

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F206290

**STEVEN B. DAVIS,
EMPLOYEE**

CLAIMANT

**AAA COOPER
TRANSPORTATION,
SELF-INSURED EMPLOYER**

RESPONDENT NO. 1

**CRAWFORD RISK MANAGEMENT,
BENEFITS ADMINISTRATOR**

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED NOVEMBER 17, 2005,

Pursuant to a hearing conducted August 24, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Steven R. McNeely, Attorney at Law, Little Rock, Arkansas, appearing for the claimant,

Mr. James C. Baker, Jr., Attorney at Law, Little Rock, Arkansas, appearing for the Respondents No. 1, and

Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas, representing Respondent No. 2, attendance excused.

STATEMENT OF THE CASE

This is a dispute over the claimant's request for maintenance, pursuant to Ark. Code Ann. §11-9-505, for his admittedly compensable low back injury.

The claimant contended that he should be awarded maintenance in an amount equal to the maximum permanent partial disability rate, beginning June 9, 2005, and continuing for a period not to exceed 72 weeks, in connection with job placement assistance provided by Respondents No. 1.

An attorney's fee for controversion was also requested. Other possible issues were reserved.

Respondents No. 1 contended that the claimant was not entitled to the benefits requested. Specifically, they contended that the statute provides maintenance only when a plan of rehabilitation has been approved and does not provide maintenance during the period of job placement assistance. That is, the statute distinguishes between re-employment assistance and a program of vocational rehabilitation, so that the claimant is eligible for maintenance only while undergoing an approved program of vocational rehabilitation.

They further contended that, even if the claimant is otherwise eligible for maintenance, under the holdings in Model Laundry & Dry Cleaning v. Simmons, 268 Ark. 770 (Ark. App. 1980) and Ryan v. Genuine Parts Co., 268 Ark. 1065 (Ark. App. 1980), the claimant is not entitled to maintenance because the claimant was not required to live away from home during the period of job placement assistance.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable low back injury May 21, 2002; he is entitled to the maximum benefit rates; as a result of this injury, he suffered permanent impairment of 9% to the body as a whole, which has been accepted by the respondents; the Second Injury Fund has accepted wage loss disability in the additional amount of 20% to the body as a whole; and Respondents No. 1 have agreed to provide job placement assistance.

3. The preponderance of the evidence fails to show that the claimant is entitled to maintenance as provided in Ark. Code Ann. §11-9-505.

DISCUSSION

The claimant began his employment with the respondent employer in 1993. During this employment, he has experienced back problems beginning with a compensable injury sustained on August 7, 1995. After a previous hearing before an administrative law judge in 1997, it was determined that the claimant suffered a recurrence of his 1995 injury in October, 1996. As the result of this injury, Dr. Jim J. Moore performed surgery in September, 1999. The previous administrative law judge opinion determined that this injury and surgery resulted in permanent impairment of 11% to the body as a whole.

His current injury occurred on May 21, 2002, when the truck he was driving hit a rough spot in the road causing him to be slammed down hard on the seat and injuring his back. Following the injury, he returned to neurosurgeon Dr. Moore, who performed additional surgery in 2003 for the current injury. Following this surgery, his impairment was rated at 24% by Dr. Moore in a note dated January 14, 2004, and at 20% by Dr. Earl Peebles in letters dated June 3, 2004, and June 29, 2004.

Following the 2002 injury, the claimant attempted to return to work as a dispatcher, but after two or three months, he had to have the additional surgery, after which he has not returned to work. Following the surgery, the terminal manager told the claimant that business was slow and he did not have appropriate work for him. At the time of the hearing, the claimant was drawing social security benefits, along with workers' compensation benefits for permanent partial disability. However, he testified that he would rather be working and he was not receiving enough to make ends meet.

He testified that he was offered job placement assistance and a meeting was arranged with the vocational specialist but that he has not heard a word from the vocational specialist since that time and has received no job offers, including offers for dispatching jobs. The reports from the vocational specialist show that the case was closed after the evaluation was completed on August 27, 2004, apparently without assisting the claimant with job placement.

The claimant testified that now his problems are mainly with his right leg where he does not have the feeling that he should, and that he needs to be sure to get adequate rest, but that he could handle a dispatching job with minimal training. He stated that he was asking for someone to help him find this job.

The statute and the cases cited by the respondents tend to show that the claimant may be entitled to maintenance if he is pursuing an appropriate program of vocational rehabilitation, but do not support an award of maintenance during the time that the claimant is exploring vocational rehabilitation but has not provided a plan or program of vocational rehabilitation. Ark. Code Ann. §11-9-505(b) specifically provides for maintenance and other necessary costs where the employee has not been offered re-employment assistance and the Commission has found that a program of vocational rehabilitation is reasonable in relation to the disability sustained by the employee.

At this time, the claimant has been offered re-employment assistance and is not pursuing a plan of vocational rehabilitation, and maintenance is not authorized under the Act.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge