

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E517398

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| MICHAEL W. VANDIVER, EMPLOYEE | CLAIMANT |
| DEMOCRAT PRINTING & LITHOGR. CO., EMPLOYER | RESPONDENT |
| FIDELITY & GUARANTY INS. UNDERW., CARRIER | RESPONDENT |

OPINION FILED SEPTEMBER 29, 2004

Hearing before Administrative Law Judge J. Mark White on August 17, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Steven McNeely, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 17, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on June 21, 2004, and a Prehearing Order was entered that same day. A copy of the June 21, 2004, Prehearing 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 Order.

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

relationship existed at all relevant times, including October 25, 1995; that on October 25, 1995, the claimant sustained a compensable injury to his neck and shoulder; and that Respondents accepted the October 25, 1995, injury as compensable and paid benefits.

The parties agreed that the issues to be presented were unpaid medical bills; and controversion and attorney's fees.

The claimant contends that he sustained a work-related injury and is entitled to payment of medical expenses; and that these issues have been controverted and the appropriate attorney's fee should attach.

Respondents contend that they have paid the reasonable, necessary and related medical expenses pursuant to the fee schedule in Rule 30.

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 all of the bills discussed herein were for treatment reasonably necessary in connection with his compensable injury.
4. The claimant has proven by a preponderance of the evidence that he is entitled to reimbursement of payments totaling \$492.36 made for health care services prior to the entry of the Full Commission opinion and order of September 16, 2001.
5. The respondents have controverted all benefits sought herein.

DISCUSSION

Though the evidence is somewhat tangled, the facts of this matter are relatively straightforward. The claimant sustained a compensable injury to his back in 1995. At some point thereafter, the respondents controverted further medical treatment. The claimant asked for a hearing before the Commission, and on November 17, 2000, an administrative law judge entered an opinion finding that additional medical treatment was reasonably necessary in connection with the

compensable injury. The Full Commission affirmed this finding on September 19, 2001, and no appeal was taken from its decision.

From 2000 through 2002, the claimant personally paid \$779.70 to various medical providers for treatment for his compensable injury. The respondents presented evidence showing they too paid the medical providers for these same bills. The bills, along with accompanying treatment notes, were submitted by the parties into evidence. The payments at issue are as follows:

- \$99 to Dr. Carl Covey, bill dated March 20, 2002, for treatment provided November 29, 2000;
- \$210 to USOrthopedics Surgery Center, bill dated November 1, 2001, for treatment provided December 7, 2000;
- \$56.76 to Dr. Covey, bill dated August 26, 2002, for treatment provided April 10, 2002;
- \$90.22 to Radiology Consultants, bill dated May 8, 2002, for treatment provided April 18, 2002;
- \$41.36 to Dr. Covey, bill date unknown, for treatment provided October 14, 2002; and
- \$282.36 to Martin Bowen Hefley Knee & Sport, bill dated August 3, 2001, for unknown dates of treatment.

The respondents stipulated at the hearing that all but the last of these bills were for treatment reasonably necessary in connection with the compensable injury.

The last bill, for \$282.36, was for unspecified treatment, but the claimant testified that this bill was for co-pays. Given the stipulation and the testimony of the claimant, I find that the claimant has proven by a preponderance of the evidence that all of these bills were for treatment reasonably necessary in connection with his compensable injury.

The claimant seeks reimbursement from the carrier for the payments he made; the respondents contend that they have already paid these bills directly to the providers, that the providers have "balance billed" the claimant, and that the respondents should not be held responsible for reimbursing the claimant. In other words, the respondents contend they should not be forced to pay the same bills twice.

After reviewing the rules and statutes governing workers' compensation in this state, I can find only one provision that appears directly relevant:

Notwithstanding any other provision of this rule, if an employee has personally paid for a health care service and at a later date a carrier is determined to be responsible for the payment, then the employee shall be fully reimbursed by the carrier.

A.W.C.C. Rule 30, Part I § J (May 15, 2000).

The bills paid by the claimant for \$210 (bill dated November 1, 2001) and \$282.36 (bill dated August 3, 2001) appear to fall squarely within the provisions of

this rule. The payments were made by the claimant for health care services, and at a later date the carrier was determined to be responsible for the payments by the Full Commission, in its opinion issued September 19, 2001. Therefore, the carrier must fully reimburse the claimant for these two payments, for a total reimbursement of \$492.36.

The remaining bills cannot fall under the purview of this portion of Rule 30, for by its terms the rule applies only to bills paid prior to a decision on the claim. The remaining bills were paid in 2002 – all of the bills are dated 2002 or later – well after the final decision on the claim for additional treatment. I am unable to identify any other authority, statutory or otherwise, that would allow me to order the carrier to reimburse the claimant for these remaining bills.

Therefore, I find that the claimant has proven by a preponderance of the evidence that he is entitled to reimbursement of \$492.36 for payments made for health care services prior to the entry of the Full Commission opinion of September 16, 2001.

AWARD

The claimant has proven by a preponderance of the evidence that he is entitled to reimbursement from the respondent-carrier of \$492.36 for payments made for treatment reasonably necessary in connection with his compensable injury. 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. Steven McNeely, is hereby awarded the maximum statutory attorney's fee on the entire Award pursuant to Ark. Code Ann. § 11-9-715 as it applies to injuries sustained prior to July 1, 2001.

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.

HON. J. MARK WHITE
Administrative Law Judge