

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F503077

LARRY DAVIS, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 2, 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 TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On August 10, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 25, 2005, and a pre-hearing order was filed on May 27, 2005. 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 employee-employer relationship existed between the parties on March 1, 2004.
3. The claimant sustained a compensable injury to his lumbar spine on March 1, 2004.

At the time of the hearing the parties agreed to stipulate that claimant would be entitled to compensation at the maximum rate in effect for 2004.

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

1. Claimant's entitlement to additional medical treatment for his compensable injury

subsequent to April 9, 2004.

2. Temporary total disability benefits beginning February 21, 2005 and continuing for four weeks.

3. Attorney fee.

At the time of the hearing the claimant clarified his request for temporary total disability benefits to include a four-week period of time beginning on February 21, 2005.

The claimant contends he is entitled to additional medical treatment and temporary total disability benefits for four weeks beginning February 21, 2005.

The respondents' contentions are set forth in their pre-hearing questionnaire which is attached to the pre-hearing order as Exhibit A.

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 May 25, 2005, and contained in a pre-hearing order filed May 27, 2005, are hereby accepted as fact.

2. The parties' stipulation that claimant was earning sufficient wages to entitle him to compensation at the maximum rate in effect for 2004 is likewise accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment or temporary total disability benefits as a result of his compensable injury.

FACTUAL BACKGROUND

The claimant is a 50-year-old man who began working for the respondent in

approximately September 1998 as a cath lab technician. Claimant testified that his job requires him to work in the cardiac cath lab with cardiologists who are performing various procedures such as angiograms, pace maker implementation, and other procedures pertaining to the heart. Claimant testified that his job duties required him to assist physicians in setting up the room, monitoring patients, assisting physicians at the procedure table, and transferring patients from their room to the procedure lab. Claimant also testified that he was responsible for helping move patients from a gurney to the procedure table by using sheets or a slide board.

The parties have stipulated that claimant suffered a compensable injury to his lumbar spine while working for respondent on March 1, 2004. Claimant testified that on that date he was in the process of transferring a patient from a gurney to the procedure table with a nurse when he felt a pulling sensation in his low back and a burning jolt down his leg. This incident occurred at midnight, claimant reported it to his supervisor the next day, and was sent to the employee health nurse. Claimant was referred by the employee health nurse to the Lowell Clinic where he saw Max Beasley, a nurse practitioner. Beasley diagnosed claimant's condition as a lumbar strain and prescribed exercises, medications, and released claimant to return to work with some restrictions. Claimant testified that he did return to work for the respondent performing light duty work for a period of time.

The medical records indicate that claimant continued to receive medical treatment from Beasley who ordered an MRI scan. Beasley also ordered physical therapy and provided claimant with an injection of Depo-Medrol. At the same time claimant was being evaluated by Beasley claimant also sought medical treatment from Dr. O'Connell, his family physician. Dr. O'Connell referred claimant to Dr. Gallaher, a neurosurgeon, who evaluated the claimant on March 24, 2004. Dr. Gallaher reviewed claimant's MRI scan and noted that it revealed degenerative changes. Dr. Gallaher diagnosed claimant's condition as lumbar spondylosis with acute exacerbation of low back pain. Dr. Gallaher

went on to recommend that claimant receive epidural steroid injections, continue medication, and when his condition improved undergo strengthening exercises.

Shortly after claimant's evaluation with Dr. Gallaher, he was released to return to work by both Drs. O'Connell and nurse practitioner Beasley. Claimant did return to work for the respondent and continued working until February 2005. On November 23, 2004, the claimant sought medical treatment from Dr. Raben who diagnosed the claimant as suffering from an annular tear and recommended an aggressive program of physical therapy. Dr. Raben subsequently provided claimant with an epidural steroid injection and referred claimant to a chiropractor for additional medical treatment.

The respondent accepted claimant's injury as compensable and paid some compensation benefits through the time he was released to return to work on April 9, 2004. Claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable injury subsequent to April 9, 2004. Claimant also seeks payment of temporary total disability benefits for a four-week period of time beginning February 21, 2005.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 SW. 2d 543 (1999). 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 he is entitled to additional medical treatment for his compensable injury. Instead, I find that claimant's compensable injury had resolved as of April 9, 2004. Therefore, any medical treatment provided subsequent to that date is not causally related to the injury.

Initially, I believe it is important to note that claimant has a history of prior back

complaints. Although claimant testified that his complaints subsequent to March 1, 2004 were different than the complaints prior to that date, I nevertheless note that claimant's pre-existing back complaints were significant. Although claimant testified that he did not recall ever complaining to his family physician, Dr. O'Connell, of having pulled his back, Dr. O'Connell's medical report of May 27, 2003 indicates that claimant was requesting medication for a "pulled back". Claimant also did not recall complaining of hip pain to Dr. O'Connell prior to March 1, 2004. However, Dr. O'Connell's medical report of November 3, 2003 indicates that he discussed various issues with the claimant on that date including "hip pain".

Furthermore, I believe it is important to note that claimant admittedly suffered from back stiffness prior to the incident on March 1, 2004. In fact, claimant was being provided significant amounts of medication by Dr. O'Connell for his back complaints. While claimant at the hearing attempted to attribute some of this medication to conditions other than his back, I note that Beasley's records of March 3, 2004 indicate that claimant gave a history of back strains for which he took Vioxx on an as-needed basis.

Furthermore, when claimant did seek medical treatment from Dr. Raben in November of 2004, he completed a patient history sheet indicating that he had had back complaints for years. A history of back complaints of more than two years was also noted by Dr. Raben in his report of November 23, 2004.

With the background of claimant's prior back complaints in mind, I now turn to the injury of March 1, 2004. As previously noted, claimant was sent by the respondent to Max Beasley, a nurse practitioner, for medical treatment. Dr. Beasley in his report of March 3, 2004 diagnosed the claimant as suffering from a lumbar strain and prescribed exercises, medications, and work restrictions. At the time of claimant's next visit with Dr. Beasley his condition was not better and Dr. Beasley ordered an MRI scan which revealed no focal disc herniation or other evidence of significant spinal stenosis. The MRI scan did reveal

degenerative changes.

Following the claimant's MRI scan Beasley indicated that claimant's condition had improved and ordered physical therapy for two weeks. In addition, Beasley gave claimant an injection of Depo-Medrol. A report from Beasley dated April 1, 2004 indicates that claimant had been to four of six physical therapy sessions and was pleased with his progress. Claimant reported a 70 to 80 percent improvement of his condition with no radiation of pain into his leg.

The next medical reports are significant. First, on April 8, 2004, claimant sought medical treatment from Dr. O'Connell, his family physician. Dr. O'Connell's note of that date states, "Doing great. Wants to go back to work. Minimal pain, feels back to where he was prior to injury." As a result of claimant's statements that his condition had resolved, Dr. O'Connell released the claimant to return to full-duty work as of April 13, 2004.

The next day after claimant's visit with Dr. O'Connell claimant returned to the physical therapist for his final session. In his report of April 9, 2004, Kevin Murphy, the physical therapist, stated:

The patient states that he feels like he has achieved 100% recovery. He actually states that he feels better than he did before his injury. He states he still has some occasional morning stiffness that is muscular in nature, but it seems to be less frequent than prior to his injury.

That very same day the claimant also returned to Beasley who stated in his report:

He says he has not had any discomfort or symptoms of any kind for the past two weeks. He says he feels good and is ready to return to his usual job.

He says his back has improved to being better than he was before the accident, and he is quite pleased

with his progress.

Thus, in the space of two days claimant informed his own family physician, Dr. O'Connell; the physical therapist; and nurse practitioner Beasley, that he had recovered and felt better than he had before the accident. At the hearing claimant testified that he lied to these medical providers or was "blowing smoke" at them in order to return to work. It is claimant's current contention that he had not recovered as of April 9, 2004. I do not find claimant's testimony and explanation to be credible.

After the medical reports indicating that claimant had recovered and felt better than he did prior to the injury, the claimant returned to work for the respondent and did not seek any additional medical treatment for back complaints until he was evaluated by Dr. Raben in November 2004, more than seven months later.

Given the medical reports from claimant's own treating physician, the physical therapist, and Max Beasley indicating that claimant's condition had resolved and that he had not had any discomfort or symptoms of any kind for two weeks and was feeling better than he had before the accident, I find that claimant's injury of March 1, 2004 had resolved as of April 9, 2004. The medical treatment claimant received more than seven months after April 9, 2004 is not causally related to claimant's compensable injury. Therefore, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury subsequent to April 9, 2004.

For the same reasons, I find that claimant has also failed to prove by a preponderance of the evidence that he remained within his healing period and that he suffered a total incapacity to earn wages subsequent to April 9, 2004, which would entitle him to additional temporary total disability benefits.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment and/or temporary total disability benefits for his compensable injury subsequent to April 9, 2004. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE