

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502651

JEFFREY CALLAHAN	CLAIMANT
QUICK LAY PIPE COMPANY	RESPONDENT
COMMERCE & INDUSTRY INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 30, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DAVID HARP, Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 4, 2005, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on July 5, 2005. The pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On June 19, 2003, the relationship of employee-employer-carrier existed between the parties.
2. On June 19, 2003, the claimant earned wages sufficient to entitle him to weekly compensation rates are \$440.00 for total disability and \$330.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issue to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained compensable injuries to his low back and hip on June 19, 2003.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from March 19, 2005 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant contends he was injured on June 19, 2003. He was working on an oil rig dragging four inch hoses out of a reserve pit and the sides of the reserve pit were huge boulders on a steep incline. Claimant fell on the boulders hitting his hip and thigh resulting in severe bruising and injury to his low back. This injury resulted in interior lumbar interbody fusion at L4-5 and L5-S1 using a bone graft. The claimant submitted an off work slip from Dr. Raben claiming that he should have been off work as of March 18, 2005 and continues to be entitled to TTD benefits to a date yet to be determined. The respondents have refused to pay for the treatment by Dr. Raben and are refusing TTD benefits."

In regard to these issues, the respondents contend:

"Respondents contend claimant did not suffer a compensable injury on or about June 19, 2003. Respondents contend the claimant had pre-existing degenerative problems and they should not be liable for payment for treatment of the same. In the alternative, if this claim is found to be compensable, respondents contend the claimant suffered only a minor strain to the lower back and they should not be responsible for the claimant's fusion."

#### DISCUSSION

##### I. COMPENSABILITY

The central issue in this claim is whether the claimant

sustained compensable injuries to his low back and hip on June 19, 2003. The burden rests upon the claimant to prove all of the facts necessary to establish the occurrence of "compensable" injuries to these portions of his body.

Ark. Code Ann. §11-9-102(4)(D) requires the claimant to first prove by medical evidence the actual existence of the physical injuries or conditions alleged to be compensable. This subsection further requires that the actual existence of the physical injuries or conditions must be supported by "objective findings," as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence presented is clearly sufficient to "establish" the actual existence of physical injuries or conditions involving the claimant's low back and hip. All of the various physicians involved in this case have diagnosed the presence of physical damage to the claimant's lower back. The physicians that saw the claimant immediately following the employment related accident also diagnosed the presence of physical damage or injury to his hips, primarily on the right side.

The record further shows that the actual existence of these diagnosed physical injuries or damage is amply supported by "objective findings", or findings beyond the claimant's voluntary control. The photographs presented by the claimant (Claimant's Exhibit No. 2) show substantial and extensive bruising in the area of the claimant's hips and lower back. This bruising was also observed by Dr. Tackett during his evaluation of June 20, 2003 and Dr. Jeffrey S. Snider, during his evaluation on that same date.

This visible bruising in the area of the claimant's hips and lumbar spine would clearly represent "objective findings" to support the existence of physical injuries to both of these portions of the claimant's body.

Further, the medical evidence records the observation of visible muscle spasms involving the lumbar area. Structural abnormalities on radiographic and MRI studies were also noted and the existence of physical damage or injury to the actual structural components of his lumbar spine.

I find that the claimant has proven by medical evidence, which is further supported by objective findings, the actual existence of a physical injury or damage in his lower back and right hip that is in the form of a contusion. He has further established by medical evidence which is supported by objective findings, the actual existence of physical injury or damage to the structural components of his lumbar spine primarily in the L4-5 area. Thus, the claimant has satisfied the requirements of Ark. Code Ann. §11-9-102(4)(D) in regard to these physical injuries or damage.

Next, the claimant must show that these medically established and objectively documented physical injuries or damage to this lower back and right hip meets the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The physical injury or damage must arise out of and occur in the course of the employment;
- (2) The physical injury or damage must be caused by a specific incident;

- (3) The physical injury or damage must be identifiable by time and place of occurrence;
- (4) The physical injury or damage must cause internal or external harm to the claimant's body;
- (5) The physical injury or damage must be such as to require medical services or result in disability.

In order to prove the first three of these requirements, the claimant must show by the greater weight of the credible evidence a causal relationship between the medically established and objectively documented physical injuries or damage to his lower back and right hip and the specific employment related incident or accident that is described as occurring on June 19, 2003. However, he need not prove that this specific employment related incident was the sole or even "major cause" of the medically established and objectively documented physical injuries or damage to his lower back or right hip. He need only show that this incident or accident played some causal role in producing or aggravating these physical injuries or damage.

The medical evidence shows two distinct types of physical injuries, both of which are supported by objective findings. The first of these is in the form of a generalized contusion to the claimant's hip, side, and lower back. These injuries are amply supported by the objective finding of extensive bruising in these areas. The second of these physical injuries or conditions involved the structural components of the claimant's lumbar spine, primarily in the L4-5 area. This physical injury or damage is amply objectively supported by the muscle spasms and the abnormalities

noted on the various radiographic studies.

Clearly, some of the structural defects involving the claimant's lumbar spine shown on the radiographic studies, could have and likely did pre-exist the employment related fall on June 19, 2003. At least some of these degenerative arthritic changes were clearly due to cumulative trauma over an extended period of time. Contrary to the claimant's testimony, the medical evidence presented shows that the claimant had experienced episodes of difficulties involving his lower back and even some radicular symptoms, prior to his employment related fall on June 19, 2003.

However, it is entirely reasonable and logical that the trauma produced by the employment related accidental fall aggravated any pre-existing degenerative arthritic condition. The degree of bruising following the fall is objective evidence of significant trauma to the claimant's lower back. The medical evidence shows that the magnitude and persistence of the claimant's lower back and radicular symptoms, following the employment related fall, were substantially increased from those shown in the medical reports and records prior to the fall.

It is also reasonable and logical that some of the objectively noted lumbar defects were caused solely and directly by the trauma of the fall. Direct trauma can clearly result in the development of subsequent arthritic changes. Direct isolated trauma is also recognized as a common cause of bulging or herniated intervertebral discs.

Dr. Ted Honghrian, an orthopaedic surgeon selected by the respondent to evaluate the claimant and his low back difficulties, gives the following opinion in regard to the cause of the claimant's back these difficulties:

"Mr. Callahan sustained an injury in the form of a contusion of his right hip and lumbar strain in nature, with possible aggravation of degenerative disc disease. He continues to have chronic low back pain which most likely started since June 18, 2003 injury, and his degenerative disc condition most likely is a pre-existing one."

Dr. Cyril Raben, an orthopaedic surgeon and the claimant's primary treating physician, has a different diagnosis of the etiology of the claimant's lower back complaints. It is his opinion that the lumbar MRI study shows not only degenerative disc dessication (dehydration) at the L4-5 level, but also shows disc derangement at this level with a central disc herniation. Dr. Raben expressed his opinion on the cause of the claimant's current lower back and radicular difficulties in a letter to the claimant, dated January 28, 2005. In this letter, Dr. Raben states:

"Thank you very much for your kind inquiry with regard to the nature of your condition. From the history I have to go on, the acute and proximate cause of your injury and need for medical treatment is as a direct result of your on the job injury. I can see nothing else in your history that would relate to this; therefore, within a reasonable degree of medical certainty, the problems that you are having are from your injury while working on the drilling rig (Claimant's Exhibit No. 1, page 33).

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the

credible evidence the existence of a causal relationship between his employment related fall of June 19, 2003 and both the contusion to his right hip and back and the structural damage to his lumbar spine, primarily in the L4-5 area. Clearly, the magnitude of trauma necessary to produce the extensive bruising and contusion to his back and hip (as demonstrated by the photographs and medical records) would be sufficient to, at least, aggravate any pre-existing degenerative or arthritic defects to his lower lumbar spine and to further produce the observed bulge or disc herniation at the L4-5 level. Dr. Raben has given his expert medical opinion that this fall was the cause of the claimant's difficulties from the structural injury or damage to his lower lumbar spine. While Dr. Honghiran does not exactly concur with Dr. Raben, in this regard, it is his expert medical opinion that such a causal relationship is clearly possible. The change in the magnitude and persistence of the claimant's lumbar and radicular symptoms, after his employment related fall, would further support the existence of the required causal relationship. Therefore, I find that the claimant has satisfied the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i) in regard to both his diagnosed back and hip contusion involving his lumbar spine, primarily at the L4-5 level.

The evidence presented further demonstrates that the claimant's lower back and right hip difficulties satisfy the remaining two definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). The claimant's subjective complaints coupled with the

extensive bruising and the radiographic abnormalities, all show internal physical harm to the affected portions of the claimant's body. The nature and magnitude of this harm is sufficient to reasonably require medical services for the evaluation and actual physical damage caused by these injuries.

In summary, I find that the greater weight of the credible evidence that proves that the claimant sustained "compensable injuries" to his lower back, including his actual lumbar spine, and to his right hip, during his employment with this respondent on June 19, 2003. Thus, it next becomes necessary to determine the nature and extent of benefits, to which the claimant is entitled for these compensable injuries.

## II. MEDICAL SERVICES

Under Ark. Code Ann. §11-9-508, the claimant is entitled to "reasonably necessary medical services" for his compensable injuries. However, the burden rests upon the claimant to prove that the medical services actually provided were, in fact, "reasonably necessary medical services." In order to meet this burden, the claimant must prove that the medical services were necessitated by or connected with his compensable injuries and had a reasonable expectation of accomplishing the purpose or goal for which they were intended.

From the medical evidence, it appears that the medical services provided to the claimant for his lower back and right hip complaints, on and after June 20, 2003, were necessitated by and connected with his compensable injuries of June 19, 2003. The

medical services provided for these difficulties, during this period, by and at the direction of Dr. Bobby Noonan, Dr. Boyd Tackett, and Dr. Jeffrey Snider all appear to be of a type, nature, and duration that is commonly recognized by the general medical community as being appropriate for the proper evaluation and treatment of injuries such as those experienced by the claimant. Clearly, these medical professionals felt that these medical services were appropriate for the foregoing purposes, and there is no evidence to indicate otherwise. It must also be noted that the diagnostic studies performed at the request of these physicians did, in fact, actually accomplish the purpose for which they were intended. This testing provided the necessary information to reach a reasonably informed and accurate diagnosis of the nature and extent of the claimant's compensable injury.

The medical services provided for the claimant's low back and radicular difficulties by and at the direction of Dr. Cyril Raben, on and after January 18, 2005, were also clearly necessitated by or connected with the claimant's compensable lumbar spine injury. The medical services provided by Dr. Raben, including the lumbar fusion, are of a type and nature commonly employed by the general medical community for the treatment of injuries or conditions such as that experienced by the claimant. It is obvious that it was Dr. Raben's expert medical opinion that these services were medically appropriate and reasonably necessary for the proper care of the claimant's compensable lumbar spine injury and resulting difficulties.

However, the medical evidence shows that, in regard to the lumbar fusion, Dr. Honghiran was of the opinion that this procedure was not medically appropriate or necessary for the claimant's back injury and resulting complaints. Although both Dr. Honghiran and Dr. Raben are board certified orthopaedic surgeons, Dr. Raben specializes and limits his practice primarily to the treatment of spinal injuries and conditions. It is my opinion that he has more expertise in the area of medicine associated with these difficulties than that possessed by Dr. Honghiran. Dr. Raben is also the claimant's primary treating physician and has had numerous occasions to examine and evaluate the claimant. On the other hand, Dr. Honghiran has seen the claimant on only one occasion. For these reasons, I find that the medical opinion of Dr. Raben, concerning the reasonableness and necessity of the lumbar fusion, is entitled to the greater weight and credit. I would also note that the claimant's testimony and the medical evidence shows that the surgery has actually accomplished its purpose relieving some of the claimant's symptoms and complaints.

In summary, I find that all of the medical services provided to the claimant for his lower back, radicular difficulties, and right hip difficulties, on and after June 20, 2003, by and at the direction of Dr. Bobby Noonan, Dr. Lee Tackett, Dr. Jeffrey Snider, and Dr. Cyril Raben all represent "reasonably necessary medical services" for the claimant's compensable injury of June 19, 2003. Under the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services. However, this

liability is subject to the medical fee schedule established by this Commission.

### III. TEMPORARY TOTAL DISABILITY BENEFITS

The final issue concerns the claimant's entitlement to temporary total disability benefits from March 19, 2005 through a date yet to be determined. In order to be entitled to such benefits, the claimant must prove by the greater weight of the credible evidence that, during this period, he remained within his healing period from the effects of his compensable injuries and remained totally disabled from performing all forms of regular gainful employment as a result of these compensable injuries.

The duration of the healing period is primarily a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment and the underlying physical damage caused by the compensable injury has resolved or has at least stabilized at a level where nothing further in the way of time or treatment offers a reasonable expectation of improvement.

In the present case, the medical evidence shows that the claimant underwent a 360 degree, two level lumbar fusion (L4-S1) on or about March 19, 2005. This type of extensive procedure is normally considered to take six months to a year for a solid fusion to occur. The medical evidence indicates that the claimant has continued under active medical follow up by Dr. Raben, through at least May 6, 2005. The claimant's testimony indicated that he has

under regular medical follow up by Dr. Raben through the date of the hearing.

In regard to the matter of total disability, the medical evidence shows that Dr. Raben medically restricted the claimant from continuing regular gainful employment immediately prior to his lumbar fusion. There is no indication that Dr. Raben had removed this medical prohibition by the date of the hearing. The claimant testified that he has continued to experience substantial difficulties and had significant restrictions on his potential physical activities, as a result of his compensable lumbar injury.

The record reveals that the claimant is 46 years old and has only a ninth grade education. There is no indication that he has received any specific vocational or technical training. His prior employments consist of truck driving, dispatching, and working on and around gas and oil well drilling rigs. The only prior employment position which could appear to possibly be within the claimant's current limitations would be the dispatching of trucks. However, the respondent has offered the claimant no employment position of this type or any other type that would be within his current physical restrictions and limitations. His chances of obtaining such a position in the open job market which he remains under active medical treatment and until his fusion has stabilized or solidified would be extremely low.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that he has continued within his healing period

from the effects of his compensable injury, during the period beginning March 19, 2005 and continuing through a date yet to be determined. He has also proven by the greater weight of the credible evidence that during this same period he has been rendered totally disabled from performing regular gainful employment, as a result of the effects of his compensable injury. Thus, the claimant would be entitled to temporary total disability benefits beginning March 19, 2005 and continuing to a date yet to be determined.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 19, 2003, the relationship of employee-self employer-carrier existed between the parties.
3. On June 19, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$440.00 for total disability and \$330.00 for permanent partial disability.
4. On June 19, 2003, the claimant sustained compensable injuries to his low back and right hip, which were in the form of a contusion to the right hip and low back and an injury to the structural components of his lumbar spine, primarily in the L4-5 area. Specifically, the claimant has established by the medical evidence, which is supported by objective findings, the actual existence of physical injuries or damage to these portions of his

body, and has further proven by the greater weight of the credible evidence that these physical injuries or damage arose out of and occurred in the course of his employment, were caused by a specific incident, are identifiable by time and place of occurrence, caused internal physical harm to this body, required medical services, and resulted in disability.

5. The medical services provided to the claimant for his right hip, lower back, and radicular difficulties, on and after June 20, 2003, by and at the direction of Dr. Noonan, Dr. Tackett, Dr. Snider, and Dr. Raben represent "reasonably necessary medical services" for the claimant's compensable injuries. The expense of such services, subject to the Commission's medical fee schedule, is the liability of the respondents herein.
6. The claimant has been rendered temporarily totally disabled, as a result of the effects of his compensable injury, for the period beginning March 19, 2005 and continuing through a date yet to be determined. Specifically, the claimant has proven by the greater weight of the credible evidence that during this period he has continued within his healing period from the effects of his compensable injuries and has been rendered totally disabled from performing regular gainful employment as a result of these injuries.
7. The respondents have controverted this claim in its

entirety.

8. A reasonable fee for the claimants' attorney is the maximum statutory attorney's fee on all benefits herein and herein awarded to the claimant. At the present time, this consists only of the temporary total disability benefits herein awarded.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning March 19, 2005 and continuing through a date yet to be determined.

The respondents shall be liable for the expense of reasonably necessary medical services provided to the claimant by and at the direction of Dr. Noonan, Dr. Tackett, Dr. Snider, and Dr. Raben. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded. One-half of this fee is be the obligation of the respondents in addition to such benefits. The remaining one-half of this fee is 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.

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This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge