

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308940

ROSCOE SHAW	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 30, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 7, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on September 13, 2004. 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 August 17, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his back on August 17, 2003.

4. All medical expenses have been paid.

5. The claimant is entitled to a weekly compensation rate of \$193.00 for temporary total disability and \$154.00 for permanent partial disability.

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

1. Additional temporary total disability from April 9, 2004, to a date to be determined.

2. Attorney's fees.

The claimant reserves the issue of the compensability of any head and neck injuries.

In regard to the foregoing issues the claimant contends that he is entitled to reinstatement of his temporary total disability benefits and that payment of those temporary total disability benefits should continue until a date yet to be determined. The claimant contends that his attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to temporary total disability benefits and attorney's fees.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical documentation marked Respondent's Exhibit No. 1 and Commission Form AR-N marked

Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and it has been stipulated that he sustained a compensable injury to his back on August 17, 2003, while working for the respondent. The claimant testified that he was working, slipped down and hit his back and head. The claimant testified that the respondents sent him to Dr. Holder and that he has had physical therapy. The claimant testified that he has also seen his family doctor, Dr. Ricky Martin, as well as Dr. Charles Craft. The claimant testified that Dr. Martin and Dr. Craft are in the same office and that when he was seen by Dr. Martin he was still experiencing tingling across his back, tingling in his legs, and a sharp pain that felt like his ankles were twisted. The claimant testified that he was allowed to be seen by Dr. Standefer, a neurosurgeon, twice and that it was his understanding that no surgery had been recommended. The claimant testified that he was then referred to Dr. Swicegood, who gave him shots in his back. The claimant testified that he has seen Dr. Swicegood three times since his referral in February of 2004. The claimant testified that he has a return appointment with Dr. Swicegood a week following this hearing. The claimant testified that Dr. Swicegood's treatments have helped relieve the pain in his back.

The claimant testified that he was seen by Dr. Craft on April 9, 2004, at which time he was having muscle spasms in the middle of his back all the way down to his lower back. The claimant

testified that he was not having any muscle spasms prior to August 17, 2003. The claimant testified that since April 9, 2004, he has not been able to return to work. The claimant testified that he has not seen Dr. Standefer after April 9, 2004. The claimant testified that he takes medication prescribed to him by Dr. Swicegood and Dr. Craft.

The claimant testified that currently he is having pain in the lower part of his back that runs down his legs and over his feet. The claimant testified that he has pain in his shins as well as in his calves and when he lays down at night his legs start jumping plus his feet go numb. The claimant testified that he cannot stand and walk for a long distance. The claimant testified that he has developed problems with his bowels as well as with erections since his accident.

On cross examination the claimant agreed that he last saw Dr. Standefer on March 24, 2004, at which time the doctor released him to full duty work. The claimant agreed that when he saw Dr. Craft on April 9, 2004, this doctor took him off work for ninety days. The claimant agreed that he helps his wife with the housework by sweeping, dusting, and doing the dishes. The claimant agreed that the respondent worked with him and tried to get him to work as a door greeter and that he in fact worked there for about a month. The claimant testified that he liked what he was doing for the respondent but due to his back he couldn't do it. The claimant also agreed that no doctor has instructed him not to drive but that he has told himself he cannot drive.

On redirect examination the claimant agreed that since he saw Dr. Craft on April 9, 2004, he has not been released to return to work by any doctor. The claimant also agreed that the annular tear which showed up on his April 9, 2004 MRI has not been repaired.

On recross examination the claimant agreed that Dr. Standefer did not recommend surgery to repair his annular tear but did indicate that he should go be treated by Dr. Swicegood.

The medical records set forth that the claimant was seen by Dr. Keith Holder on August 29, 2003, for follow up of his lumbar strain. Dr. Holder continued the claimant's medications, physical therapy, and recommended that he return to work with no lifting over 20 pounds, no pushing or pulling greater than 30 pounds, and no repetitive motions of the back. Dr. Terry Clark writes on October 13, 2003, that the claimant states that he is still sore but denies radicular symptoms stating that overall he is a little better. Dr. Clark released the claimant to work without restrictions as tolerated. Dr. Clark writes on August 27th that the claimant was seen and reports that he is feeling better than he did the first time he was seen and that he denies pain or radicular symptoms but does have complaints of a little residual soreness occasionally. Dr. Clark released the claimant to work without restrictions. The claimant underwent an MRI on February 9, 2004, which revealed a tiny central disc bulge or protrusion at L5-S1, minimally excentric to the left. This test also set forth that the claimant had far left lateral spur and annular tear with disc bulge/protrusion at L4-5. Dr. Michael Standefer writes on February

16, 2004 that he has seen the claimant and reviewed his lumbar MRI which demonstrated degenerative changes in the disc at L4-5 and to a lesser degree at L3-4 and L5-S1, with a hemangioma that is noted at the L1 level. Dr. Standefer notes that he does not see any obvious surgical problem noting that there is no interspinal lesions or obvious ruptured disc. Dr. Standefer writes that in talking with the claimant he reports a recent episode of numbness and tingling in the hips bilaterally, and has also noted some numbness and tingling in his feet. The doctor writes that it sounds as though on one occasion the claimant had some loss of control of his bowels. Dr. Standefer recommended that the claimant undergo a thoracic MRI and to undergo a bilateral lower extremity EMG. Dr. Standefer also prescribed physical therapy noting that if the above studies are negative he would recommend epidural steroid injections by Dr. Swicegood. Dr. Standefer writes on February 26, 2004 that the claimant's recent complaints of numbness, tingling in his hips bilaterally, numbness and tingling in his feet, and on one occasion his loss of control of his bowels clearly warrant further evaluation. Dr. Standefer writes that the claimant's radiographic studies to date and his clinical history are most consistent with lumbar strain however, these would not be associated with numbness and tingling in the hips or problems with bowel or bladder control. The doctor writes that at present there are no objective physical findings that prevent the claimant from performing employment with the respondent noting that he has not placed any restrictions on the claimant. The claimant underwent an MRI of his thoracic spine

on March 9, 2004, which revealed minimal disc bulge or protrusion noted at multiple levels with no significant disc displacement or herniation demonstrated. This test does reveal vertebral hemangioma noted at L1. Dr. Michael Standefer writes on March 24, 2004 that he has reviewed the claimant's lumbar MRI, thoracic MRI and EMG noting that these studies do not reveal any evidence of a structural neurosurgical problem that would account for his complaints. Dr. Standeder concludes with writing that over all the claimant's complaints of pain are more in keeping with the lumbar strain. The claimant was seen by Dr. Charles Craft on April 9, 2004 for his back problems. Dr. Craft notes that the claimant has a longstanding seizure disorder. Dr. Craft writes that the claimant has been seen by Dr. Swicegood at the pain clinic and that the claimant has had one back injection and is scheduled for a repeat visit. Dr. Craft writes that the claimant is currently working but he cannot get through a day with his back. Upon examination it is noted that the claimant has some paralumbar spasms for which the doctor recommended physical therapy, medications, and to be taken off work for ninety days.

On May 10, 2004 Dr. Craft saw the claimant for his complaint of elevated blood pressure at which time his medications were adjusted. On May 27, 2004 the claimant was hospitalized for a condition described as an altered mental status, possible seizures. The claimant was discharged on May 28th. On June 2, 2004 Dr. Craft writes that he has seen the claimant after his hospitalization for a presumed seizure activity with possible conversion reaction

component. The doctor notes that the CT and EEG scan of the claimant's head were normal. The doctor writes that the claimant has some problems with his low back and has been off work for this condition. The claimant's medication was adjusted by Dr. Craft at this time.

Dr. Michael Standefer writes on June 11, 2004, that the claimant was released from his clinic on March 24, 2004, and was capable of resuming employment at that time. Dr. Standefer notes that the claimant had no surgical lesions to account for his symptoms and that conservative care is the mainstay of therapy for him. The doctor concludes with stating that the claimant had no objective physical findings identified that would preclude him from performing employment with the respondent. Dr. Charles Craft writes on June 28, 2004 that at the time of the claimant's April 9, 2004 visit he described pain with limitations of movement aggravated by stooping, bending, lifting, and even sitting. Dr. Craft writes that the claimant's history and complaints appear genuine and consistent with his MRI findings and associated back spasms. The doctor notes that based upon the above findings and clinical impression combined with his continuing visits with Dr. John Swicegood, a pain specialist, the patient was given time off work for continued treatment to include physical therapy. Dr. Craft notes that the claimant's continuing medical treatment has centered around his high blood pressure and seizure condition noting that these conditions are currently under evaluation and treatment.

After a complete review of this matter, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from April 9, 2004 until June 28, 2004. Dr. Craft clearly sets forth in his medical notes that the claimant had objective findings of back problems for which he took him off work on April 9, 2004. Dr. Craft writes on June 28, 2004, that the claimant currently is being treated primarily for his high blood pressure and seizure condition but does note that the claimant does have low back problems. I find however that by or on June 28, 2004, the claimant's high blood pressure and seizure condition overshadowed his back problems and they are the main reason for his inability to work.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 17, 2003, the relationship of employee-employer existed between the parties.
3. The claimant sustained a compensable injury to his back on August 17, 2003.
4. All medical expenses have been paid.
5. The claimant is entitled to a weekly compensation rate of \$193.00 for temporary total disability and \$154.00 for permanent partial disability.
6. The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from April 9, 2004 until June 28, 2004. See Discussion above.

7. The respondents have controverted the claimant's entitlement to additional temporary total disability.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from April 9, 2004 until June 28, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE