

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110570

TOM TROUTMAN, EMPLOYEE

CLAIMANT

CRAIGHEAD FARMERS CO-OP, EMPLOYER

RESPONDENT

**AG-COMP SI FUND,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 25, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on March 12, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Guy Alton Wade, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 12, 2004, to determine whether the claimant is entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on January 14, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant times, including September 7, 2001; that the claimant sustained a compensable

cervical injury on said date; that he earned sufficient wages to entitle him to compensation rates of \$291.00 per week for temporary total disability and \$218.00 per week for permanent partial disability; and that the respondents have controverted all medical treatment beyond that previously paid. This claim has been the subject of a prior hearing, specifically, on April 26, 2002. An Opinion was filed on May 31, 2002. It was agreed that no appeal was taken by either party from the prior Opinion which is now the law of the case.

By agreement of the parties, the sole issue presented for determination concerned claimant's entitlement to additional medical treatment.

Claimant contended, in summary, that respondent inappropriately suspended medical care; that he required on-going medical treatment which should be authorized by this Commission; and that a controverted attorney's fee should attach to any additional medical benefits awarded.

The respondent contended that it had complied with all prior Opinions and Orders; that it provided appropriate medical treatment following the prior award and that the claimant subsequently abandoned all medical treatment; and that additional medical treatment was not reasonably necessary based on the facts of this claim.

The claimant was the only witness to testify at the hearing. The record is composed solely of the transcript of the March 12, 2004, hearing containing a joint exhibit consisting of forty-four (44) pages, of which twenty (20) pages

are medical records and the remaining pages consisting of an investigative report concerning a surveillance of the claimant's activities by Mid-State Investigations, Inc. Three (3) video tapes of the various surveillances were introduced as "Respondent's Exhibits 1 - 3," respectively, and retained in the Commission file. The record of the prior proceeding and the administrative law judge Opinion filed May 31, 2002, were incorporated by reference and made a part of the record herein.

From a review of 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 made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On September 7, 2001, the claimant sustained a compensable, cervical injury arising out of and during the course of his employment with Craighead Farmers Co-Op, at which time he earned sufficient wages to entitle him to compensation rates of \$291.00 per week for temporary total disability and \$218.00 per week for permanent disability.
3. A prior Opinion filed May 31, 2002, is now a final decision.

4. The claimant returned to work for another employer on November 14, 2001, and has apparently remained gainfully employed since that time.
5. The claimant's last medical treatment for his September 7, 2001, admitted injury was on December 2, 2002.
6. The claimant has failed to prove, by a preponderance of the credible evidence, that additional medical treatment is reasonably necessary in this claim.
7. Respondents have controverted claimant's entitlement to additional benefits.

DISCUSSION

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The employee has the burden of proving, by a preponderance of the

evidence, that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc., vs. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2002).

The facts in this case are basically undisputed. An Opinion was filed May 31, 2002, awarding the claimant some limited, additional temporary total disability for a closed period beginning October 31, 2001, through November 14, 2001, at which time the claimant returned to gainful employment for another employer. In addition, it was determined that respondents were not justified in unilaterally terminating medical treatment on October 30, 2001. The respondent was directed and ordered to pay continued, reasonably necessary medical treatment, including, but not limited to follow-up examination and treatment by Dr. Bruce Safman, as well as any other, valid referrals by claimant's primary treating physician, Dr. Stubblefield. The record reflects that respondents accepted and paid the award of additional temporary total disability, as well as the follow-up medical care provided by Dr. Safman. The record further reflects that the claimant missed several scheduled appointments with Dr. Safman. It is undisputed that the claimant last saw Dr. Safman on December 2, 2002. The claimant did not seek any additional medical treatment of any nature or kind until after respondents requested a dismissal of his claim for lack of prosecution, at which time the claimant objected to the dismissal and requested additional benefits. It is apparent that the claimant's request for a hearing was based on respondents' request for a dismissal. Ark. Code Ann.

§11-9-509 (Repl. 2002) provides:

The amounts payable or time periods allowable for authorized medical, hospital, and other services and treatment furnished under §§11-9-508 – 11-9-516, unless waived by the employer-respondent or approved by the Workers' Compensation Commission and warranted by the preponderance of the evidence on the basis of the record as a whole, are:

- (1) Six (6) months if the claimant lost no compensable time from work as a result of his or her injury;
- (2) Six (6) months following the return to work by an injured employee who has been receiving authorized medical or hospital or other services or treatment;
- (3) Ten thousand dollars (\$10,000) aggregate for all authorized medical, hospital, and other services and treatment, including any amounts paid under subdivisions (1) and (2) of this section.

The claimant's injury occurred on September 7, 2001. The claimant returned to work for a different employer as a truck driver on November 14, 2001. The claimant has continued to work since that time. In addition to driving a truck, it is undisputed that the claimant is physically capable of performing extremely demanding work including, but not limited to, lifting, carrying, shoveling, as well as loading and unloading significant weights. The claimant last obtained authorized medical treatment on December 2, 2002. Although the claimant maintained that he continued to require follow-up medical treatment, his statements are mere conclusions and are not supported by the record as a whole. To the contrary, the record reflects that the claimant did not seek follow-up medical care and that the respondents terminated his treatment based upon information that the claimant cancelled and/or failed to

show for several follow-up appointments. In view of the foregoing, it is herein concluded that the claimant has failed to prove that additional medical treatment is reasonably necessary in relation to his September 7, 2001, admitted injury. Accordingly, the within claim for additional medical treatment is respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge