

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402547

TIMMY JASON WISE, EMPLOYEE	CLAIMANT
QUEENS PLANTATION, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED NOVEMBER 12, 2004

Hearing before Administrative Law Judge J. Mark White on September 16, 2004, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 16, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on July 7, 2004, and a Prehearing Order was entered that same day. A copy of the July 7, 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 February 20, 2004, February 27, 2004, and March 1, 2004; and that the claimant earned an average weekly wage of \$362, entitling him to a compensation rate of \$241 for total disability benefits and \$181 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury while working for the respondent-employer; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees.

The claimant contends that he sustained a compensable injury on February 20, 2004; that the medical treatment he has received to date has been reasonable, necessary and related to his compensable injuries; that he should be paid temporary total disability benefits from March 2, 2004, to July 9, 2004; that he is entitled to additional medical treatment; and that his attorney's fees should be paid as permitted by law.

Respondents contend that the claimant did not suffer a compensable injury at any point in time while working for the respondent-employer; that they did not receive notice of any alleged injury until March 2, 2004; and that in the event compensability is found, the respondents should not be liable for benefits prior to the receipt of actual notice.

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 witnesses and to observe their 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 he sustained an injury on February 20, 2004, arising out of and in the course of his employment, and that his injury was caused by a specific incident identifiable by time and place of occurrence.
4. The claimant has proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services, and that the existence and extent of his injury is established by medical evidence supported by objective findings.
5. The claimant has therefore proven by a preponderance of the evidence that

he sustained a compensable injury on February 20, 2004.

6. The claimant has proven by a preponderance of the evidence that the treatment received from Dr. Marc Hagebusch during March 2004 was reasonably necessary in connection with the compensable injury.
7. The claimant has proven by a preponderance of the evidence that additional medical treatment, specifically an MRI, is reasonably necessary in connection with his compensable injury.
8. The claimant has proven by a preponderance of the evidence that he was totally incapacitated from earning wages from March 2, 2004, until March 26, 2004.
9. The claimant has proven by a preponderance of the evidence that he was within his healing period from March 2, 2004, through March 26, 2004.
10. The claimant has therefore proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from March 2, 2004, until March 26, 2004.
11. The issue of notice is moot.
12. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

On February 20, 2004, the claimant was working for the respondent-employer as a farm hand. He and two other employees were attempting to move a grain auger, a piece of equipment that weighed several hundred pounds, if not more. The claimant testified that when he and another employee attempted to lift the auger:

[M]y back went out immediately, I mean, I just - I felt a pain just like somebody stabbed me in the dead middle of my lower back. I fell to my knees after we had put the skid plate underneath it and I went to crawling on the ground back over to the truck.

Tommy Nicholson, one of the other two employees, testified and largely corroborated the claimant's account of the accident. When the claimant later sought medical treatment, the history he gave to the chiropractor reflected the same account.

The accident occurred on a Friday. The claimant testified he completed his shift, though he said he was unable to do any physical labor the rest of the day. He rested over the weekend and on the following Monday returned to work. He continued working until March 1. On March 2, the claimant testified, his back hurt too much for him to work, and he called in sick to his supervisor. He testified that he asked to be sent to a doctor; the supervisor, Johnny Burke, testified that he

passed the request on to the corporate office. Burke told the claimant he could not return to work without a doctor's note.

A week passed and the respondents failed to arrange for medical treatment for the claimant. On the advice of his attorney, he sought treatment on his own on March 9 from a chiropractor, Dr. Marc Hagebusch. Dr. Hagebusch diagnosed the claimant with muscle spasm, lumbar intervertebral disc syndrome, and sacroiliac sprain. The claimant continued to treat with Dr. Hagebusch through March 23.

At some point after March 11, the respondents furnished the claimant with a list of three medical providers to choose from for treatment. The claimant noted that one of the providers refused to treat him, and that the other two providers did not accept workers' compensation patients. The other two clinics appear to actually be a single clinic, as both are at the same address in Texarkana. The claimant's attorney notified the respondents on March 17 that none of the providers were willing to treat the claimant. The respondents eventually arranged an appointment for the claimant to see Dr. Norris Knight on April 6.

Before the claimant could see Dr. Knight, he moved to the state of Washington "where I could receive financial support." He testified that he was "broke" and could no longer afford to live on his own, since he had not returned to work. The respondents controverted his injury when he failed to see Dr. Knight.

II. Adjudication

A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The claimant's account of his February 20, 2004, work accident was substantially corroborated by the testimony of Tommy Nicholson, as well as by the records of the claimant's chiropractor. There is no evidence in the record substantially contradicting his account. Therefore, I find that the claimant has

proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and that his injury was caused by a specific incident identifiable by time and place of occurrence.

The claimant was treated by a chiropractor from March 2 through March 23, 2004. The chiropractor observed muscle spasms in his first visit with the claimant, along with other objective findings described in his reports. There is no medical evidence in the record contradicting the chiropractor's diagnosis or treatment recommendations. Therefore, I find that the claimant has proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services, and that the existence and extent of his injury is established by medical evidence supported by objective findings.

The claimant has proven every element of a compensable injury. Therefore, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury on February 20, 2004.

B. Benefits

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary

medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

As noted above, there is no medical opinion in the record contradicting the treatment recommendations of the claimant's chiropractor. I find that the claimant has proven by a preponderance of the evidence that the treatment received from Dr. Marc Hagebusch during March 2004 was reasonably necessary in connection with his compensable injury. Dr. Hagebusch has recommended the claimant undergo an MRI and opined that the claimant's back problems are causally related to his compensable injury. There is no medical opinion in the record contradicting his recommendation. I find that the claimant has proven by a preponderance of the evidence that additional medical treatment, specifically an MRI, is reasonably necessary in connection with his compensable injury.

An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The claimant stopped working as of March 2 but did not seek medical treatment until March 9. Dr. Hagebusch immediately took him off of work and gave him a work excuse until March 26. The claimant continued to treat with Dr. Hagebusch until March 23, but Dr. Hagebusch did not extend the claimant's work excuse. In response to a letter from the claimant's attorney, Dr. Hagebusch agreed it was "reasonable and necessary" for the claimant to have been off work "up until the time which I referred him out," which was March 23. The only evidence of the claimant's inability to work after March 26 is his own testimony. I note that he continued to work several days after his injury, and that he was able to return to work when his financial condition required it. Given this evidence, I find that the claimant has proven by a preponderance of the evidence that he was totally incapacitated from earning wages from March 2, 2004, until March 26, 2004. He was being treated during this time, and he had not yet received all of the treatment which was recommended. I find that the claimant has proven by a preponderance of the evidence that he was within his healing period from March 2, 2004, through March 26, 2004. Therefore, I find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from March 2, 2004, until March 26, 2004.

C. Notice

Employees are required to promptly notify their employers of any injury, and employers are ordinarily not responsible for payment of indemnity or medical benefits accrued prior to the employee's report of injury. ARK. CODE ANN. § 11-9-701 (a)(1). There is a prima facie presumption that sufficient notice was given. ARK. CODE ANN. § 11-9-707 (2). It is thus the respondents' burden to overcome the prima facie presumption by a preponderance of the evidence. *See, e.g., Country Pride v. Holly*, 3 Ark. App. 216, 624 S.W.2d 443 (1981) (application of different prima facie presumption in workers' compensation context).

Though the respondents have raised the issue of notice, they acknowledge they had notice of the claimant's injury as of March 2, 2004. The claimant did not stop working until that day, and he did not seek medical treatment until after that day. In other words, the claimant does not seek any benefits for the time prior to when he gave notice, that is, March 2, 2004. Therefore, I find that the issue of notice is moot.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury on February 20, 2004; that the medical treatment he

received was reasonably necessary in connection with the compensable injury; and that additional medical treatment, specifically an MRI exam, is reasonably necessary in connection with the 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. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

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