

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F309903

GARY CHEATHAM, Employee	CLAIMANT
BARLOWORLD HANDLING, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 14, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 23, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 15, 2004, and a pre-hearing order was filed on December 16, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties on September 7, 2003, when claimant sustained an injury to his nose and face.
3. There is no dispute over benefits relating to the claimant's nose and face injuries.

At the time of the hearing the parties agreed to stipulate that claimant would be entitled to the maximum compensation rate in effect for 2003. (TTD \$440.00, PPD \$330.00)

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to neck on September 7, 2003.
2. Related medical.
3. Temporary total disability benefits.
4. Attorney fee.

The claimant contends he suffered a compensable injury to his neck on September 7, 2003. He seeks payment of temporary total disability, related medical, and an attorney fee.

The respondents contend that claimant did not suffer a compensable injury to his neck on September 7, 2003.

From a review of 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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 15, 2004, and contained in a pre-hearing order filed December 16, 2004, are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle him to the maximum compensation rate in effect for 2003 (TTD \$440.00, PPD 330.00) is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that his neck condition is causally related to the injury of September 7, 2003.

FACTUAL BACKGROUND

The claimant is a 47-year-old man with a twelfth grade education who has worked

for the respondent for seventeen years as a diesel technician. Claimant suffered a horrific injury while working on a truck on September 7, 2003. Claimant was on his knees underneath a truck working on a brake chamber. Claimant was holding the chamber in his hand approximately two feet from his face when it exploded and struck him in the face. Claimant was taken to the hospital emergency room where x-rays were taken and he was given medication. The next day claimant sought medical treatment from Dr. Cashman for the injury to his nose. Claimant returned to work for the respondent three days after this injury and continued working for the respondent until January 2004 when he left respondent and went to work for J.B. Hunt as a mechanic. Claimant testified that he performed his job with respondent as best he could, but that he continued to have trouble keeping his balance.

Claimant continued to receive medical treatment from Dr. Cashman and in addition has been evaluated by several other physicians. In August 2004 the claimant sought medical treatment from Dr. Butler, a chiropractic physician. Dr. Butler took x-rays and referred claimant to Dr. Blankenship. An MRI scan was performed which revealed spondylosis and some disc herniations in claimant's cervical spine. After some initial treatment from Dr. Blankenship claimant received medical treatment from Dr. Danks who has recommended surgery.

The respondent has accepted liability and paid compensation benefits for treatment relating to the injury to claimant's nose and face. Claimant has filed this claim contending that his neck condition is causally related to the injury of September 7, 2003. He seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

The claimant contends that his neck condition, including the cervical disc

herniations, is causally related to the injury which occurred on September 7, 2003. Claimant has the burden of proving by a preponderance of the evidence that a causal relationship exists between his neck problems and the accident of September 7, 2003. The determination of whether a causal connection exists is a question of fact for the Commission. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W. 2d 645 (1998).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that a causal connection exists between his cervical disc herniations and the accident of September 7, 2003.

Initially, I note that prior to the accident of September 7, 2003, claimant had a history of some neck complaints. A case history update form signed by the claimant at the time of his initial visit with Dr. Butler, a chiropractic physician, on September 21, 1985 indicates that claimant was complaining of tightness in his shoulder and neck. That same form also indicates that claimant had previously received treatment from Dr. Ables, another chiropractic physician, for complaints in his hip and neck. Beginning in 1985 claimant continued to receive periodic treatment from Dr. Butler. Some of this treatment included claimant's cervical spine.

Subsequent to the claimant's accident of September 7, 2003, he was primarily treated by Dr. Cashman for the injury to his neck and face. None of the initial medical reports contained in the documentary evidence makes any mention of any complaints of neck pain. Claimant was seen by Dr. Randall Black for an independent medical evaluation on October 20, 2003. Claimant's primary complaints to Dr. Black at that time were bilateral cheek pain. However, Dr. Black's report also indicates that his examination of the claimant's neck was negative.

The respondent took the first of two depositions of the claimant on April 7, 2004. At that time the claimant was asked about his pain and physical problems. Claimant

admitted at the hearing that at that initial deposition he mentioned pain behind his right eye, pain in his cheekbone, and pain on the top of his head. Claimant did not mention any complaints of neck pain during that deposition of April 7, 2004.

Following claimant's deposition on April 7, 2004, claimant was sent to Dr. Moon for evaluation of his headaches. Dr. Moon's medical report of that date does not mention any complaints of neck pain. Dr. Moon ordered an MRI scan of the claimant's brain which returned normal. Claimant testified that after his first visit with Dr. Moon on May 7, 2004, he began having new symptoms which included problems with his arms and legs.

According to claimant's testimony he returned to Dr. Butler for additional medical treatment in August 2004 and following x-rays Dr. Butler referred claimant to Dr. Blankenship. An MRI scan revealed multi-level spondylosis and acute disc herniations. However, according to Dr. Blankenship's medical report of September 1, 2004, claimant's neck pain did not begin until several months after his injury and Dr. Blankenship could not state whether the disc herniations were related to claimant's accident of September 7, 2003.

The patient states that his neck pain developed some time this year several months after his injury, ...

[I]t is difficult to state as to whether his acute disc herniations or sub-acute disc herniations are related to his accident or not.

The history contained in Dr. Blankenship's report is consistent with claimant's testimony at the hearing that his neck pain might not have developed until several months after the accident.

Q. You reported to Dr. Blankenship that you had had neck pain that developed several months after your injury. Is that right?

A. It could be several months. I don't know exactly when.

Dr. Blankenship subsequently recommended a course of medical treatment, but claimant sought medical treatment from Dr. Danks who in turn recommended surgery. Dr. Danks did indicate that claimant's disc pain was secondary to his injury based upon the history of claimant's neck pain having existed since the time of the injury.

In short, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that a causal connection exists between his neck condition and the accident of September 7, 2003. First, the evidence indicates that claimant had some complaints of neck pain prior to September 7, 2003. Furthermore, the initial medical reports after the accident of September 7, 2003 do not mention any complaints of neck pain. At the time of claimant's initial deposition on April 7, 2004, claimant did not mention neck pain when describing his pain and physical problems. Claimant subsequently sought medical treatment from Dr. Moon on May 7, 2004, and again no mention is made of neck pain. According to claimant's testimony he did develop new symptoms involving his arms and legs after his initial evaluation with Dr. Moon. It was not until August 2004, almost one year after his accident, that claimant was evaluated for neck pain by Dr. Butler, a chiropractic physician, who in turn referred claimant to Dr. Blankenship. According to Dr. Blankenship's medical report, claimant gave a history of his neck pain having begun several months after his accident. Furthermore, Dr. Blankenship stated that it was difficult to determine whether the claimant's disc herniations were related to claimant's accident or not. Finally, while Dr. Danks indicated that a causal connection did exist, Dr. Danks' opinion is based upon a history that claimant's neck pain began at the time of the accident on September 7, 2003. That history is not supported by the evidence of record.

Accordingly, for the foregoing reasons, I find that although claimant did suffer a horrific injury to his nose and face on September 7, 2003, that he has failed to prove by a preponderance of the evidence that his current neck condition; specifically, cervical disc herniations, is causally related to that accident of September 7, 2003.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his neck as a result of the accident on September 7, 2003. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE