

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302435**

<b>TRAVIS L. ROSS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>COOPER TIRE &amp; RUBBER CO., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>CROCKETT ADJUSTMENT, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 29, 2004**

Hearing before Administrative Law Judge J. Mark White on December 11, 2003, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Nelson V. Shaw, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

**STATEMENT OF THE CASE**

On December 11, 2003, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on October 27, 2003, and a Prehearing Conference Order was entered that same day. A copy of the October 27, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/self-insured employer

relationship existed at all relevant times, including January 21, 2002; that the claimant's supervisor on January 21, 2002, was Bryan Greathouse; that on January 21, 2002, the claimant sustained a compensable injury to his left arm and elbow; that Respondents accepted the January 21, 2002, injury as a compensable medical-only injury; that the claimant has had two surgeries on his left elbow since January 21, 2002; that the claimant earned sufficient wages to entitle him to the maximum compensation rates; and that the claimant received short-term disability benefits in the amount of \$350 per week during the time period for which the claimant seeks temporary total disability benefits.

The parties agreed that the issues to be presented were whether the medical treatment received by the claimant, including his surgeries of January 13, 2003, and February 5, 2003, was reasonably necessary in connection with his compensable injury of January 21, 2002; whether the claimant is entitled to temporary total disability benefits; the respondent's entitlement to an offset for benefits paid per ARK. CODE ANN. § 11-9-411; and controversion and attorney's fees.

The claimant contends that he sustained a compensable injury to his left elbow and arm; that the medical treatment he has received for his left elbow and arm was reasonably necessary in connection with his compensable injury; and that he is entitled to temporary total disability benefits for his injury from January 12,

2003, to March 25, 2003.

Respondents contend that the surgeries of January 13, 2003, and February 5, 2003, were not authorized nor were they reasonable and necessary; that the claimant will be unable to prove any causal relationship between the January 21, 2002, injury to the left elbow and the more recent controverted medical treatment, surgeries and periods of disability; that the claimant has had a natural progression of a pre-existing left elbow problem; and that the respondent is entitled to an offset for benefits paid per Ark. Code Ann. § 11-9-411.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3. The claimant has proven by a preponderance of the evidence that additional medical treatment, specifically the surgery by Dr. Weems, the follow-up surgery, and all related treatment, was reasonably necessary in connection with his January 21, 2002, compensable injury.
4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the time he was off from work due to the surgeries, from January 12, 2003, to March 25, 2003.
5. The respondents are entitled to a credit for benefits paid by other insurers, per Ark. Code Ann. § 11-9-411.
6. The respondents have controverted this claim in its entirety.

## **DISCUSSION**

### **I. History**

The claimant sustained a compensable injury to his left elbow on January 21, 2002, while pulling on a piece of equipment. While trying to pull, he felt “a pop and a burning” in his left elbow and forearm. The claimant continued working until the elbow popped again several minutes later. He reported the injury to his supervisor; after completing the necessary paperwork, he went to the emergency room.

The ER physician diagnosed the claimant with a left elbow strain, and

released him after an x-ray revealed no abnormalities. The claimant saw the company doctor, Dr. Craig Ditsch, the next day. Dr. Ditsch noted "marked tenderness right over the lateral epicondyle associated with swelling around the olecranon and the lateral epicondyle" and diagnosed him with "lateral epicondylitis." *Dorland's Illustrated Medical Dictionary*, 26<sup>th</sup> Edition, establishes that epicondylitis is more commonly known as "tennis elbow." Dr. Ditsch prescribed medication and released the claimant to work light duty.

An MRI performed January 25, 2002, revealed "brachialis tendonitis with increased signal in adjacent musculature suggesting inflammation and/or strain." The claimant returned to Dr. Ditsch on January 29, complaining of pain "really down in the peri-olecranon area." On February 4 Dr. Ditsch provided a cortisone injection, and the claimant reported significant pain relief, though he noted "occasional pain in the forearm" on February 12. Dr. Ditsch released the claimant to work regular duty on February 19 and gave him a "long-term" prescription for Celebrex.

The claimant testified that as of February 19, he was still having minor pain in his elbow, and that over the next several months he experienced more and more pain. He returned to Dr. Ditsch for treatment on November 25, 2002, complaining of pain "in the lateral epicondyle of the elbow and down, right in the notch between

the lateral epicondyle and the olecranon” as well as pain in his forearm. Dr. Ditsch increased the claimant’s prescription for Celebrex and placed him on light duty. The claimant returned on December 3, and Dr. Ditsch kept him on light duty. Nonetheless, the claimant testified that Dr. Ditsch told him at this time that the respondents would pay for no more treatment for the elbow.

The claimant sought a second opinion from Dr. Harold Weems on December 4, 2002. Like Dr. Ditsch, Dr. Weems diagnosed “lateral epicondylitis.” Dr. Weems reviewed the claimant’s MRI, and while acknowledging that the MRI revealed no loose bodies in the elbow, Dr. Weems concluded that the claimant’s “symptoms are consistent with a loose body within the elbow as well as a lateral epicondylitis.” Dr. Weems recommended surgery, and the claimant agreed.

Dr. Weems performed the surgery, a tennis elbow release with lateral epicondylectomy, on January 13, 2003. During the surgery, Dr. Weems also examined the elbow for any loose bodies, but found none. As a complication of the surgery the claimant developed a seroma on his elbow, which was removed surgically on February 5, 2003.

On March 25, 2003, Dr. Weems noted that the claimant was doing well and released him to work regular duty. The claimant testified at the hearing that he still has occasional pain in his elbow, and that he may require an additional surgery if

the pain grows worse.

## II. Adjudication

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). The law does not require a claimant to establish his entitlement to additional medical treatment or temporary total disability benefits with objective medical findings. *Williams v. Prostaff Temporaries*, 64 Ark. App. 128, 979 S.W.2d 911 (1998).

The parties have stipulated that the claimant sustained a compensable injury on January 21, 2002. The evidence in the record convincingly establishes that the claimant's compensable injury caused his lateral epicondylitis (tennis elbow). Such was the diagnosis of Dr. Ditsch the day after the compensable injury, and such was the diagnosis of Dr. Weems after the claimant's surgery nearly a year later. The claimant acknowledged in his testimony that some of his complaints of pain prior to surgery were new, but the record also reflects that he continued to complain of pain in the same areas as he had in the weeks just after his compensable injury. At

both times – in the weeks after his compensable injury, and again prior to his surgery nine months later – the claimant complained of pain in the area of his olecranon and lateral epicondyle. At both times, he complained of pain in his forearm.

Admittedly, the January 13, 2003, surgery was performed in part because of Dr. Weems' suspicion of a loose body in the elbow, a suspicion unsupported by the objective medical evidence. Yet the surgery was also performed specifically to address the tennis elbow which the claimant sustained as a result of his compensable injury. The procedure was identified as "tennis elbow release with lateral epicondylectomy." Both the preoperative and postoperative diagnoses included "left tennis elbow." The respondents have introduced no evidence to establish or even suggest that surgery is an inappropriate treatment for tennis elbow.

Finally, it is true that more than nine months elapsed from the claimant's initial release by Dr. Ditsch and his eventual surgery. I found the claimant to be a credible witness, in that his testimony was plausible, internally consistent, and largely consistent with the medical evidence of record. Regarding the nine-month gap, he testified: "The popping had never went away. The pain – I had pain the whole time I was building in those nine months. It was a slight pain but it had

increased again to a pretty major pain and burning.” Notably, Dr. Ditsch had given the claimant a “long-term” prescription for Celebrex immediately prior to this nine-month period. Given his plausible and credible testimony of continued pain and symptoms in his elbow throughout those nine months, and given Dr. Ditsch’s recognition of a continuing need for medication in that same time period, I cannot find that the nine-month lapse is sufficient to render the surgery and related treatment unreasonable, or to break the chain of causation between the compensable injury and the surgery and related treatment.

The surgery of January 13, 2003, was performed specifically to address the claimant’s tennis elbow, the condition he was diagnosed with immediately after his compensable injury. It is undisputed that the surgery of February 5, 2003, was necessary due to a complication from the original surgery. Given this causal connection, given the consistent diagnoses, given the consistency in his reported symptoms throughout the relevant periods of time, given the claimant’s credible testimony of continued pain until his surgery, given the lack of any evidence of any independent intervening cause, and given the lack of any contradictory medical opinion, I find that the claimant has proven by a preponderance of the evidence that additional medical treatment, specifically the surgery by Dr. Weems, the follow-up surgery, and all related treatment, was reasonably necessary in connection with the

compensable injury.

I note that the respondents have contended the claimant's elbow problems are due to a pre-existing condition. However, nothing in the record establishes or even suggests that the claimant had any elbow problems which pre-existed his work injury. The claimant did acknowledge once feeling pain while pulling on a piece of equipment a month before the January 21, 2002, injury, but he credibly testified that the pain following his January incident was of a different type than that of the earlier pain. In any event, the December event described by the claimant in testimony and in Dr. Ditsch's notes would itself constitute a compensable injury, if the respondents' allegation of a causal connection were correct.

### **Temporary Total Disability Benefits**

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

Because I find that the claimant's surgeries and related medical treatment

were reasonably necessary in connection with the compensable injury, I also find that the claimant is entitled to temporary total disability benefits for the time he was off from work due to the surgeries, from January 12, 2003, to March 25, 2003. The respondents are entitled to a credit for benefits paid by other insurers, per Ark. Code Ann. § 11-9-411.

### **AWARD**

The claimant has proven by a preponderance of the evidence additional medical treatment, specifically the surgery by Dr. Weems, the follow-up surgery, and all related treatment, was reasonably necessary in connection with his January 21, 2002, compensable injury; and that he is entitled to temporary total disability benefits from January 12, 2003, to March 25, 2003, subject to a credit for benefits paid by other insurers, per Ark. Code Ann. § 11-9-411. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Nelson V. Shaw, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this

award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. §  
11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge