

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F308513

**ROBERT LEON PAVEL,
EMPLOYEE**

CLAIMANT

**UNIVERSITY OF ARKANSAS
FOR MEDICAL SCIENCES,
EMPLOYER**

RESPONDENT

**ARKANSAS INSURANCE DEPARTMENT,
PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 23, 2004

Hearing conducted February 18, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Ms. Emily Paul, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Richard S. Smith, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over whether the claimant suffered a compensable low back injury on the job, or merely experienced symptoms related to his pre-existing back problems.

The claimant contended that he sustained either a new injury or an aggravation of his pre-existing condition as the result of two painful incidents at work on July 7, 2003, for which he requested benefits, including reasonably necessary medical and related expenses. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant had previously sought medical attention for pre-existing back problems, with associated objective findings, and that his current condition is simply a manifestation of his prior problems and does not represent a compensable injury which can be established by medical evidence, supported by objective findings, as required by the Act.

Specifically, they contended that any objective finding was merely a continuation of the claimant's pre-existing difficulties.

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, including July 7, 2003, when the claimant's average weekly wage was \$1,134.77.

3. The preponderance of the evidence shows that on July 7, 2003, the claimant sustained a compensable injury, arising out of and in the course of his employment, which has been established by medical evidence, supported by objective findings.

4. The medical care received by the claimant has been reasonably necessary in connection with his compensable injury and is the responsibility of the respondents.

DISCUSSION

The claimant, a registered nurse 52 years of age at the time of the hearing, testified that he injured his back on two occasions in July, 2003, during his employment with UAMS. His claim for benefits is complicated by his history of prior back problems.

For example, as he admits and the medical record reveals, the claimant has had back problems at least since a lifting incident in approximately 1984. He also has suffered from arthritis in his hands beginning in the 1990's and has taken Motrin for his back and hand problems for several

years. Then, in 2000, his back was injured again when a motorcycle he was riding was struck by another vehicle and he was knocked through the air, after which he underwent a CT scan, which revealed degenerative changes but no fracture. In April, 2003, he consulted his family physician, Dr. Robert T. Cheek, for hand problems as well as complaints that his back was getting more stiff and had lost range of motion. The physician's note of April 10, 2003, indicated that he had called complaining that he had a "disc problem" and, later, an April 17, 2003, note shows that he presented to Dr. Cheek's office and requested a rheumatology work-up. The claimant also testified that he had received considerable chiropractic care in the past and, just prior to the July, 2003, problem which is the subject of this case, he had completed a course of therapy and chiropractic care for low back pain.

At the hearing, he testified that on that on July 7, 2003, he developed symptoms of a back injury first as the result of working with a large male patient who was confused and uncooperative. His symptoms began when he was bending over the patient, trying to assist him in returning to bed, which the patient was resisting. He stated that the patient was not steady on his feet and he did not want to let him fall. After the patient had been placed in bed, the claimant got down on his hands and knees to clean the floor and felt worsening symptoms.

He testified that, after the cleaning the floor, his back was "spasming" and he sat on a chair to rest. After a few minutes, he was asked by a female patient for help with using a bedside commode. While helping this patient, his symptoms were greatly increased as he was leaning forward toward her and she leaned forward from the commode, placed her hands on top of his shoulders, and pressed down in a gesture of gratitude. The claimant testified that this caused great

back pain as well as symptoms of shooting pain, going down his right leg, symptoms which were more severe than he had experienced in the past.

He then reported his problem and sought care at the employer's emergency room, where he was given medication and his history of scoliosis, degenerative joint disease, and arthritis was noted. He testified that he was also advised to follow up with his family physician, Dr. Cheek.

Accordingly, on July 14, 2003, he was seen by an intern working with Dr. Cheek, Dr. James B. Knutson, who recommended an MRI which was performed the next day with findings that included a broad-based disc bulge and left posterolateral subarticular disc protrusion at L4-5, with probable impingement of the left L-5 nerve root. Other findings included a small central disc protrusion at L5-S1, diffuse disc bulge with hypertrophic facet disease with associated bilateral neural foraminal encroachment, greater on the left, at L3-4, and a small central disc bulge without compression of the thecal sac at L1-2. The medical record also shows that the claimant was taken off work by Dr. Cheek from July 23, 2003, through July 27, 2003, and thereafter from August 6, 2003, until "after his surgery." However, the claimant testified that, while he did not work the next weekend after the July 7 incident, he continued to work at light duty, without lifting patients, and only missed about three days of work as a result of his problems.

On September 9, 2003, North Little Rock neurosurgeon Dr. Steven L. Cathey examined the claimant and wrote that he had reassured the claimant that his pain was well explained on the basis of a musculoskeletal injury superimposed on advanced pre-existing degenerative changes in his low back, which was not something that was likely to respond favorably to surgery. He recommended physical therapy and a referral to Dr. William Ackerman for pain management and also suggested that the claimant start liberalizing his activities in anticipation of going back to light duty work

effective September 16, 2003. He noted that the claimant would be unable to lift objects weighing more than ten pounds without assistance.

On November 26, 2003, Dr. Sonia Williams examined the claimant and wrote that he had suffered a recent work-related increase or exacerbation of soft-tissue complaints and she recommended physical therapy and pain reducing measures, continuing his TENS use and medication and continuing modified non-patient contact nursing work.

The parties acknowledged that in order to be entitled to benefits, the claimant must establish the existence of a compensable injury by medical evidence, supported by objective findings. Although findings of muscle spasm are considered objective, complaints of muscle spasm are not considered objective findings since complaints are within the control of the patient. However, even though the record shows that the pathology associated with the claimant's back problem was largely pre-existing, the claimant has nevertheless sustained a compensable injury, however minor, given the changes reflected by the MRI scan. The fact that Dr. Cathey did not think the claimant's MRI scan would justify surgery does not mean that the claimant failed to sustain an injury, as Dr. Cathey noted, superimposed on pre-existing degenerative changes. Indeed, the medical record since July 7, 2003, does not suggest that the claimant is malingering and tends to confirm that he was injured on that date.

Thus, the July 14, 2003, MRI scan was read as showing a broad-based disc bulge and left disc protrusion at L4-5 with probable impingement of the left L5 nerve root, as well as a small central disc protrusion at L5-S1 and disc bulges at L3-4 and L1-2. The report of the 2000 CT scan mentioned disc bulges at all levels but did not suggest that there was probable impingement of the L5 nerve root or bilateral neural foraminal encroachment, greater on the left, at L3-4 as was noted

on the 2003 MRI scan. These changes are enough to show objective findings of injury associated with the claimant's work-related activity, even though they may not justify surgery or form a sufficient basis for an award of permanent impairment, an issue reserved by the claimant for a future time. The treatment the claimant has received has not been challenged by the respondents and is reasonably necessary in connection with his injury, superimposed on his prior pathology.

Under Ark. Code Ann. §11-9-715, attorney's fees have, as a practical matter, been limited to compensation for indemnity benefits and are not available for medical expenses, unless the claimant's attorney has entered into a contract with medical providers to recover disputed bills. No such contract has been presented in this case and at this time an attorney's fee cannot be awarded the claimant's attorney.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge