

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409394

MARK FIELD

CLAIMANT

USA TRUCK
SELF INSURED

RESPONDENT

OPINION FILED AUGUST 11, 2005

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

Claimant represented by M. KEITH WREN, Attorney, Little Rock, Arkansas.

Respondent represented by J. RODNEY MILLS, Attorney, Van Buren, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 24, 2005, in Fort Smith, Arkansas. The deposition of a John Noggle was taken on May 24, 2005, and has been admitted as Respondent's Exhibit No. 2.

A pre-hearing order was entered in this case on February 8, 2005. This 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 this pre-hearing order has been made Commission's Exhibit No. 1 to the hearing.

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

1. On July 30, 2004, the relationship of employee-self insured employer existed between the parties.

2. The appropriate weekly compensation rates are \$453.00 for total disability and \$340.00 for permanent partial disability.

3. On July 30, 2004, the claimant was involved in an accident when he was struck by a vehicle.

4. In this accident, the claimant sustained a significant injury to his left leg.

5. The medical services rendered him for this injury were reasonable and appropriate.

6. The accidental injury rendered him temporary totally disabled.

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

1. Whether the claimant was performing "employment services" at the time of his accidental injury.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits, and attorney's fees.

In regard to these issues, the claimant makes the following contentions:

The claimant contends that he sustained a compensable injury to his leg on July 30, 2004, and is entitled to appropriate benefits provided by the Act.

In regard to these issues, the respondent makes the following contentions:

The claimant was not performing employment services at the time of the accident giving rise to this claim; this claim is not compensable under the Arkansas Workers' Compensation Act; no compensable event is the major cause of the condition for which the claimant currently seeks benefits and/or medical treatment; the medical treatment and expenses sought by the claimant are not reasonable and necessary as a result of a compensable event.

DISCUSSION

The central issue in this case is the question of whether the claimant was performing “employment services” at the time of his accidental injury. There is no dispute that the claimant experienced a significant physical injury that involved his left leg in an accident or specific incident on July 30, 2004. There is also no dispute that this physical injury required medical services and resulted in a period of temporary total disability.

Ark. Code Ann. §11-9-102(4)(B)(iii) expressly excludes from the category of “compensable injuries”;

“Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated”:

The record reveals that the claimant was hired by the respondent as a “driver/trainer” and that he was acting in this capacity on July 30, 2004. In this position, the claimant not only performed the duties of an over the road truck driver, but was also responsible for training, supervising, and grading the driver trainee or co-driver that he had been assigned.

The claimant testified that at approximately 6:30 to 6:45 p.m. on July 30, 2004, he was contacted over the qual-com system in his truck and was directed to switch loads with another truck in Atlanta, Georgia. He testified that at approximately 7:55 p.m. he and his co-driver arrived at a parking lot in Jonesboro, Georgia, a suburb of Atlanta. This parking lot was near the respondent’s

terminal and was across the street from a Waffle House. The claimant testified that he and the co-driver worked on their log books, for awhile in the parking lot. When the co-driver's log book was brought up to date, his co-driver went across the street to the restaurant. The claimant testified that he remained at the truck to finish his own log book and rearrange his things to accommodate the co-driver for his turn in the truck's sleeper. Some thirty minutes later he followed the co-driver across the street to the Waffle House. There he used the pay phone and attempted to call respondent's dispatch office. He was unable to contact the appropriate individuals at the respondent's dispatch. He then went to the restroom. After this, he proceeded to the coffee counter where his co-driver was sitting, and drank some tea. He and his co-driver then left the Waffle House and proceeded back across the street or highway to return to the parked tractor trailer. While crossing the street or highway, he was struck by a vehicle and sustained the significant injuries to his left leg.

The claimant's description of the events leading up to the accident and injury are somewhat contradicted by the testimony of Carol Webb, a work comp analyst supervisor in the respondent's risk management department and John Noggle, an operation fleet manager for the respondent. Ms. Webb testified that on September 8, 2004, she had a conversation with the claimant about his accident and injury. She stated that in this conversation, the claimant:

“Indicated that he and a student had gotten lost so they parked and were going to get something to eat and he was struck by a vehicle.” (Emphasis mine)

In his direct testimony, the claimant denied any recollection of such a conversation with Ms. Webb. On rebuttal he expressly denied ever telling Ms. Webb that he had gotten lost in the Atlanta area. He testified that he had lived in Atlanta for nine years and had actually worked at the old Waffle House, which had been torn down to create the parking lot where he had parked.

Mr. Noggle testified that he had talked to the claimant about the accident on the following Wednesday, which would have been August 4. He stated that in this conversation the claimant:

“Told me that he and his student were crossing the road going to a Waffle House to get them something to eat and a woman in a car had struck him and shattered-broke his leg. They took him to the hospital.”

Mr. Noggle also testified that it was possible that he could have talked to the claimant on the preceding Monday, August 2, 2004. He also stated that he talked to the claimant's student driver and had been told the same thing.

Clearly, at the time of his accident and injury, the claimant was walking across a street or highway. In order to determine whether such activity constitutes the performance of “employment services”, only the particular activity at the specific time of the accident is considered. One of the factors relevant to ascertaining this purpose is whether the claimant was going from his truck to the Waffle House restaurant or whether he was returning to his truck from the Waffle House restaurant, Wallace v. West Fraser South, CA 03-1335 (Arkansas Appeals 2-16-05); Pifer v. Single Source Transport, 347 Ark. 851, 69 S.W. 2d 1 (2002).

In support of his testimony that the entire trip to and from the waffle House was work related as it was for the purpose of contacting the respondent and making arrangements to switch trailers, the claimant points to the phone log that is contained in Respondent's Exhibit No. 1. This log records several calls to the respondent's central dispatch from the Atlanta, Georgia area on July 30, 2004. The specific call the claimant identifies to corroborate his testimony was received by the respondent's central dispatch at 9:38 p.m. However, as indicated by the testimony of Ms. Webb, 1-800 call logs are recorded based upon the time they are received at the location of the 1-800 number. In this incidence, the location of the 1-800 number would be the respondent's central dispatch in Van Buren, Arkansas. Therefore, this call was received at 9:38 p.m. central time, which would have been 10:38 p.m. local time in the Atlanta area. The accident report (also contained in Respondent's Exhibit No. 1) shows that the claimant's accident and injury occurred at 9:58 p.m. local time in the Atlanta area, which would have been forty minutes prior to the recorded phone call. Most likely, the phone call the respondent's central dispatch received from Jonesboro, Georgia at 9:38 p.m. central time would have been the claimant's driver trainee reporting the claimant's accident and injury. The only other recorded phone call from the Atlanta, Georgia area on July 30, 2004, prior to 9:58 p.m. Atlanta or eastern time, was a call at 6:03 p.m. central time or 7:03 p.m. Atlanta time. This call would have been made approximately an hour prior to the time the claimant testified that he arrived in the

Atlanta area. Thus, the claimant's testimony that the entire trip to and from the Waffle House was performed for the employment related purpose of calling the respondent's central dispatch is refuted by the respondent's central dispatch telephone records.

There remains the question of whether the entire trip to and from the Waffle House was necessitated by the claimant's need to relieve himself. However, it is my opinion that it is unnecessary to give this matter of why the claimant went to the Waffle House more than cursory consideration, because the greater weight of the credible evidence shows that at the exact time of the claimant's accident and injury he was returning to his tractor trailer truck to resume the performance of the duties for which he had been specifically hired. In reaching this decision, I am aware that the claimant's own testimony is the only direct evidence presented to prove this fact. I am also aware that the claimant's testimony, concerning this matter, would be inconsistent with the history that the respondent's witnesses attribute to the claimant and his driver trainee. It is simply my opinion that the claimant's testimony in this regard is more credible and accurate.

I would note that the description of the incident that is contained in the claimant's testimony would be substantiated by his official driving log. The last entry made by the claimant, in this log, was made at approximately 8:30 p.m. central time or 9:30 p.m. eastern or Atlanta local time. Whether the claimant signed himself off duty at that point or whether he was subsequently signed off duty at that point by his driver trainee is of little importance.

Obviously, at that time his status changed and he stopped whatever activities he had previously been performing. His accident was not until some twenty-eight minutes later. The only reasonable explanation for this twenty-eight minute gap is that the claimant had proceeded from his truck to the waffle House, performed whatever activities he had performed at the waffle House, and was returning to his truck at the time of his accident.

The accident report diagram also supports the claimant's testimony that he was returning to the truck rather than leaving it when the accident occurred. The codes and diagram indicate that the claimant was struck from behind while he was heading south (the same direction as the vehicle that struck him) on the side of the roadway closest to his parked truck. This would be a more likely direction of travel if the claimant was proceeding toward the truck rather than away from it.

Under the Rule announced in Wallace, the claimant's returning to his work station to resume his regularly assigned employment activities is sufficient to indirectly benefit the respondent and cause the claimant to be performing "employment services" at the actual time he was struck and injured. Thus, the claimant's accidental injuries are not expressly excluded from the category of "compensable injuries" by the provisions of Ark. Code Ann. §11-9-102(4)(B)(iii).

The stipulations offered by the parties and the evidence presented shows that this accidental injury satisfies all of the statutory requirements of a "compensable injury" contained in the

Act. Specifically, these include the provisions of Ark. Code Ann. §11-9-102(4)(A)(i) and §11-9-102(4)(D). Thus, the claimant is entitled to appropriate benefits under the Act for his employment related accidental injury to his left leg.

The stipulations and the medical evidence presented show that the medical services provided the claimant by various hospital personnel in Atlanta, Georgia and subsequently by and at the direction of Dr. Geoffrey A. Sandman represent reasonably necessary medical services for the claimant's compensable injury. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of such services, subject to the medical fee scheduled established by this Commission.

The evidence presented and the stipulations further show that the claimant has continued within his healing period from the effects of his compensable injury and has not returned to employment by the time of the hearing. Therefore, under the provisions of Ark. Code Ann. §11-9-521(a), the claimant would be entitled to temporary total disability benefits for the period beginning July 31, 2004, 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 July 30, 2004, the relationship of employee-self insured employer existed between the parties.

3. On July 30, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$453.00 for total disability and \$340.00 for permanent partial disability.

4. On July 30, 2004, the claimant sustained a compensable injury to his left leg. Specifically, the greater weight of the credible evidence shows that at the time of the accidental injury to the claimant's left leg, he performing activities that indirectly benefitted the respondent employer (in that he was returning to his work station to resume his regularly assigned employment activities). Further, the evidence presented shows that the claimant's injury to his left leg arose out of and occurred in the course of his employment with the respondent, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal harm to his body, required medical services and resulted in temporary disability, is "established" by the medical evidence, and is supported by "objective findings".

5. The medical services initially provided to the claimant for the compensable injury by the personnel at the hospital in the Atlanta, Georgia area and the subsequent medical services provided to the claimant by and at the direction of Dr. Jeffrey Sandman represent reasonably necessary medical services for the claimant's compensable injury. The respondents are liable for the expense of these services, subject to the Commission's medical fee schedule.

6. The claimant is entitled to temporary total disability benefits, under the provisions of Ark. Code Ann. §11-9-521(a), for

the period beginning July 31, 2004, and continuing through a date yet to be determined.

7. The respondents have denied the occurrence of a compensable injury to the claimant's left leg and have controverted his entitlement to any benefits.

8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the indemnity benefits herein awarded and which may hereinafter be awarded to the claimant for his compensable injury.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning July 31, 2004, and continuing through a date yet to be determined.

The respondents shall be liable for the expense for medical services required by the claimant for his compensable left leg injury. This specifically includes medical services provided him by the various personnel at the hospital in the Atlanta, Georgia area and by and at the direction of Dr. Jeffrey Sandman. This liability is subject to the medical fee schedule established by this Commission.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted indemnity benefits herein awarded to the claimant. One-half of this fee is the responsibility 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.

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

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE