

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410676

BILLY BEATY

CLAIMANT

HIGHLAND LANDSCAPES
UNINSURED

RESPONDENT

OPINION FILED APRIL 25, 2005

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondent not represented by counsel.

STATEMENT OF THE CASE

A hearing was held on March 8, 2005, 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 January 4, 2005. 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. An event on May 20, 2004, resulted in the claimant breaking his right clavicle.

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

1. Employment relationship.

2. Related medical.

3. Temporary total disability from May 21, 2004, to the date the claimant returned to work.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was working for the respondent when he fell and broke his right clavicle and is in need of medical treatment and temporary total disability from May 21, 2004, until he returned to work.

In regard to the foregoing issues the respondent contend that the claimant was contracted to work one or two days only and was not an employee of the respondent.

Notice of this hearing was sent out to the parties on January 4, 2005. The respondent's letter with notice was not returned to the Commission and no one appeared at the scheduled time for the hearing. Shane Pruitt was present by telephone at the time of the pre-hearing conference, stating the respondent's contentions and agreeing to the hearing date.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order dated January 4, 2005, marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1 and medical bills marked Claimant's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 48 years old and went to work for the respondent on May 25, 2004. The claimant testified that he agreed to work for the respondent for \$10.00 an hour. The

claimant testified that he had no tools with him and all that he had was a pair of gloves and work boots. The claimant testified that the respondent drove him to the job site where they resoded a yard and did some landscaping. The claimant testified that he had done landscaping work before but that the respondent gave him instructions as to the job to be done. The claimant stated that besides the owner of the business, Shane Pruitt, Mr. Pruitt's father was also working with them. The claimant testified that the respondent's father ordered him to get up into the truck and use a round pointed shovel to get some mulch away from the side of the truck. The claimant testified that when he got up into the truck he slipped on the mulch and fell from the back of the truck onto the sidewalk breaking his right clavicle. The claimant testified that he knew immediately that he was hurt and asked to be taken to the hospital so he could see a doctor. The claimant testified that at that time the respondent informed him that he did not have any insurance and he could not take him to the hospital. The claimant testified that there was a hospital within five miles of their work site but that the respondent told him that he was going to have to take him back to his truck. The claimant stated that the respondent took him back to his truck but on the way they stopped at an ATM machine and drew out forty dollars and gave to him. The claimant stated that when he got back to his truck he drove to the Bentonville Hospital.

The claimant testified that at the hospital he had x-rays taken which revealed that he had a broken clavicle. The claimant

stated that he was given medications and sent home. The claimant stated that the ER personnel had him make an appointment with Dr. Dickinson and that he has seen the doctor three or four times before he was cleared to return to work in August 2004. The claimant testified that he has had one job since then but he has not been able to work like he used to be able to work. The claimant testified that during the period of time he was being seen by Dr. Dickinson he would continue to have his shoulder x-rayed to see how it was improving and that the doctor gave him different exercises to do to work the muscles and to work out the pain. The claimant testified that he is totally released at this time.

The medical records set forth that the claimant was seen at the Northwest Medical Center of Benton County on May 25, 2004, with complaints of having right shoulder pain. X-rays taken of the claimant's right clavicle reveal that he had a fractured proximal clavicle on the right side. Dr. Rodger Dickinson writes on June 2, 2004, that he has seen the claimant for his right collar bone noting that he fell at work on May 25, 2004, injuring his right shoulder. Dr. Dickinson writes that the claimant has a fracture of the proximal clavicle just distal to the sternoclavicular joint. The doctor notes that the claimant has a moderate amount of swelling and recommended that he use an arm sling for comfort and not to work for six to eight weeks. The claimant was asked to return in three weeks for repeat x-rays and Vicoden was prescribed for pain. On June 23, 2004, Dr. Dickinson writes that the claimant still has a lot of swelling and disc discomfort but he is getting

better. Dr. Dickinson recommended that he work on his arm motion, repeated his x-rays and asked him to return in three to four weeks. Dr. Dickinson writes on July 14, 2004, that the claimant is doing better but still has a proximaly which the doctor explained he would have. Dr. Dickinson had new x-rays of the claimant's right clavicle made and increased his activity as well as gave him a series of exercises. There is a foot note to this July 14, 2004, note indicating that the claimant's x-rays show a healing fracture of the proximal right clavicle.

After a review of this entire case, I find that the claimant has proven by a preponderance of the evidence that he was an employee of the respondent on May 25, 2004, working at the rate of \$10.00 per hour. This would entitle the claimant to an average weekly wage of \$400 per week, entitling him to a temporary total disability rate of \$267.00 per week and a permanent partial disability rate of \$200.00 per week. I further find that the claimant has proven by a preponderance of the evidence that he sustained a work related injury while working for the respondent when he fell out of a flatbed truck and fractured his right clavicle. The medical records reveal that the claimant, in fact, did have a fractured right clavicle for which he received treatment at the emergency room at the Benton County Hospital as well as treatment by Dr. Dickinson. The respondent, therefore, should pay for the medical treatment for his claimant's compensable injury. The medical records set forth that the claimant was removed from work from the date of his injury until August 1, 2001, when Dr.

Dickinson returned him to work. The respondent, therefore, should pay temporary total disability to this claimant from May 26, 2004, until August 1, 2004, at the rate of \$267.00 per week.

FINDINGS & CONCLUSIONS

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

2. An event on May 20, 2004, resulted in the claimant breaking his right clavicle.

3. The claimant has proven by a preponderance of the evidence that he was an employee of the respondent and not an independent contractor. See discussion above.

4. The claimant is entitled to a compensation rate of \$267.00 for temporary total disability and \$200.00 for permanent partial disability. The claimant testified that he earned \$10.00 per hour thus entitling him to an average weekly wage of \$400.00 per week. See discussion above.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on May 25, 2004. The claimant testified that while working on May 25, 2004, he slipped and fell out of the back of a flatbed truck landing on the sidewalk fracturing his right shoulder. X-rays taken on May 25, 2004, reveal that the claimant had a fractured right clavicle for which he required medical treatment. Also see discussion above.

6. The respondent should pay for all reasonable and necessary medical treatment for this claimant's compensable injury.

7. The respondent should pay temporary total disability to this claimant from May 26, 2004, to August 1, 2004, when Dr. Dickinson released him to return to work.

8. The respondent has 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 was an employee of the respondent on May 25, 2004, earning an average weekly wage of \$400.00 entitling him to a temporary total disability rate of \$267.00 per week and a permanent partial disability rate of \$200.00 per week.

The claimant has proven by a preponderance of the evidence that he sustained a work related injury while working for the respondent on May 25, 2004. The respondent, therefore, should pay for all reasonable and necessary medical treatment associated with this compensable injury.

The respondent shall also pay temporary total disability to this claimant from May 26, 2004, to August 1, 2004.

The respondent 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 respondent in addition to such benefits and one half of said attorney's fee to be withheld by the respondent 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