

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307388

WILLIAM PITTS	CLAIMANT
RHEEM MANUFACTURING COMPANY	RESPONDENT
OLD REPUBLIC INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 21, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by JASON BROWNING, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 24, 2004, in Fort Smith, Arkansas. The deposition of Dr. Larry Armstrong was taken on January 15, 2003, and has been admitted as Joint Exhibit No. 1.

A pre-hearing order was entered in this case on November 5, 2003. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the claimant announced that he was only seeking temporary total disability benefits for a limited period of time. This has resulted in an amendment to the first issue to reflect that it only concerns the claimant's entitlement to temporary total disability benefits for the period of July 6, 2003 through October 23, 2003. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 28, 2003, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$396.00 for total disability

and \$297.00 for permanent partial disability.

3. On March 28, 2003, the claimant sustained a compensable injury to his back.
4. All appropriate benefits, accruing through July 5, 2003 have been paid.
5. The respondents controvert the claimant's entitlement to any benefits accruing on and after July 6, 2003.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to the payment of medical expenses and temporary total disability benefits from July 6, 2003 through October 23, 2003.
2. Whether the additional benefits the claimant now seeks were occasioned by an independent intervening cause.
3. Appropriate attorney's fee.

In regard to these issues, the claimant contends that he sustained a compensable injury to his back on March 28, 2003, and that his condition deteriorated until he ultimately underwent back surgery on August 8, 2003. The claimant also contends that he is entitled to temporary total disability benefits from July 6, 2003 through October 23, 2003. The claimant contends that his attorney is entitled to an appropriate attorney's fee. Finally, the claimant contends that no independent intervening incident occurred after his March 28, 2003 injury and that therefore the respondents are liable for the benefits claimed herein.

In regard to these issues, the respondents contend that an independent intervening incident occurred on or about July 6, 2003, and thus, the respondents are not liable for the benefits claimed herein.

DISCUSSION

_____As set out in the pre-hearing order, the central issue in this case is the claimant's entitlement to the payment of medical expenses incurred for his back complaints on and

after July 6, 2003, and his entitlement to temporary total disability benefits from July 6, 2003 through October 23, 2003. Clearly, the medical services provided the claimant by and at the direction of the physicians at the emergency room of St. Edwards Mercy Medical Center, Dr. Greg Lloyd (the company physician), Dr. Jason Richey, and Dr. Larry Armstrong were all necessitated by and were all medically appropriate for the claimant's objectively documented herniated disc at L5-S1. It is further apparent that during the period of July 6, 2003 through October 23, 2003, the claimant continued within his healing period from the effects of this herniated disc and was also rendered incapable of performing regular gainful employment as a result of the disabling effects of this defect. In fact, it does not appear that the respondents even argue that the medical services provided were unnecessary or unreasonable or that the claimant was not actually temporarily totally disabled during the period in question.

The real dispute arises over whether the claimant's herniated disc at L5-S1 was causally related to his admittedly compensable lower back injury or March 28, 2003. The respondents concede the occurrence of an employment related injury to the claimant's lower back, on March 28, 2003. However, they deny that this compensable injury played any causal role in producing the subsequently documented disc herniation at L5-S1. Instead, they maintain that this injury or defect was the result of a non employment related incident beginning on July 6, 2003.

The burden rests upon the claimant to prove that his subsequently documented herniated disc is causally related to the specific employment related incident of March 28, 2003. However, he need not prove that this incident was the sole or even major cause of the disc herniation.

Clearly, the specific employment related incident described by the claimant could have reasonably caused his subsequently documented herniated disc at L5-S1. However, the claimant must prove more than the fact that this specific employment related incident

could be a possible cause of his herniated disc and resulting difficulties. He must prove that it was the probable or most likely cause of the disc herniation and his resulting difficulties.

The medical record reveals that the claimant is experiencing significant degenerative disc disease at almost all levels of his lumbar spine. This pre-existing degenerative condition would make the claimant more susceptible to experiencing herniations of these degenerative discs. Such disc herniations could be produced by relatively minor trauma, even so minor that it might go unnoticed. The claimant's initial medical records further show that he has a history of episodes of lower back difficulties pre-dating the employment related incident of March 28, 2003.

All of the evidence presented (including the claimant's own testimony) establishes that the claimant experienced no radicular symptoms involving his right lower extremity (which would be indicative of the occurrence of a right sided herniation of the L5-S1 disc), contemporaneously with the employment incident of March 28, 2003. The claimant testified that within three days his back symptoms had essentially resolved. He stated that his symptoms involving his right lower extremity did not appear until Monday, March 31, 2003. These symptoms were only in the form of a "numb spot" on the bottom of his right foot. However, he concedes that he had no difficulty performing his usual employment activities and did not bother to seek any medical treatment for this symptom until June 11, 2003.

In his deposition, Dr. Larry Armstrong (a neurosurgeon and the claimant's primary treating physician after July 6, 2003), testified that it was not unusual, in the case of a herniated disc, that the initial symptoms would involve only the back, that these symptoms might subsequently resolve, and that the radicular symptoms might not appear until days following the actual disc herniation. However, he appears unaware that, in the present case, the initial medical records indicate that the claimant's back symptoms were primarily

on the left side, and that the claimant did complain of contemporaneous potential radicular symptoms involving the left lower extremity (i.e. pain radiating from the back into the claimant's left buttock). At the very least, he offers no explanation as to how the claimant's subsequently documented right sided disc herniation would initially produce left sided symptoms. It must be also noted that when the claimant experienced what Dr. Armstrong describes as a "reherniation" of his L5-S1 disc on July 6, 2003, he clearly experienced an immediate or contemporaneous onset of significant right sided radicular symptoms.

The record further shows that the claimant sought no medical treatment, whatsoever, for any symptoms or difficulties with his back or either of his lower extremities from March 31, 2003 through June 10, 2003. During this period of time, he continued to perform all of the duties required by his regular employment position with the respondent. These employment duties required considerable bending at the waist and repetitive lifting of objects between 40 and 60 pounds. He was physically able to perform these rather strenuous activities without any difficulty or discomfort.

The claimant continued to perform his regularly assigned employment duties, as a coil bender even after his June 11, 2003 return visit to Dr. Lloyd. On cross examination, the claimant's testimony indicates that he continued to work at this position until July 6, 2003 (T.26). However, information contained in a form (completed by the claimant on July 21, 2003), states that the last day he actually worked was Monday, June 30, 2003. There is no evidence concerning the claimant's activities from June 30, 2003 through July 5, 2003.

If, as Dr. Armstrong hypothesizes, the claimant experienced the initial herniation of his L5-S1 disc on March 28, 2003, it would not be reasonably expected that he could continue to perform his rather strenuous employment activities for this respondent for such an extended period of time, without any difficulty or complaint. Clearly, repetitive bending at the waist and the frequently lifting and maneuvering 40 to 60 pound objects would place considerable stress on all of the claimant's lumbar discs, including the disc at L5-S1. In

fact, it is common medical practice to limit individual suffering from a herniated or even bulging discs from engaging in physical activities requiring repetitive bending at the waist or frequent lifting of objects in this weight range.

Clearly, it is Dr. Armstrong's opinion that the claimant's mere bending at the waist on July 6, 2003 was sufficient to "reherniate" the claimant's L5-S1 disc. However, he offers no explanation as to how or why the claimant was able to perform this same type of activity on a frequent basis, together with other activities that were even more physically stressful and demanding on the L5-S1 disc, for over two months without any physical difficulties or complaints

I recognize that Dr. Armstrong is a board certified neurosurgeon with particular training and expertise in the area of medicine associated with herniated discs. However, I simply do not find his opinion, concerning the existence of a causal relationship between the claimant's employment related incident on March 28, 2003 and the subsequently documented right sided disc herniation at L5-S1, to be reasonable or credible. While the existence of such a causal relationship may not be impossible, it would appear to be unlikely in light of all the facts in this case. Dr. Armstrong has provided no explanation for these inconsistencies between his opinion and the facts shown in this case. He has offered no explanation as to how a right sided herniation of the L5-S1 disc would initially produce primarily left sided back pain and possible left sided radicular symptoms. He has further offered no explanation of the claimant's ability to perform, for over two months, physical activities that would place considerable stress on the L5-S1 intervertebral discs without any apparent difficulty or complaint.

In summary, I find that the claimant has failed to prove the existence of a causal relationship between his admittedly compensable back injury of March 28, 2003, and his subsequently documented right sided disc herniation at the L5-S1 level. In fact, the greater weight of the credible evidence would indicate that the most likely or most probable cause

of this right sided disc herniation was solely the non employment related incident on July 6, 2003. Thus, the medical treatment necessitated by this disc herniation and the disability it has produced would not be the result of the claimant's admittedly compensable back injury of March 28, 2003, and would not comprise the basis for an award of any benefits provided by the Act.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 28, 2003, the relationship of the employee-employer-carrier existed between the parties.
3. On March 28, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$396.00 for total disability and \$297.00 for permanent partial disability.
4. On March 28, 2003, the claimant sustained a compensable injury to his back.
5. There is no dispute over the payment of appropriate benefits for the claimant's compensable back injury for July 5, 2003, and all such benefits have been paid.
6. The medical services provided to the claimant for his back related complaints, after July 6, 2003, were necessitated by and related to a right sided herniation of his L5-S1 intervertebral discs. The claimant has failed to prove by the greater weight of the credible evidence the existence of any causal relationship between this right sided disc herniation and the employment related incident of March 28, 2003. Thus, the claimant has failed to prove that these medical services were necessitated by or connected with his "compensable injury" of March 28, 2003, or represent "reasonably necessary medical services" within the meaning of Ark. Code

Ann. §11-9-508. The respondents would not be liable for the expense of these services.

7. The temporary total disability experienced by the claimant, during the period of July 6, 2003 through October 23, 2003, was occasioned solely by the right sided herniation of his L5-S1 intervertebral disc. The claimant has failed to prove by the greater weight of the credible evidence the existence of any causal relationship between this and the employment related incident and injury of March 28, 2003. Thus, he has failed to prove that during the period of July 6, 2003 through October 23, 2003, he was rendered temporarily totally disabled as a result of the effects of a “compensable injury”, so as to be entitled to temporary total disability benefits, as provided by the Act.
8. The respondents have controverted the claimant’s entitlement to the medical services provided him for his back and right lower extremity complaints, after July 6, 2003. The respondents have also controverted the claimant’s entitlement to any temporary total disability benefits on or after July 6, 2003.

ORDER

For the reasons heretofore set forth in this Opinion, I have no alternative but to deny the claimant’s request for the payment of medical expenses incurred for reasonably necessary medical treatment of the right sided herniation of his L5-S1 intervertebral disc and his claim for temporary total disability benefits for the period of July 6, 2003 through October 23, 2003.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

