he sought treatment at the Siloam Springs emergency room on February 2, 2003. Claimant attributed his back pain at that time to his prior compensable injury. Since that time the claimant has been evaluated at the emergency room on several occasions and also by several treating physicians.

As previously noted, respondent initially accepted this injury as compensable and paid some compensation benefits. Claimant has filed this claim contending that he is entitled to additional temporary total disability benefits and additional medical treatment subsequent to December 12, 2002.

ADJUDICATION

In order to be entitled to additional medical treatment or temporary total disability benefits claimant has the burden of proving by a preponderance of the evidence that the

proposed medical treatment and period of disability are causally related to the original compensable injury. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proof.

Following his injury on October 23, 2002, claimant was evaluated by Dr. Rebecca Lewis on October 24, 2002. X-rays were taken and were read as normal. Dr. Lewis diagnosed claimant's condition as an acute lumbar strain with bilateral leg pain. She prescribed medication and indicated that she would re-evaluate the claimant the next week.

Dr. Lewis' next evaluation occurred on October 28, 2002. Dr. Lewis stated that claimant had resolving lumbar strain with persistent pain. She continued claimant's medication and prescribed physical therapy for five days. Dr. Lewis' report of October 30, 2002 indicates that claimant's condition is improving.

The patient does state that his physical therapy is helping. He is anxious to get back to his regular work and regular pay. He is having no complaints of persistent numbness or tingling of the legs and states that he has better mobility, flexion, and rotation.

Upon physical examination today, the patient does have normal gait and has no difficulty sitting on the exam table. Examination of straight-leg raising test is negative. Reflexes are brisk at the patellar and Achilles's tendons. There is good flexion. The patient does have full flexion and can touch his toes today. He is also able to rotate his trunk normally.

Based upon her findings Dr. Lewis indicated that claimant's lumbar strain was resolving, that he should continue physical therapy, and it was anticipated that he would be able to return to his normal work duties in a few days.

Dr. Lewis' next evaluation of the claimant occurred on November 1, 2002. Based upon her findings of that day, Dr. Lewis released claimant to return to work to normal duty

and noted that no additional medical treatment would be necessary.

He has been through a course of physical therapy and is actually doing quite well. He has pain localized now over the left lower spine. He has been undergoing some therapy with good results of pain relief and strengthening of his muscles.

Upon physical examination today, the patient is revealed to have normal gait. There is negative straight-leg raising test. His reflexes are brisk at the patellar and Achilles tendons. There is no hamstrings or quadriceps weakness.

Plan: The patient will be released back to normal duty. He can continue some strengthening exercises which we did give him today. He should finish physical therapy today and then should need no further treatment.

In addition, the physical therapist note of November 1, 2002 indicates that claimant's overall condition has improved. The physical therapist notes that claimant was released to return to regular duty as of that date.

Claimant did in fact return to regular duty for the respondent on November 2, 2002. Claimant testified that although he returned to his regular duty he was unable to perform his regular job activities. However, claimant testified that he only missed one day of work subsequent to his return to work and that was the day before his termination on or about December 12, 2002.

Significantly, claimant testified that during this period of time he repeatedly complained of back pain to various supervisors of the respondent and that he requested additional medical treatment which was denied by the respondent. Testifying on behalf of respondent was Jackie McGinnis, the respondent's office manager. McGinnis testified that after claimant returned to work on November 2, 2002, he saw claimant on a daily basis until his termination. McGinnis testified that claimant had no problems performing his job. McGinnis said that on the second day after claimant returned to work he indicated that his

back was stiff but that he could continue working. McGinnis indicated that claimant reported no other complaints and never asked to return to Dr. Lewis. McGinnis testified that if claimant had complained of needing to go back to see a physician, the procedure was for any supervisor to bring claimant to McGinnis in order to schedule an appointment. McGinnis went on to testify that claimant was fired for excessive tardiness, absenteeism, and a disrespectful attitude toward management. In reviewing McGinnis' testimony, I do note that McGinnis is the son-in-law of Doug Rockwell, the owner of respondent.

Testifying on behalf of claimant by deposition was Wendell Elliott. Elliott testified that he did not actually work for the respondent but instead worked for Rockwell Transportation. Elliott testified that both of these companies were owned by Doug Rockwell and based upon the evidence presented it would appear that they were located on the same premises. Elliott testified that he was the operation and sales manager for Rockwell Transportation and that he saw claimant for a few minutes each day after claimant returned to work. Elliott did testify that sometime prior to his termination claimant did mention once in passing that his back was still hurt or was sore. Interestingly, claimant testified that he asked various people about returning to a treating physician and was refused. One of these people included Wendell Elliott. However, Elliott testified that he had no knowledge that claimant had ever asked to return to a physician.

Following claimant's termination on or about December 12, 2002, claimant did not receive any additional medical treatment until February 2, 2003, when he saw Dr. Maul in the Siloam Springs emergency room. Claimant at that time was complaining of back pain which he attributed to his prior work-related injury. Dr. Maul diagnosed the claimant as suffering from a disc bulge at the L3-4 and L4-5 levels with mild spinal stenosis. Furthermore, when claimant sought medical treatment from the Siloam Springs emergency room on March 12, 2003, the physician at that time diagnosed claimant as suffering from a herniated disc at the L3-4 and L4-5 levels. These diagnoses appeared to be preliminary

in nature since they are not supported by radiology testing. Shortly after claimant was seen by Dr. Maul in the emergency room on February 2, 2003, a CT scan of the claimant's lumbar spine was performed on March 3, 2003. That CT scan was read as normal with a normal spinal canal and no evidence of disc herniation. Furthermore, the diagnosis of a herniated disc made on March 12, 2003 is not supported by an MRI scan performed five days later on March 17, 2003. The MRI scan of the claimant's lumbar spine was read as within normal limits by Dr. Michael Morse.

The spinal cord ends at the L1 level and is normal in appearance. The lumbar vertebral bodies show normal alignment and no pathologic signal intensities. The intervertebral disc spaces are well maintained. There is no disc herniation or spinal stenosis.

IMPRESSION:

This MR of the lumbar spine is within normal limits.

In the course of his treatment claimant also was evaluated at St. Frances Hospital in Tulsa. A radiology report dated April 25, 2003 reveals that claimant's bones, joints, and disc spaces are normal. The report also notes that the curvature is not unusual and that there are no significant radiographic abnormalities.

A claimant requesting additional medical treatment or temporary total disability benefits does not have the burden of offering objective medical findings establishing entitlement to those benefits. However, the medical evidence is obviously a factor to be considered in determining whether a causal connection is present.

In this particular case, claimant has made a number of complaints which seem out of proportion to the objective findings. Medical reports indicate that claimant has complained of dragging his leg and claimant testified that he has had trouble falling down. In fact, claimant testified that he developed weakness in his legs while walking through Wal-Mart and that precipitated his visit to the emergency room on February 2, 2003.

Claimant also testified that weakness in his legs caused him to fall off the porch of his mother and father's home and resulted in him seeking treatment from St. Frances Hospital in Tulsa. Despite these complaints, objective testing in the form of x-rays, a CT scan, and an MRI scan of claimant's cervical spine have all been read as normal by the treating physicians.

In summary, in order to be entitled to additional medical treatment or temporary total disability benefits, claimant has a burden of proving by a preponderance of the evidence that his current condition is causally related to his original compensable low back injury. Here, claimant was released by Dr. Lewis to return to full duty with no restrictions on November 1, 2002. Claimant returned to work for respondent and continued working until he was terminated on or about December 12, 2002. Although claimant contends that he was unable to perform his job duties, Jackie McGinnis, the office manager for respondent, testified that claimant had no problems performing his job. He also indicated that claimant never requested additional medical treatment from Dr. Lewis. Claimant also testified that he requested permission for additional medical treatment from Wendell Elliott. However, Elliott testified that he had no knowledge of claimant asking to return to see a physician. After claimant's termination on or about December 12, 2002, claimant did not receive any additional medical treatment until February 2, 2003. Although claimant at that time did attribute his continued problems to his work-related injury, my review of the medical records indicates that claimant's complaints and symptoms are not supported by the medical evidence. A CT scan, MRI scan, and other radiographic testing have all been read as normal. Although a claimant is not required to offer objective findings establishing his entitlement to additional medical treatment or temporary total disability benefits, a comparison between claimant's complaints and the medical evidence is a relevant factor which may be considered.

Given the foregoing evidence, I find that claimant has failed to prove by a

preponderance of the evidence that he is entitled to additional medical treatment or additional temporary total disability benefits as a result of his compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment or temporary total disability benefits as a result of his compensable low back injury. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE