

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313198

| | |
|---|------------|
| SHAWN WEST | CLAIMANT |
| OZARK AIRCRAFT SYSTEMS | RESPONDENT |
| AIG CLAIM SERVICES, INC. INSURANCE CARRIER | RESPONDENT |

OPINION FILED AUGUST 30, 2004

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

Claimant represented by JAMES EVANS, JR., Attorney, Springdale, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on June 22, 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 April 16, 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 July 20, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 2003.

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

1. Compensability of the claimant's back and neck injuries.
2. Related medical.
3. Temporary total disability from August 4, 2003, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he has been temporarily totally disabled since August 4, 2003. AIG has refused to pay for any medical care on the behalf of the claimant. That the claimant contends that he is entitled to continue with his medical care through Dr. Cyril Raben and have physical therapy directed at his care and direction, and to be cared for by Dr. Ronald Bertram.

In regard to the foregoing issues the respondents contend that the claimant did not suffer a compensable injury while in their employment.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted medical records marked Joint Exhibit No. 1. The respondents submitted a Form 1-A marked Respondents' Exhibit No. 1 and non medical marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he began work for the respondent in April 2000 as an avionics technician. The claimant explained that he, with others, installed advanced avionics systems in Boeing Business Jets. The claimant testified that he acquired his

experience and training in the field of avionics while he was in the military.

The claimant testified that on July 20, 2003, he and another employee, Bobby Hendrix, were working on a Boeing 727 closing up the number 3 engine cowling. The claimant testified that he and Mr. Hendrix were up in a hydraulic lift working when a stubborn latch gave way and he fell backward onto the lift. The claimant testified that he had on a safety harness so he did not fall all the way to the ground but he did fall onto the floor of the lift. The claimant testified that Mr. Hendrix helped him up and he knew he was hurt but was unaware of the severity of his injuries. The claimant testified that he finished the rest of his shift and when they came down off the lift he and Mr. Hendrix went to their lead man, Phil White, to report his injury.

The claimant testified that his symptoms became worse through the following days and he talked with Melissa Boudreaux as well as Harvey Schlessman, who was the main supervisor. The claimant testified that he remembers talking to Melissa with Mr. Schlessman on three different occasions, mainly over his medication and his need for limited duty. The claimant testified that he also had another fall while working for the respondent. The claimant remembers that the respondent was having a lot of contractors in to see the 727 and that he, the claimant, went over to clean up some water which was a safety hazard and in the process he ended up falling himself. The claimant testified that he reported this fall to Phil White immediately. The claimant testified that before this

fall he was already being seen by Dr. Bertram. The claimant testified that eventually he was referred to and was seen by Dr. Blankenship.

The claimant testified that he went in to see Melissa inquiring on what he needed to do to file for workers' compensation and she told him to fill out some papers that they would work out the workers' comp when they got all the stuff together. The claimant testified that Harvey Schlessman was with him at this meeting with Melissa and that in fact an accident report was filled out but he does not know what happened to it.

The claimant testified that he had a misunderstanding with Dr. Blankenship and was ultimately dismissed from his care. The claimant explained that he was unaware that Dr. Blankenship had a twenty-four-hour contact number. The claimant stated that it was a weekend and his pain was so bad he went to the VA for some relief. The claimant testified that he received medication from the VA in order to help him sleep. The claimant testified that he had already been off work as a result of his injury prior to September 30, 2003, at which time Dr. Bertram recommended that he be off for at least another eight weeks and referred him to a neurosurgeon.

The claimant testified that as a result of a service connected problem he was assessed with low back strain and given a 10 percent impairment rating for which he draws benefits. The claimant testified that in the three, almost four, years that he worked for the respondent he did not have any back problems that prevented him

from working prior to his July 20, 2003, accident. The claimant testified that he also had a right knee injury while he was in the service but he did not receive an impairment rating. The claimant testified that he had a left knee injury while working for the respondent for which he filed a workers' compensation claim. The claimant testified that he had surgery on his knee but he has never had an impairment rating assessed for that knee injury. The claimant testified that he has never had any claims or problems with his neck prior to his fall while working for the respondent. The claimant testified that the last physician he has seen for his current back and neck problems was Dr. Raben. The claimant testified that it has been since January 2004 that he has seen any physician for his back and neck and he is in need of further treatment.

On cross examination, the claimant agreed that after he finished his shift on July 20, 2003, he was to be off for almost a full week before he was to return to work the following Friday. The claimant testified that his symptoms progressively got worse during this period of time. The claimant testified that following his July 20 incident he thinks it was approximately three weeks or two and a half weeks later that he first spoke to Melissa Boudreaux about his work related injury. The claimant agreed that he first saw a doctor for his back problem on August 4, 2003, when he was seen by Dr. Bertram. When asked, the claimant testified that he does not believe that he told Dr. Bertram that he fell and hurt his back while working for the respondent. The claimant agreed that

Dr. Blankenship discontinued his care over a narcotics issue. The claimant testified that he told Dr. Blankenship that he had gone to the VA for medication and that Dr. Blankenship told him that he could not do that at which time he dismissed him from his care. The claimant testified that he did not know that he could get hold of Dr. Blankenship in order to get medication. The claimant testified that he does not recall telling Dr. Blankenship that he injured his back in July. The claimant testified that the back injury he had while in the military has caused him to have a slight problem with his back but not the types of symptoms he is currently experiencing such as his genitals going numb, his big toe and leg going numb, having shooting pains down his leg and having cricks in his neck with shooting pains down his arm. The claimant agreed that he did not tell Dr. Bertram that he had problems with his neck because he was ignorant of what his back problems were. The claimant agreed that he though his arm pain was related to his back injury.

On redirect examination, the claimant agreed that after he fell he reported his injury that evening to Phil White because that was what they were told to do.

Bobby Hendrix testified on behalf of the claimant and stated that he did work for the respondent from January 2003 until October 2003. Mr. Hendrix stated that during this period of time he worked with the claimant and was working with him in July 2003. Mr. Hendrix testified that one night he and the claimant were working on a stand, July 20 he believed, and they were closing the cowling

on number three engine on a 727. This witness stated that the latch was worked out of shape so bad they were having to fight with it and when the latch did close, the claimant fell on the stand. Mr. Hendrix stated that he helped the claimant up and asked him if he was ok. Mr. Hendrix remembers that they joked about it and went about their business but later that night the claimant started complaining about his back hurting him and that he suggested that the claimant needed to report the incident to their lead man, Phil White. Mr. Hendrix agreed that they did notify Mr. White that evening. Mr. Hendrix testified that he continued to work with the claimant but that the claimant got to where he was hobbling around so bad he could hardly do his work and the medications he was on were causing him problems. Mr. Hendrix stated that the claimant was in physical pain but he still came to work. This witness testified that he has listened to conversations between Harvey and the claimant about talking to Melissa Boudreaux. Mr. Hendrix explained that they all worked together and even though Harvey Schlessman worked the day shift, before he would leave, he would go over what they needed to do on their shift. This witness testified that they would be standing around a table talking about their work and that concern for the claimant's situation was part of the conversation. Mr. Hendrix stated that by the second or third week in August, the claimant was really showing signs of having problems and by the first part of September it was very obvious. Mr. Hendrix testified that even with the medications, the claimant was hurting so bad it appeared he could not concentrate on what he was

doing. Mr. Hendrix testified that prior to July the claimant had no trouble physically or mentally handling any aspect of his job but that after his July incident he changed.

Melissa Boudreaux testified that she had been employed by the respondent but had been laid off as of December 18, 2003. Ms. Boudreaux testified that she was the Human Resource Director for the respondent in July 2003 and part of her duties included handling workers' compensation claims. This witness testified that she also handled the Family Medical Leave paperwork. Ms. Boudreaux stated that if the claimant had come in alleging a workers' compensation injury, she would not have filled out Family Medical Leave forms. Ms. Boudreaux testified that on December 1, 2003, the claimant reported a workers' compensation injury to her at which time a first report of injury was filled out. This witness testified that she had no recollection of the claimant and Harvey Schlessman coming to her on several different occasions and reporting a workers' compensation injury. This witness testified that as Human Resource Director when a workers' compensation injury is reported she is to first fill out a first report of injury and forward that report to the carrier.

On cross examination, Ms. Boudreaux testified that the claimant last worked for the respondent on September 26, 2003. This witness testified that it was her understanding that the claimant had been under treatment for quite some time for a back injury and he starting talking to her about his doctor going to take him off work and what did he need to do. Ms. Boudreaux

testified that at that time they initiated paperwork for the Family Medical Leave Act. Ms. Boudreaux testified that Phil White is an avionics technician that worked with the claimant and that Harvey Schlessman was a salaried supervisor. Ms. Boudreaux testified that Mr. Schlessman and the claimant came to her on more than one occasion to discuss his disability and injury because Mr. Schlessman was concerned as to what he would need to do because the claimant's doctor was going to take him off work. Ms. Boudreaux testified, "But, again, there was, you know, there was no mention of it being an on the job injury." Ms. Boudreaux testified that if a first report of injury was filled out it would have been with Harvey Schlessman and that report would have been given to her. This witness testified that the claimant had not signed any of the Family Medical Leave forms but his physician had signed the forms which she would have given to the claimant to take to his doctor. Ms. Boudreaux agreed that it is possible that Mr. Schlessman had given the first report of injury to Ned Batchelor, the avionics manager over the entire department. Ms. Boudreaux testified that if Mr. Batchelor had been given a report of injury he would have talked to her about it. Ms. Boudreaux testified that she was unaware that the claimant had had a knee injury while working for the respondent.

On redirect examination, Ms. Boudreaux testified that the claimant did not draw short term disability. Ms. Boudreaux explained that by the time the short term disability claim was filled out it came to her attention that the claimant had reported

a work related injury, therefore, he would not be entitled to short term disability.

On recross examination, Ms. Boudreaux testified that after the claimant quit working in September 2003 he did not draw any workers' comp, short term disability or long term disability.

The medical records set forth that the claimant was seen by Dr. Ronald Bertram on August 4, 2003, complaining of low back pain with an onset being approximately two months before. It is noted that the claimant reports that he has had back problems ever since he injured his back in the military but currently is having pain all the way across his low back with shooting pains up his back into his hips and that he has had problems sleeping due to the pain. The claimant was diagnosed with having low back pain with spasms and medication was recommended. The claimant was seen on September 11, 2003, by Dr. Bertram noting that he continues to have low back pain. Medications were recommended as well as a referral to a neurosurgeon for further evaluation and treatment. Dr. Bertram also recommended that he use ice and a heat treatments three times a day with no lifting over ten pounds and to avoid twisting and bending. The claimant phoned Dr. Bertram on September 16 and September 17 needing something for his pain and requesting a referral to a neurosurgeon. Upon examination on September 17, 2003, Dr. Bertram notes that the claimant has spasms bilaterally at the paraspinous muscles and radiculopathy. Dr. Bertram recommended that the claimant be off work until he is evaluated by a neurosurgeon. The claimant continued to be seen or have contact

with Dr. Bertram's office concerning his pain and his need to be seen by a neurosurgeon up through the remainder of September and through October. Eventually an appointment was finalized with Dr. Blankenship on October 29, 2003. Dr. Blankenship writes on October 29, 2003, that the claimant reports that he has been having nagging low back pain for many years but over the past four months he has been having rather severe low back pain and over the past two and a half weeks he has been having rather significant neck pain. Dr. Blankenship notes that the claimant's plain film and lumbar MRI are essentially normal but he does have some mild disc bulging and some very minimal disc degenerative changes noted at L4-5. The doctor notes that since the claimant is complaining of neck pain he would recommend a cervical MRI and further recommended medication as well as physical therapy. The claimant underwent a cervical MRI on November 4, 2003, which revealed degenerative disc disease with disc space changes at C5-6 with a small disc herniation that is in the midline slightly off to the left with no neuro compression. This test also revealed bilateral neuro foraminal narrowing secondary to disc bulging at C6-7, noting that once again there is ample space at this level so radiculopathy would be unlikely. Dr. Blankenship writes on December 9, 2003, that he has seen the claimant for his complaints of lower back and left hip pain, noting that he has completed his physical therapy. It is noted that the claimant was also complaining of significant neck pain and bilateral knee pain. After examination, Dr. Blankenship notes that the claimant has chronic mechanical neck pain that is myofascial in

nature and that he believes the most likely diagnosis of the claimant's low back is zygapophyscal joint pain. Dr. Blankenship recommended altering his exercise program and cautioned him about going to the VA for medications for his pain treatment. On January 6, 2004, Dr. Blankenship writes that the claimant has been discharged from the clinic for failure to comply with the recommendations not to seek other medical treatment for his pain management other than from himself. Dr. Blankenship notes that this recommendation was violated when the claimant went to the VA Hospital and received some Oxycodone, noting that the claimant had previously been informed that his phone calls would be taken and that it was impossible to manage his pain with multiple physicians prescribing different medications. It was noted that the claimant asked for a referral to another physician and that Dr. Blankenship gave him the name of Dr. Knox and Dr. Runnels.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his back and neck while working for the respondent on or about July 20, 2003. The claimant has testified to a specific incident as to falling while working on an engine and this testimony has corroborated by a co-employee. The claimant as well as Mr. Hendrix has testified that this injury was reported to Phil White and the claimant's condition and problems with his back were discussed with the supervisor, Harvey Schlessman, on several occasions. The medical documentation sets forth that the claimant had muscle spasms in his back for which Dr. Bertram prescribed

medication on the claimant's initial visit with him on August 4, 2004. The MRI of the claimant's cervical area indicates that at his C5-6 there is a small herniation that is midline slightly off to the left with no neuro compression. The medical records set forth that Dr. Bertram did not take the claimant off work until September 17, 2003. Therefore, temporary total disability should begin on September 17, 2003, and continue to a date to be determined. It is noted that the claimant has testified to having prior problems due to his military service but it is noted that he worked full time with no problems affecting his work until his July event after which his physical condition deteriorated and his ability to work was hindered. The claimant's co-employee, Mr. Hendrix, state quite clearly that the claimant's ability to perform his work and to move around normally were limited due to his ongoing complaints of back and neck problems. The respondents, therefore, should pay for all reasonable and necessary medical care for this claimant's low back and neck problems subsequent to his July 2003 fall.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 20, 2003, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to the maximum compensation rate for 2003.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on July 20, 2003. See discussion above.

5. The respondents should pay for all reasonable and necessary medical care for this claimant's low back and neck problems subsequent to July 20, 2003.

6. The claimant is entitled to temporary total disability from September 17, 2003, to a date to be determined. See discussion above.

7. The respondents have controverted this claim in its entirety.

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 sustained a compensable injury while working for the respondent on July 20, 2003.

The respondents should pay all reasonable and necessary medical treatment for this claimant's compensable low back and neck injuries.

The respondents should pay temporary total disability to this claimant from September 17, 2003, to a date to be determined.

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