

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306018

ANIBAL POSADAS

CLAIMANT

SUPERIOR INDUSTRIES

RESPONDENT

CROCKETT ADJUSTMENT CO.
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 17, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondent represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 14, 2004 in Springdale, Arkansas.

A pre-hearing conference was previously held in this claim, and as a result thereof, a pre-hearing order was entered in the claim on April 12, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to be litigated and resolved at the present time, and the respective parties contentions in regard thereto. Immediately prior to the commencement of the hearing, the parties agreed on the appropriate weekly compensation rates and the issue of the period of disputed temporary total disability was changed. A copy of the Prehearing Order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

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 January 28, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The appropriate weekly compensation rates are \$355.00 for total disability and \$266.00 for permanent partial disability.

4. There is no dispute over the payment of medical expenses incurred for services by physicians at First Care Family Clinic and Trinity Physical Rehabilitation.
5. The respondent controverts the claimant's entitlement to the payment of any expenses incurred for medical services by any providers except those noted above and his entitlement to any temporary total or permanent disability benefits.

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 temporary total disability benefits from May 22, 2003 through July 15, 2003, including whether the claimant is barred from receiving such benefits by the provisions of A.C.A. §11-9-526.
2. The claimant's entitlement to the payment of medical expenses incurred by and at the direction of Dr. Luke Knox, including whether the claimant is barred from receipt of these benefits by A.C.A. §11-9-514.
3. The claimant's entitlement to the payment of permanent disability benefits for permanent physical impairment.
4. Attorney's fees.

In regard to these issues the Claimant contends that the claimant sustained a compensable back injury arising out of and in the course of employment with the respondent on or about January 28, 2003. On that date, the claimant was working as a wheel polisher, lifting wheels weighing 50 to 80 lbs. when he was injured. As a result of this compensable injury, the claimant has been temporarily disabled from January 28, 2003, a date as yet to be determined, or January 28, 2003

through 5/22/03 (7/14/03 returned to same Employer). As a result of this work related injury, the claimant has been treated by the following medical providers:

- (a) Luke D. Knox, M.D.
- (b) Arkansas Physical Health and Rehabilitation
- (c) Arkansas MRI Services, LLC
- (d) Washington Regional Medical Center
- (e) Luke D. Knox, M.D.
- (f) Gary Thorn, M.D.
- (g) Neurological Associates

Claimant contends entitlement to workers' compensation benefits as set forth in the issues response in the preceding paragraph, and specifically, to the following workers' compensation benefits:

- (a) Reasonable and necessary medical expenses;
- (b) Temporary total disability benefits;
- (c) Permanent partial/total disability benefits (reserved)
- (d) Controverted attorney fees

All other benefits are reserved under the Act.

In regard to these issues the Respondent contends that they accepted this claim as compensable and provided medical treatment through First Care Family Physicians and Trinity Physical Rehabilitation. The claimant stopped attending physical therapy after four (4) sessions and began seeking medical treatment on his own. The respondent contends that this medical treatment is unauthorized. The respondent has not denied medical treatment. The respondent contends that work was made available for the claimant and that he is not entitled to any temporary total disability benefits. The respondent has not been aware of the assessment of any permanent anatomical impairment rating and, therefore, based upon the present medical evidence, the respondent contends that the claimant is not entitled to permanent disability benefits at the present time.

DISCUSSION

In their Prehearing Questionnaire, the respondent states that they are conceding that the claimant sustained a "compensable injury" to his lower back on January 28, 2003. The Prehearing Order recites a proposed stipulation that the claimant sustained a compensable injury to this portion

of his body on that date. However, the evidence presented does not support this contention or this stipulation.

It appears from the AR-C, the claimant's testimony, and the medical evidence that the claimant's complaints have only involved his upper back, in the left trapezius/shoulder area, and his neck. The medical records and reports from the physicians clearly authorized to treat the claimant (Family Care Medical Clinic and Trinity Physical Rehabilitation) only show treatment provided to these areas of the claimant's body.

The only mention of any allegation of an injury involving the claimant's low back is the testimony of the respondent's witness, Larry Massey. Mr. Massey stated that he was under the belief that one of the two AR-N's filed in this case concerned a low back injury and the other a neck or cervical injury. However, both of these AR-N's indicate the same injury date and time and neither give the location of the injury as the claimant's low back. The first AR-N identifies the place of the injury as "la espalda." This Spanish term can be interpreted as meaning either the back or the shoulders. In the second AR-N, the part of the body is identified in Spanish as:

"Mi parte izquierda de mi espalda con el cuello."

This phrase loosely translates as: the part of my body on the left of my back/shoulder with the neck.

The only other passing mention of the claimant's low back is found in some of the chiropractic notes. Some of these notes indicate that occasionally adjustments were administered to one or more areas of the claimant's lumbar spine, as well as the continuing adjustments to his cervical and thoracic spines. However, these notes do not record any specific complaints with the lumbar area, but note continuous record complaints involving the claimant's neck/cervical spine and upper back/thoracic spine.

Essentially all disputed medical treatment was rendered to the claimant for cervical or upper back difficulties. Therefore, it is obvious that these medical services would not be reasonably necessary for a compensable low back injury. The same would hold true for the disputed period of temporary disability and the disputed permanent physical impairment. Any disability or

impairment appears to be related solely to difficulties and abnormalities involving the claimant's cervical spine, which forms his neck and possibly into his very upper back. Thus, any disability produced by these difficulties or defects would not represent disability attributable to a compensable low back injury.

While the respondent has clearly authorized and provided the claimant with medical treatment for his neck and upper back difficulties by personnel at First Care Family Clinic and Trinity Physical Rehabilitation and has not provided him with any medical treatment for a low back injury, I cannot assume from this that the respondent was merely mistaken in regard to its stipulation concerning the area of the claimant's compensable injury. It would be improper for me to amend the respondent's stipulation of a compensable low back injury to reflect a stipulation of a compensable upper back or neck injury.

It appears that there may have been a misunderstanding between the parties over whether there was a dispute over the "compensability" of the claimant's actual injury. The issue of whether the claimant sustained a "compensable injury" to his upper back or neck on January 28, 2003, was not identified as an issue to be litigated in the Prehearing Order. I am not inclined to add it, sua sponte, as an issue after the hearing. Both parties must be informed that the resolution of this issue is a necessary prerequisite to a determination of the claimant's entitlement to the benefits he now seeks, and be given the opportunity to present any evidence relevant on this issue.

Therefore, I find that the issues currently before the Commission, as identified in the Prehearing Order of April 12, 2004, cannot be determined without the resolution of the prerequisite issue concerning the compensability of the claimant's upper back or neck difficulties.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 28, 2003, the relationship of employee-sel-insured employer-third party administrator existed between the parties.

3. On January 28, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$355.00 for total disability and \$266.00 for permanent partial disability.
4. The issues currently before the Commission (the claimant's entitlement to temporary total disability benefits from May 22, 2003 through July 15, 2003, the claimant's entitlement to the payment of medical expenses incurred for services rendered him by and at the direction of Dr. Luke Knox, the claimant's entitlement to the payment of permanent benefits for permanent physical impairment, and the claimant's entitlement to payment of attorney's fees) cannot be resolved until a determination is made on whether or not the claimant sustained a "compensable injury" to his upper back and/or neck on January 28, 2003. Therefore, these issues should be reserved for future determination, upon resolution of this prerequisite issue.

ORDER

The parties are hereby advised that the issues currently before the Commission, as set out in the Prehearing Order of April 12, 2004, cannot be resolved until a determination is made on the issue of whether or not the claimant sustained a "compensable injury" to his upper back and/or neck. If the parties can stipulate to the occurrence of such a compensable injury, then the issues identified in the previous Prehearing Order can be decided, based upon the prior record. However, if the parties cannot stipulate to the occurrence of a compensable injury to the claimant's upper back and/or neck, then an additional hearing will be necessary to allow the parties to present all relevant evidence in regard to this threshold issue.

The parties are hereby directed to advise this Commission, as soon as possible, concerning how they wish to proceed in this matter.

At the present time, the issues of the claimant's entitlement to temporary total disability benefits for the period of May 22, 2003 through July 15, 2003, his entitlement to medical expenses incurred for services rendered him by and at the direction of Dr. Luke Knox, his entitlement to permanent disability for permanent physical impairment, and his entitlement to attorney's fees is expressly reserved.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE