

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310422

KENNETH BARKER

CLAIMANT

MORRELL MANUFACTURING

RESPONDENT

AIG CLAIM SERVICES, INC.
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 23, 2005

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 CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 2, 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 January 29, 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 September 15, 2003, the relationship of employee-employer-carrier existed between the parties.

3. Medical expenses have been paid.

4. The claimant is entitled to a compensation rate of \$200.00 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. Compensability of the claimant's head injury on September 15, 2003.

2. Temporary total disability from September 15, 2003, to a date to be determined.

3. The claimant's entitlement to medical treatment.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that his temporary total disability rate should be \$193.00 per week and that the respondents should be ordered to pay him the difference between the appropriate rate and the rate at which he was paid. The claimant contends that the respondents have suspended payment of his temporary total disability benefits during various times alleging that the claimant failed to keep medical appointments. The claimant contends that he has keep medical appointments and has been and continued to be under active medical treatment. The claimant contends that he should have been paid temporary total disability benefits continuously since on or about September 15, 2003, and that his period of temporary disability continues until a date yet to be determined. The claimant contends that his attorney is entitled to an appropriate attorney's fee regarding any temporary disability benefits not previously paid.

In regard to the foregoing issues the respondents contend that the claimant has been paid at the appropriate compensation rate pursuant to the Form AR-W. The claimant was on the job for a very short period of time prior to his injury. Therefore, compensation for a similar employee has been documented and provided herewith. Respondents also contend that all appropriate benefits have been paid with regard to this claim in a timely manner pursuant to respondents' obligations under the Arkansas Workers' Compensation Act. The respondents clarified and restated their contentions at the hearing before testimony.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical documentation marked Claimant's Exhibit No. 1, additional medical records marked Claimant's Exhibit No. 2, a report from Dr. Griggs marked Claimant's Exhibit No. 3 and medical reports from Dr. Sasser marked Claimant's Exhibit No. 4. The respondents submitted medical information marked Respondents' Exhibit No. 1 and additional documentation marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that on September 15, 2003, he was working for the respondent and tripped over a broken broom covered with trash and fell on a concrete floor injuring his shoulder, knees and head. The claimant testified that the fall knocked him out but when he woke up he got up, wiped the blood off of his face and that his supervisor, who was right there with him, took him to

the first aid room. The claimant testified that the fall caused his upper tooth to go through his lip and shoved his front bottom teeth into his upper gums. The claimant testified that when he started to get up he began getting dizzy and told his supervisor that he needed to go to the doctor. The claimant testified that he drove himself to Dr. Sasser's office and, while in the doctor's office, he had a seizure, Dr. Sasser called the paramedics and that he was transported by ambulance to Spark's Medical Center. The claimant testified that he woke up the next morning in the hospital.

The claimant testified that it had been over a year since he has had any type of seizure activity. The claimant testified that he began having seizures in 1997 after he was hit in the back of the neck and across his shoulders with a lead pipe. The claimant testified that he was 17 years old when this happened and he has treated for seizure activity subsequent to that time. The claimant testified that a neurology specialist, Dr. Corneliuson, from Missouri referred him to Dr. Keating when he moved to Arkansas. The claimant testified that he first began being seen by Dr. Keating in October 2002. The claimant testified that he did not see Dr. Keating between October 2002 and September 2003 nor did he see any other doctors for his seizure problems during this period of time. The claimant testified that he was not on any type of anti seizure medication during this period of time.

The claimant testified that before going to work for the respondent he worked with Tech Temporary Service and that he had a

driver's license. The claimant testified that currently he does not have a driver's license due to his seizure problems. The claimant testified that in order to have a valid driver's license he would have to be seizure free for a period of at least one year. The claimant testified that he had his last seizure two months prior to this hearing. The claimant testified that other than returning to work for a short period of time for the respondent he has not been employed since September 15, 2003, nor has he been physically able to hold down a regular job since that time. The claimant agreed that after his injury Dr. Griggs indicated that he should try and go back to work. The claimant stated that since he had had a seizure the night before Dr. Griggs had called him and he was given a note which he took to the respondent's receptionist setting forth that he was not going to be able to return to work.

The claimant testified that initially his claim was accepted as compensable and he was paid temporary total disability as well as medical expenses. The claimant agreed that once his checks stopped he was unable to obtain any further medical treatment which, in his opinion, he still needs. The claimant testified that he still has trouble focusing on things, he shakes and lacks the physical ability of getting around day to day.

On cross examination, the claimant testified that the seizures which he has are epileptic seizures. The claimant testified that since his seizures have started this time he also experiences periods of blackouts for a minute or two. The claimant agreed that he had these episodes while he was being treated by Dr. Keating.

The claimant stated that he had been off of his seizure medication for one year before September 2003. When asked, the claimant testified that sometimes he can tell when a seizure is coming on but other times he has no notice of an oncoming seizure. The claimant testified that he took a slip from Dr. Griggs into the respondent's receptionist setting forth that he was unable to work until his medication levels were readjusted. The claimant testified that the doctor's slip which the respondents have introduced into evidence setting forth that he can work just not around equipment that would cause danger to himself or someone else was not the note which he took into the respondent. The claimant testified that he did not talk to anyone else at the respondent's business except for the receptionist indicating that every time he asked to speak to someone they were always too busy to get to the phone.

Sandra Barker testified that the claimant is her son and has lived in her home since 1997. Mrs. Barker testified that in 1997 someone attacked her son resulting with him receiving medical treatment for a seizure condition. Mrs. Barker testified that prior to September 15, 2003, it had been approximately eleven months to a year and a half since the claimant had had a seizure but since that date he has had seizures off and on. Mrs. Barker testified that since September 15, 2003, she has observed the claimant being depressed as well as jerking and he cannot do a lot of things. Mrs. Barker testified that the claimant also has vision problems.

Dwight Sayre testified that he had been employed by the respondent for eight years and is the safety coordinator and assistant general manager. This witness testified that he was acquainted with the claimant and his workers' compensation claim. This witness stated that the claimant worked for the respondent two full days and fifteen minutes. Mr. Sayre testified that he did not witness the claimant's fall. Mr. Sayre testified that when the claimant was brought to his office he had a cut on his nose and a tooth was loose. This witness testified that the claimant did not report to him that he had tripped over a broom that was under trash and that all he observed was the claimant's cut lip and a loose tooth. This witness testified that the claimant did not indicate to him that he was dizzy while he was in his office and that the claimant told him that he did not need anyone to drive him to the doctor. Mr. Sayre testified that he asked the claimant if he needed medical attention and the claimant did not, at any time, request medical treatment. This witness testified that on January 13, 2004, a letter was sent to the claimant stating that the respondent had some light duty work. This witness testified that the following day the respondent received a call from the claimant stating he had not been released. At this time the claimant was instructed to bring in a note to that affect but he never did come in.

On cross examination, Mr. Sayre read a note from Dr. Griggs setting forth that the claimant had restricted duties in which loss of consciousness will not harm him or others. This witness was

asked what kind of floors there are at the respondent's business and Mr. Sayre stated, "Concrete." This witness stated that as a safety person, in his opinion, it would not be safe for a person to pass out and fall on a concrete floor.

Tyrell Edwards testified that he was a supervisor for the respondent. Mr. Edwards testified that on September 15, 2003, they all were just getting ready to start work and that the claimant was headed toward his station and that he, Mr. Edwards, was right behind him and the claimant fell face first on the floor. Mr. Edwards testified that he went over to the claimant and that the claimant's face was bleeding indicating that he had hurt his mouth area. Mr. Edwards testified that he asked the claimant if he was all right and the claimant indicated that he was and they went to "Dwight." Mr. Edwards was asked if the claimant was knocked out as a result of the fall and Mr. Edwards responded, "No. He was fine. He got up and said he was all right." Mr. Edwards testified that he did not notice a broken broom handle covered by trash on the floor where the claimant fell nor anything else he could have tripped over. Mr. Edwards testified that the claimant was carrying a bag of bags when he fell but does not remember whether these bags flew out of the claimant's hand or whether he fell to the ground with them still in his hands. Mr. Edwards testified that he went to get Dwight and that when Dwight got to the area the claimant went with Dwight to his office and that he, Mr. Edwards, was no longer involved with it. This witness testified that the claimant

seemed to be all right but he was bleeding from his lip, noting that he had fallen face first.

On cross examination, Mr. Edwards indicated that he did not inspect the area where the claimant had fallen because he had gone immediately to get Dwight. Mr. Edwards testified that the claimant kind of turned on his own, noting that the claimant was not just laying there knocked out but that he got up on his own and turned around and that was when he asked him if he was all right. This witness testified that that was when he saw the blood and he went to get Dwight. On redirect examination, Mr. Edwards testified that there is always material laying everywhere, noting that no one is running around. Mr. Edwards testified that, "We all walk around and you have just got to watch what you are doing." Mr. Edwards testified that the claimant did not indicate to him that he had tripped on anything. On recross examination, Mr. Edwards was asked if the claimant told him that he had fainted and the witness responded, "No, he did not."

On rebuttal, the claimant testified that when he fell the back of his head hit the concrete. The claimant testified that Mr. Edwards had instructed him to get his work station ready so he walked over to where the product was for part of the products, grabbed a box, stepped off the pallet and was walking back to his work station when he tripped over the broken broom covered with pre-used material and as he was falling he pulled the box he was holding and it came up to his face because he was stumbling trying to catch his step and it bused his mouth open and shoved his tooth

into his lip. The claimant testified that as he was falling he fell and first hit the corner of the box into his temple and then completed the fall with a smack to the back of his head. The claimant testified that he was six feet, five inches tall and weighed approximately 178 pounds. The claimant testified that he had heard Mr. Edwards testify that it did not appear that he tried to catch himself or brace himself as he was falling but that in fact he did try to catch himself as he was falling. On cross examination, the claimant explained that as he was falling forward he rolled as he was falling and hit the corner of the box with his temple because he was trying not to hit the floor. The claimant testified that as the box hit him in the temple the impact of the box pushed him over to his side which resulted in the back of his head hitting the floor. On redirect examination, the claimant testified that the box hit him below his left ear and between his left ear and left eye. The claimant testified that he actually hit the back side of his head when he hit the pavement and that it was the box that he was carrying that he was trying to use to brace his fall that hit him in the face and mouth.

The medical records set forth that the claimant was seen by Dr. Gordon Sasser on September 15, 2003. The claimant reports that he was working for the respondent and tripped over a broom striking the left side of his head. Upon examination, the doctor notes that there is slight tenderness toward the left parietal temporal aspect of the claimant's scalp but no significant bruising is appreciated. The doctor notes that there is bruising involving the right upper

incisors and gums and there is also bruising to the left upper lip and to the left knee cap. Dr. Sasser writes that the claimant is somewhat shaky and in between questioning he almost has a flickering of his eyelids and eyes which worsens when he is changing positions or sitting up in the wheelchair. The claimant was taken to Sparks ER to undergo further evaluation and scanning. On Follow up with Dr. Sasser on September 17, 2003, it is noted that when the claimant went to the ER where he was evaluated, he had multiple observed seizure activities, although a CT of his brain was negative. Dr. Sasser writes that Dr. Keating who is the claimant's neurologist had taken him off his Dilantin since the claimant had been seizure free for at least two years. The claimant was still having complaints of pain around his head, facial bones, jaw and tooth as well as his left knee. It is further noted that there has been no recurrence of seizure activity. After examination, the claimant's medications were adjusted, he was scheduled for an EEG and an appointment with Dr. Keating was scheduled. The claimant was not to return to work or drive in view of his seizure activity until cleared by Dr. Keating. Dr. William Griggs writes on October 21, 2003, that he has seen the claimant on referral from Dr. Sasser for an evaluation of seizure disorder. Dr. Griggs writes out a history concerning the claimant's fall while working for the respondent due to tripping over a broom, falling and striking the left temporal region on a box and then the back of his head on the floor. Dr. Griggs recommended that they do an EEG and if it is negative a twenty-four-hour EEG. Dr. Griggs

writes on October 30 that the claimant's twenty-four hour EEG showed two episodes of a seizure burst. Dr. Griggs writes that he thinks that the claimant does have a convulsive disorder for which he prescribed Delantin. Dr. Griggs notes that he would advise the claimant's employer that he should not work at any job in which loss of consciousness would be harmful to himself or others, noting that after they get his seizures under control, he would be glad to let him resume other activities. On December 9, 2003, Dr. Griggs writes that due to the claimant's seizure disorder, he has restricted him to duties in which loss of consciousness will not harm him or others should he have a convulsion. Dr. Griggs writes that he has given the claimant a temporary disability for six months, noting that he continues to have three to four brief blackouts a day but has not fallen to the floor. Dr. Griggs continued the claimant on his medications and to see him back in six weeks.

On June 30, 2004, Dr. Sasser writes to the claimant's attorney setting forth that when he reviewed the claimant's records of September 15, 2003, the claimant had reported to him that he had tripped over a broom striking the left side of his head. Dr. Sasser writes that the claimant did not relate to him that he had a syncopal episode that resulted in his trauma actually reporting that he had not been having any seizure activity for quite some time. Dr. Sasser writes that clearly from the objective findings the claimant had difficulty concentrating and answering questions but otherwise was coherent and oriented thus making his historical

account of his injury reliable. Dr. Sasser writes that there is nothing in his records that would indicate that the claimant fainted prior to the fall resulting in the loss of consciousness.

Dr. Griggs writes to the claimant's attorney on July 26, 2004, where the doctor sets forth that his experience with the claimant has been one in which the claimant has been non compliant. Dr. Griggs writes that the claimant has not taken his medications indicating that he cannot afford them and when they had tried to get his medicine free, the claimant had not provided the proper financial data to achieve this goal. Dr. Griggs writes that the claimant had another seizure while at work on July 23, 2004, and had zero anticonvulsants in his blood stream. Dr. Griggs writes that the claimant did have an abnormal twenty-four-hour EEG which showed fairly frequent seizure bursts and that he does need treatment. Dr. Griggs writes that he does not know what the cause of the claimant's convulsions are but that the blow could have aggravated the seizures. Dr. Griggs again writes that the claimant certainly is in need of treatment but he needs to be more compliant with the treatment recommendations.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on September 15, 2003. The testimony has pointed out that the claimant had been subject to a seizure disorder due to blunt trauma some years before his compensable September 15, 2003, injury. The

claimant has testified and his mother has verified that the claimant had been seizure free for a year or more and had been productively working at various jobs up until his trip and fall accident. The claimant has consistently testified that he tripped over material in the floor and the respondents' witness has testified that the floor of the respondent's business is covered with material and they all try to be careful when moving around the floor. The medical records have verified that the claimant has a seizure disorder for which he requires medication and treatment. The claimant's treating physicians, Dr. Griggs and Dr. Sasser, have indicated that the claimant has reported to them that he tripped over a broom handle causing his fall and striking his head on the floor and subsequent to that event has been plagued with seizures and blackouts. Dr. Griggs writes that although he does not know the cause of the claimant's convulsions, the blow to the claimant's head as a result of his fall could have aggravated his seizures. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his compensable injury of September 15, 2003, as well as temporary total disability from September 15, 2003, to a date to be determined. The claimant's physicians have taken him off work for a period of time and then when he was released he was released to work at a job that would not be a danger to him or others around him should he have a blackout. The respondent has testified that with the concrete floors at the Respondent's business, if someone fell or passed out, it would be dangerous for them to hit the concrete floor. The

claimant, therefore, is entitled to temporary total disability until such time as his doctors adjust his medication and bring his seizure activity under control.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On September 15, 2003, the relationship of employee-employer-carrier existed between the parties.

3. Medical expenses have been paid.

4. The claimant is entitled to a compensation rate of \$200.00 for temporary total disability and \$154.00 for permanent partial disability.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury on September 15, 2003, while he was working for the respondent. See discussion above.

6. The claimant is entitled to medical treatment for his compensable injuries. See discussion above.

7. The claimant is entitled to temporary total disability from September 15, 2003, until a date to be determined. See discussion above.

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

9. 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 September 15, 2003.

The respondents should pay for this claimant's medical treatment for his compensable injuries.

The respondents should pay temporary total disability to this claimant from September 15, 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