

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201489

CARROLL E. CROUCH, EMPLOYEE	CLAIMANT
PAT SALMON & SONS, INC., EMPLOYER	RESPONDENT NO. 1
PACIFIC EMPLOYERS INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED OCTOBER 24, 2005

Hearing before Administrative Law Judge J. Mark White on September 20, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Donald Ryan, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Frank Newell, Attorney at Law, Little Rock, Arkansas.

Second Injury Fund did not appear and was excused from participation herein.

STATEMENT OF THE CASE

On September 20, 2005, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on August 8, 2005, and a Prehearing Order was entered that same day. A copy of the August 8, 2005, 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; and that this claim was the subject of a prior administrative law judge opinion, entered March 21, 2005, which opinion is now final. The stipulations, findings of fact, and conclusions of law set forth therein are incorporated herein by reference.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional temporary total disability benefits; whether additional medical treatment is reasonably necessary in connection with the compensable injury; unpaid medical bills; and controversion and attorney's fees.

The claimant contends that he is entitled to additional medical treatment, including prescription medication and injections prescribed by Dr. Bruffett, as well as continuing treatment by another physician; that certain medical bills remain unpaid; that he is entitled to additional temporary total disability benefits from the date those benefits were terminated; and that he is entitled to attorney's fees.

The respondents contend that any additional treatment is for pre-existing conditions, not the compensable injury; and that the claimant is no longer within his healing period.

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 claimant and to observe his 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 claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.
3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to payment of his unpaid prescription bills.
4. The claimant has proven by a preponderance of the evidence that he remained within his healing period until August 9, 2005.
5. The claimant has proven by a preponderance of the evidence that he was totally incapacitated from earning wages through August 9, 2005.
6. The claimant has therefore proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from the date those

benefits were terminated until August 9, 2005.

7. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The parties have previously stipulated that the claimant sustained a compensable injury on January 30, 2002, when he slipped and fell down an icy stairway. In an opinion filed March 21, 2005, the claimant was awarded additional medical treatment, including a surgical consultation, and additional temporary total disability benefits. That opinion was not appealed and is now a final order.

The claimant saw Dr. Wayne Bruffett on May 16; Dr. Bruffett ordered an updated MRI exam, but indicated he doubted surgical intervention would be helpful. Dr. Bruffett mentioned that another trigger point injection might be beneficial, as one such injection had earlier provided significant relief. After the MRI exam was performed, Dr. Bruffett recommended a bone scan, which also was performed, and referred the claimant to Dr. Brent Sprinkle for a trigger point injection. At the same time, Dr. Bruffett released the claimant to light-duty work.

The respondents offered the claimant a job they described as light-duty. The job consisted of refueling trucks by carrying a 20-foot hose around the trucks to the

fuel tanks and waiting for the tanks to fill. The claimant was required to stand while waiting for the tanks to fill, but he was able to sit at other times. The claimant worked at this position for one day and did not return due to renewed back pain. He testified that he was physically unable to do the job. Larry McGohan, the respondent-employer's terminal manager, testified that the claimant would have refueled about 20 trucks during a nine-hour shift, though McGohan admitted he left and went home four hours before the end of the claimant's shift. The claimant testified that he refueled "a lot more" than 20 trucks in that one shift.

For reasons that are not explained in the record, the respondents did not honor Dr. Bruffett's referral to Dr. Sprinkle, and instead sent the claimant to a physical medicine and rehabilitation specialist, Dr. Darin Wilbourn. Dr. Wilbourn first saw the claimant on July 26, and he too recommended a trigger point injection. The claimant testified he did receive such an injection, though it is not reflected in the medical records. The claimant returned to Dr. Wilbourn on August 9, at which point Dr. Wilbourn released him from care.

Dr. Wilbourn refused to prescribe additional pain medication, so on his own the claimant went to his personal physician, Dr. Kevin Bay. None of Dr. Bay's records were introduced herein, but the claimant testified that Dr. Bay prescribed medication for him, and that the respondents refused to pay for the prescriptions.

Since his release by Dr. Wilbourn, the claimant has undergone two functional capacity evaluations. One study found him capable of only sedentary work, while the other study found him capable of light work. Both studies indicated the claimant gave an inconsistent effort.

II. Adjudication

A. Medical Treatment

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). The claimant bears the burden of proof in establishing his entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *Clardy v. Medi-Homes LTC Serv., LLC*, 75 Ark. App. 156, 55 S.W.3d 791 (2001).

Additional medical treatment was found to be reasonably necessary in the prior opinion issued in March 2005. Since that time, the claimant has received the surgical consultation recommended by his physicians, and he has received a trigger point injection. It appears from the record that all of the treatment recommendations

made by the claimant's physicians have been fulfilled, and I can find no remaining recommendations for further treatment. Dr. Bruffett noted in his final visit:

With regards to his pain, the only thing that has benefitted him throughout all of this has been a trigger point injection by Dr. Barnes. I am going to have him see Dr. Brent Sprinkle for consideration of another trigger point injection and any other non-surgical treatments. I am hopeful that Dr. Sprinkle can follow-up on the bone scan for stability. After Dr. Sprinkle has treated Mr. Crouch with whatever he can do, I think Mr. Crouch would then be at MMI and he would need an operable impairment rating. I do not see a problem in his spine of surgical significance.

I recognize that the respondents unilaterally transferred the claimant's care to Dr. Wilbourn and ignored Dr. Bruffett's referral, but the fact remains the claimant testified he received both the bone scan and the trigger point injection. No doctor has recommended any further treatment for the claimant's back. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.

The claimant contends he is entitled to payment of bills for medication prescribed by his personal physician. Treatment rendered by an unauthorized physician, except for emergency treatment, is not the liability of the carrier or employer, so long as the employee has been notified of the change of physician

rules. ARK. CODE ANN. § 11-9-514. The change of physician rules do not apply once a claimant's entitlement to treatment has been controverted. *Sanyo Mfg. Corp. v. Farrell*, 16 Ark. App. 59, 696 S.W.2d 779 (1985); *Kenney v. Siloam Springs School District*, A.W.C.C. E907076 (Aug. 31, 2001); *Barnett v. Daniel*, A.W.C.C. E600078 (May 25, 2001).

The record contains a Form AR-N signed by the claimant, signifying his receipt of the change of physician rules. There is no evidence in the record to show that the claimant's personal physician was an authorized physician, and there is likewise no evidence the respondents had controverted further treatment prior to the time these prescriptions were filled. I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to payment of his unpaid prescription bills.

B. Temporary Total Disability

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).

As discussed above, I do not find that additional treatment is reasonably necessary, and there is no evidence that further treatment will improve the claimant's condition. Dr. Wilbourn assessed the claimant as having reached maximum medical improvement as of August 9, 2005, and I see nothing in the record to contradict his opinion. Therefore, I find that the claimant has proven by a preponderance of the evidence that he remained within his healing period until August 9, 2005.

After reviewing the relevant testimony, I am not persuaded that the light-duty position offered to the claimant by the respondents was within the claimant's restrictions as defined by Drs. Bruffett and Wilbourn. I find that the claimant has proven by a preponderance of the evidence that he was totally incapacitated from earning wages through August 9, 2005, the end of his healing period. Therefore, I find that the claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from the date those benefits were terminated until August 9, 2005.

AWARD

The claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from the date those benefits were terminated until August 9, 2005. 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. Donald Ryan, 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