

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212233/F307562

ROBERT SCOTT	CLAIMANT
MIDDLETON DRYWALL	RESPONDENT
AIG CLAIM SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 30, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 27, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on December 4, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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 all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his cervical spine and left hip on September 25, 2002.

4. That the claimant is entitled to a compensation rate based on an average weekly wage of \$404.00 which would entitle him to a temporary total disability rate of \$268.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's right shoulder on September 25, 2002.

2. Related medical.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that although his primary treatment physician, Dr. Knox opined that the claimant needs an orthopedic consult regarding his right shoulder. The respondents have not taken appropriate steps to make medical care available regarding the claimant's right shoulder as evidence by the fact that two appointments for Mr. Scott with an orthopedic surgeon have been canceled. The claimant contends that since a case manager is involved in this case, the respondents have an affirmative duty to follow up with the recommended consultation and if they fail and refuse to provide the recommended treatment, they are controverting the claim and that the claimant's attorney will be entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant's shoulder problems are not causally related to his injury of September 25, 2002.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical records marked Claimant's Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The parties have stipulated and the claimant agreed that he sustained a compensable fall on September 25, 2002, while working for the respondent. The claimant testified that on September 25, 2002, he fell approximately fifteen to seventeen feet when the scaffolding he was on collapsed and he landed on some concrete stairs. The claimant testified that when he landed his left hip immediately went numb and then the scaffolding parts, braces and scaffold boards fell on him and shoved him another fifty feet down the stairs and out in the entry way. The claimant testified that at this time he was hurting all over and did not know exactly what all he had injured. The claimant remembered that after landing on his left hip the sections of the scaffold hit him in the upper part of his back and his right shoulder. The claimant testified that he was taken to the hospital by ambulance and at that time his left hip was numb, his right shoulder was hurting, he felt very nauseated and stayed sick for several hours. The claimant testified that his main or worst injuries at that point were his left hip and right shoulder stating, "I mean, that was my chief complaints." The claimant testified that initially he was treated just for his left hip and no treatment was given to his shoulder.

The claimant remembers that he was first seen by Dr. Allard the morning after his accident while he was in the hospital. The claimant testified that Dr. Allard focused his attention on his left hip even though his right shoulder was still hurting. The claimant testified that his right shoulder was more of his concern because he did not have any feeling in his fingers. The claimant testified that Dr. Allard did discuss with him his shoulder on October 28 after he had examined his shoulder. The claimant testified that his chief complaint was the spasms in his right shoulder stating, "The muscles in my shoulder were just jumping." The claimant testified that his shoulder has continued to bother him since Dr. Allard's examination. The claimant testified that he has very limited use of his shoulder and when he does do activities which involve the use of his right shoulder, he experiences pain which will not go away. The claimant testified that he is in need of additional medical treatment for his right shoulder.

The claimant testified that besides being seen by Dr. Allard for his shoulder he has been seen by Dr. Gary Moffitt. The claimant testified that he also has been seen by an orthopedic surgeon in Fayetteville, Dr. Mitchell.

The claimant testified that in the past he has seen Dr. Randall Oates, his family doctor, for numerous things. The claimant testified that when he has seen Dr. Oates about another medical matters he discussed with him the discomfort he was experiencing due to over use of his shoulder. The claimant explained that his work in the year 2000 was painting and finishing

sheet rock and this work is very physical and involves constant use of his hands and arms over his head. The claimant testified that his work is really hard labor and he gets sore and tired. The claimant explained that sheet rock will weigh from thirty to eighty pounds and this product would have to be lifted up over his head to be installed. The claimant testified that he did not experience any specific injury to his shoulders in the year 2000 or 2001 but that he would experience pain in his shoulders due to the nature of the work he was doing.

On cross examination, the claimant stated that he has seen Dr. Randall Oates off and on since 1987 for a variety of medical problems and that the doctor has given him two or three cortisone shots. The claimant testified that he was not misleading in his deposition when he answered no to the questions concerning treatment to his neck, arms and shoulders, explaining that he has never had a specific injury but that he, due to the type work he does, would occasionally have discomfort in his shoulders. The claimant testified that he discussed with Dr. Allard his shoulder problems the morning of the 26th following his accident and that on repeated office visits he would visit with Dr. Allard about his shoulder problems. The claimant stated that his right shoulder was hurting him when he got to the ER after his accident. The claimant agreed that he and Dr. Allard talked more about his shoulder when he was seen in Dr. Allard's office on October 28. The claimant testified that he also has been treated by Dr. Vincent Runnels since 1987 following his lumbar surgery. The claimant testified

that from time to time due to the hard work he did he would get down in his back and would return to see Dr. Runnels. The claimant testified that Dr. Runnels would have an MRI made in order to check things in his back. The claimant testified that his shoulder would hurt from time to time when he would be seen by Dr. Runnels but he had never had an injury. The claimant testified that he does not recall talking about his shoulder specifically but he does remember twice talking about his right wrist. The claimant testified that Dr. Allard wanted him to be seen by Dr. Runnels for his shoulder problems after his fall. The claimant remembers that Dr. Allard had prescribed Celebrex, a mild pain killer and an anti-inflammatory for him.

On redirect examination, the claimant stated that after his recovery from his back surgery back in the 1980s he was able to return to physical labor, hanging sheet rock and painting, up until his September 2002 accident. The claimant testified that Dr. Runnels referred him to Dr. Knox after the claimant's September 25, 2002, accident and that Dr. Knox had performed surgery on his cervical spine. The claimant testified that this surgery was performed in order to correct his right arm, right shoulder problems as well as the numbness in his fingers and to get so that he could use his right arm. The claimant asked if this surgery fixed these problems and the claimant responded, "No, Sir." The claimant agreed that that was why he was wanting treatment for his shoulder because his cervical fusion did not fix his problems.

Sheila Colleen Scott testified on behalf of her husband stating that they had been married approximately three years. Ms. Scott testified that prior to September 25, 2002, she does not recall her husband complaining of right shoulder problems nor having any limited use of his right shoulder. Ms. Scott testified that on September 25, 2002, she recalls that her husband was involved in an accident and she met him at the hospital. This witness testified that from her observation of her husband, he was in terrible pain with his hip as well as his shoulder. Ms. Scott testified that she was present when Dr. Allard visited with her husband on September 26 and heard the claimant tell the doctor that his right shoulder was hurting him real bad and his fingers on his right hand did not feel right. Ms. Scott testified that since the claimant's September 25, 2002, injury he has been very limited with his activities and can do very little with his right shoulder. Ms. Scott testified that the claimant's activities are limited because of his shoulder problems and he no longer can ride his motorcycle as he did before and she has to carry in the firewood which he also had done before September 25.

The medical records set forth that the claimant was seen at the Siloam Springs emergency room on September 25, 2002, as a result of a fall from scaffolding and then falling further down a flight of stairs. The ER notes indicate that the claimant was complaining of left hip pain for which medications were prescribed and he was to be seen by an orthopedist as well as not to return to work until cleared by the orthopedist. The claimant was admitted

to the hospital for observation. Dr. Mark Allard saw the claimant in the hospital on September 26. After taking a history as well as examining the claimant, Dr. Allard assessed the claimant with having a left hip contusion and possibly an occult fracture. Upon general examination, Dr. Allard notes that the claimant is in a moderate amount of pain but he is alert and oriented. Dr. Allard recommended the use of crutches, medications and he should be off work until he returns to the clinic. Dr. Allard saw the claimant on October 7, 2002, for follow up for his compensable left hip injury. Dr. Allard notes that the claimant, at the very least, has a significant hip contusion but he may have a non-displaced ligamentous injury to his pelvis. It is noted that the claimant certainly is having some radiation of symptoms consistent with nerve root compression. Dr. Allard continued the claimant on medication, the use of his crutches and recommended that he not return to his regular duty work but could do some light duty where he could sit down. On October 28, 2002, Dr. Allard writes that the claimant reports that he has been having pain in his right shoulder ever since his fall. Upon physical examination, Dr. Allard notes that the claimant has tenderness in his trapezius but has full range of motion in his shoulder and neck but he does have some discomfort when he rotates his neck to the opposite shoulder. Dr. Allard writes that he really does not feel a great deal of spasm in the trapezius. Dr. Allard at this time diagnosed the claimant with a contusion to his hip as well as a right shoulder trapezius strain. Physical therapy, ultrasound, hot packs and deep massage

to the claimant's trapezius area were recommended. The doctor released the claimant to limited duty work noting that if there is no light duty available within his restrictions he should remain off work. Dr. Allard writes on January 15, 2003, that the claimant returned to work for the respondent on light duty but was immediately required to perform work that exceeded his restrictions, therefore, he refused to do the work described and things got ugly. Dr. Allard notes that the claimant is still having problems with his left hip but notes that his right shoulder is really giving him problems and these problems radiate down into his right arm into his hand and fingers. The doctor notes that the claimant has loss of strength as well as pain that is not activity related. After examination, Dr. Allard writes that the claimant did have a significant fall and it is certainly possible that he had a neck injury or brachial plexis injury. The doctor recommended that the claimant be seen by a neurologist and undergo an EMG and NCV. Dr. Allard recommended medications and to return in six weeks.

The claimant underwent testing of his cervical spine and right shoulder on February 19, 2003. These tests revealed degenerative changes of the right acromioclavicular joint and it is noted that there appears to be a little neuroforaminal encroachment at C5-6. Degenerative changes were also noted from C5 through C7. An MRI of the claimant's cervical spine done on February 19, 2003, set forth that there is narrowing on the left at C3-4 secondary to spur formation, bilateral uncovertebral hypertrophy, right greater than

left, at C4-5 narrowing the neural exit foramina right greater than left and bilateral neural exit foraminal narrowing at C5-6 noting that there is also an underlying disc bulge on the right compromising the exiting nerve root and that at C6-7 level there is uncovertebral hypertrophy, left greater than right and that there is an underlying disc bulge to the left compromising the exiting nerve root. Dr. Luke Knox writes on April 4, 2003, that he has seen the claimant for severe and incapacitating neck and right arm pain resulting from his fall in August 2002. Dr. Knox notes that the claimant suffered a deep hip bruise on the left and developed right neck pain following the incident. Dr. Knox notes that the claimant reports persistent radiculopathy with severe and incapacitating burning extending to the right arm described as a C6-C7 radiculopathy. Dr. Knox writes that the claimant's neurological exam was remarkable in that he did have an absent tricep reflex on the right and diminished brachioradiatis on the right with diminished sensation over the C6-C7 dermatome and that he, the doctor, could not discern any overt evidence of weakness in the right upper extremity. Dr. Knox writes that he has reviewed the claimant's MRI which showed a rather significant disc herniation at 5-6 and 6-7 stenosis at the 3-4 level that appeared to be worse on the left. Physical therapy was recommended and a shot of Depo-Medrol was administered. It was recommended that the claimant remain off work for the next month and if he does not improve, they will proceed with an further testing. On May 9, 2003, Dr. Knox notes that the claimant has undergone mylogram which

revealed a pronounced neuroforaminal encroachment at C5-6 with marked adjacent spondylosis. Dr. Knox recommended and discussed surgery for the claimant. On June 24, 2003, Dr. Knox writes that he has seen the claimant who is now three weeks status post anterior cervical fusion noting that the claimant's x-rays show stable alignment noting that the claimant is still having various aches and pain with electric type shock extending into his right arm and pain extending into his right shoulder. Physical therapy was recommended by Dr. Knox. On July 17, 2003, it is noted that the claimant can return to work with the following limitations: no lifting over fifteen pounds, no looking up and to avoid stooping and bending.

Dr. Mark Allard writes on October 24, 2003, that the claimant has been his patient from September 2002 until January 2003 as a result of a significant fall off of scaffolding for which he was treated for a hip contusion. Dr. Allard notes that the claimant reports to him that he mentioned the day after his injury that he injured his right shoulder. Dr. Allard writes that he does not recall but has no reason to doubt that the claimant reported his shoulder problem. Dr. Allard writes that the right shoulder problem is not included in his dictation because he had a significant pelvis injury and he was concentrating on that at the time. The doctor writes that on October 28, 2002, his documentation does note that the claimant was reporting an injury to his right shoulder. Dr. Allard sets forth that in his opinion the claimant likely did injury his right shoulder when he fell off

of the scaffolding noting that the claimant had a significant pelvis injury which was quite painful and that he was concentrating mainly on that injury at the time. Dr. Allard writes that the claimant certainly did not do anything strenuous enough to cause a significant right shoulder injury between the time of his injury and the date he examined his shoulder in late October.

After a review of this complete record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable right shoulder injury as a result of his fall and multiple injuries on September 25, 2002, while working for the respondent. The claimant's treating physician, Dr. Mark Allard, has written that at the time he first saw the claimant he does not recall the claimant reporting right shoulder problems but the doctor admits that he was concentrating primarily on the claimant's left hip problems and does not doubt that the claimant may have mentioned the shoulder problems to him. Dr. Allard does note that on October 28 the claimant did discuss with him right shoulder problems and the doctor, as stated in his letter of October 24, 2003, believes that these right shoulder problems were a result of his compensable fall. It is noted that the claimant has had treatment for his right shoulder prior to September 25, 2002, but whatever problems he had prior to September 25, 2002, were not significant enough to keep him from working or inhibit him from working but subsequent to the October 25 date due to his hip injury as well as his shoulder injury, the claimant has been unable to return to gainful employment. Both the claimant and the

claimant's wife have testified that from the date of his injury he complained of having right shoulder pain and problems but that due to the concerns of the medical providers for his hip injury, these right shoulder problems were not initially addressed. I find that the respondents should pay for all the reasonable and necessary medical care for this claimant's right shoulder problems which resulted in the need for medical treatment as a result of his compensable fall on September 25, 2002.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his cervical spine and left hip on September 25, 2002.

4. That the claimant is entitled to a compensation rate based on an average weekly wage of \$404.00 which would entitle him to a temporary total disability rate of \$268.00.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable right shoulder injury in his fall while working for the respondent on September 25, 2002. See discussion above.

6. The respondents should pay for all reasonable and necessary medical care for this claimant's compensable right shoulder problems.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable right shoulder injury as a result of his fall while working for the respondent on September 25, 2002. Therefore, the respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable right shoulder injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE