

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F300108**

**GEORGE HAYDEN, EMPLOYEE**

**CLAIMANT**

**BARTON'S OF MONTICELLO, EMPLOYER**

**RESPONDENT NO. 1**

**INDIANA LUMBERMENS MUT. INS. CO., CARRIER**

**RESPONDENT NO. 1**

**SECOND INJURY FUND**

**RESPONDENT NO. 2**

**OPINION FILED DECEMBER 29, 2005**

Hearing before Administrative Law Judge J. Mark White on November 18, 2005, in Monticello, Drew County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Gill A. Rogers, Attorney at Law, Little Rock, Arkansas.

Second Injury Fund was excused from participation in this hearing.

**STATEMENT OF THE CASE**

On November 18, 2005, the above-captioned claim came on for a hearing in Monticello, Arkansas. A pre-hearing conference was conducted on August 22, 2005, and a Prehearing Order was entered that same day. A copy of the August 22, 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 as follows:

1. Compensable work-related back injury having occurred on July 15, 2002.
2. Compensation rate: \$281.00 – TTD, \$211.00 – PPD.
3. All TTD benefits were paid through January 3, 2003.
4. Respondents accepted a 7% impairment rating by Dr. Schlesinger and continued to pay all medical through December of 2004.

The parties agreed that the issues to be presented were the claimant's entitlement to vocational rehabilitation or retraining and the claimant's entitlement to any unpaid medical expenses, medication and mileage.

The parties' contentions are set forth in the Prehearing Order of August 22, 2005, and are incorporated herein by reference.

#### **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 stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to rehabilitation benefits.
4. The claimant has failed to prove by a preponderance of the evidence that any additional medical treatment after March 1, 2004, is reasonably necessary in connection with the compensable injury.
5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to reimbursement of unpaid pharmacy bills.
6. The claimant has proven by a preponderance of the evidence that he is entitled to medical mileage reimbursement in the amount of \$413.85.
7. The respondents have controverted all benefits sought herein.

## **DISCUSSION**

### **I. History**

The claimant sustained a compensable injury to his back on July 15, 2002, while lifting a bundle of shingles. The respondents accepted his injury as compensable and paid benefits, including a permanent anatomical impairment

rating of 7% to the body as a whole.

After initial treatment by his primary care physician, Dr. Ralph Maxwell, the claimant saw a neurosurgeon, Dr. Scott Schlesinger. Dr. Schlesinger recommended conservative treatment and referred the claimant to Dr. William Ackerman for medication management. Dr. Ackerman treated the claimant with a variety of medications, including narcotics. He released the claimant from care on August 7, 2003, even though the claimant was still rating his back pain as a "9" on a ten-point scale. Dr. Ackerman referred the claimant back to Dr. Maxwell for continued medication management, but Dr. Ackerman changed the claimant's prescriptions to a non-narcotic medication. Dr. Schlesinger likewise released the claimant, saying that no surgical treatment was appropriate.

Notes from the respondent-carrier's nurse case manager reflect that the claimant never filled the non-narcotic prescriptions, but instead used some old prescriptions to obtain more narcotic medication. As of December 2003, the claimant was reporting that the non-narcotic medications were of no benefit, and the respondent-carrier sent the claimant to Dr. Bruce Safman for the purpose of "weaning" the claimant off of narcotics. Dr. Safman treated the claimant with a variety of other medications, to no effect, and he noted that the claimant's "very serious psychiatric issues" could play a role in his continued problems. On March

1, 2004, Dr. Safman released the claimant from care, noting that the claimant's back pain had been "unresponsive to all intervention."

## **II. Adjudication**

### **A. Vocational Rehabilitation**

In addition to other benefits to which he may be entitled, a claimant is entitled to payment of "reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation" if it is shown (1) that the program is reasonable in relation to the claimant's disability; (2) that the claimant is entitled to permanent disability benefits; and (3) that the claimant has not been offered reemployment assistance or an opportunity to return to work. ARK. CODE ANN. § 11-9-505(b)(1). Like the remainder of the Workers' Compensation Act, this statutory provision must be strictly construed. ARK. CODE ANN. § 11-9-704(c)(3).

The claimant acknowledged in his testimony that he was provided job listings by a rehabilitation counselor retained by the respondent-carrier, and that he met with the counselor. The claimant testified that he did not follow up on any of the job prospects identified by the counselor. The statute is explicit that rehabilitation benefits may be ordered only if the claimant has not been offered reemployment assistance or an opportunity to return to work. ARK. CODE ANN. §

11-9-505(b)(1).

Given the claimant's testimony, as well as the job information sheets he introduced into evidence, I find that the claimant has been offered reemployment assistance. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to rehabilitation benefits.

### **B. Additional Medical Treatment & Unpaid Bills**

The Prehearing Order did not specifically identify additional medical treatment as an issue to be considered at the hearing, but it does reflect the claimant's contention that he is entitled to future medical treatment. The respondents did not object at the hearing when the claimant stated that he seeks additional medical treatment, and the issue of unpaid bills cannot be resolved without a determination of whether additional treatment is reasonably necessary. Therefore, I conclude that the issue of additional medical treatment is properly before the Commission.

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).

When the claimant was released from care by Dr. Schlesinger and Dr. Ackerman, they referred him back to Dr. Maxwell for medication management. They expressed an intent to switch the claimant to non-narcotic medications, but the claimant apparently used old prescriptions to continue obtaining narcotic medications. The medical records quote the claimant as saying the non-narcotic medications are of no effect. The respondent-carrier sent the claimant to Dr. Safman to wean him off of narcotics, and Dr. Safman has opined that no further care is warranted. There is no remaining recommendation of additional treatment to be found in the record before me. Given the evidence of record, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment after March 1, 2004, the date of his release by Dr. Safman, is reasonably necessary in connection with the compensable injury.

The claimant has introduced into evidence pharmacy bills reflecting prescriptions filled in the fall of 2004, for which he seeks reimbursement. As discussed above, I find any treatment after March 1, 2004, not to be reasonably necessary. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to reimbursement of unpaid pharmacy bills.

### **C. Unpaid Mileage Expenses**

The claimant also seeks reimbursement of medical mileage expenses. He is entitled to mileage reimbursements for travel reasonably incurred as a result of treatment of the compensable injury A.W.C.C. Advisory 89-2 (Rev. Aug. 19, 2005); *West v. Arkansas Technical Contractors*, A.W.C.C. F206803 (Feb. 6, 2004).

The claimant has submitted into evidence two itemized lists of unpaid medical mileage, one typed and one handwritten, but the two lists appear to be identical in content. In total, the lists itemize 1,335 unpaid miles for travel incurred prior to March 1, 2004, the date of his release by Dr. Safman. The rate for travel in 2003-2004 as established by Commission Advisory 89-2 is 31 cents per mile. Therefore, I find that the claimant has proven by a preponderance of the evidence that he is entitled to medical mileage reimbursement in the amount of \$413.85 (1,335 miles x \$0.31).

### **AWARD**

The claimant has proven by a preponderance of the evidence that he is entitled to medical mileage reimbursement in the amount of \$413.85. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

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.**

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**HON. J. MARK WHITE**  
Administrative Law Judge