

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F403777

JOSEPH W. HEFLIN, EMPLOYEE	CLAIMANT
FIRESTONE TUBE COMPANY, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED OCTOBER 18, 2005

A hearing in this case was conducted on July 22, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Russellville, Pope County, Arkansas.

Claimant was represented by Aaron L. Martin, Attorney at Law, Fayetteville, Arkansas.

Respondents were represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on March 18, 2005; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to five stipulations. Three of these stipulations are found in the Prehearing Order, and were confirmed by the parties at the hearing; the remaining two stipulations were agreed upon at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on March 8, 2004 and at all other relevant times.
2. Claimant sustained a compensable left shoulder injury on March 8, 2004.

3. Claimant's average weekly wage was \$683.00; his temporary total disability rate is \$453.00; and Claimant's permanent partial disability rate is \$340.00.

4. Respondents paid Claimant temporary total disability benefits from April 12, 2004 to August 23, 2004.

5. Respondents accepted a 7% permanent impairment rating to the body as a whole for Claimant's left shoulder injury, and are paying permanent partial disability benefits for that rating.

At the July 22, 2005 hearing, the parties discussed the issues set forth in the Prehearing Order. In particular, the parties agreed to modify the first issue listed in the Prehearing Order, and to add the second issue listed below as a pleading by Claimant in the alternative. Therefore, the parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant is entitled to reasonably necessary medical treatment for his neck complaints in connection with his compensable left shoulder injury.

2. In the alternative, whether Claimant sustained a compensable neck injury as a compensable consequence of his compensable left shoulder injury.

3. Whether Claimant is entitled to temporary total disability benefits from September 1, 2004 through September 22, 2004.

4. Whether Claimant is entitled to temporary partial disability benefits from September 23, 2004 through December 6, 2004.

5. Whether Claimant is entitled to an attorney's fee.

The parties agreed that issue number 4 in the Prehearing Order is resolved by the fifth stipulation. Respondents claimed all offsets allowed under Ark. Code Ann. § 11-9-411.

Claimant contends that his neck condition is causally connected to his compensable left shoulder injury, such that he is entitled to reasonably necessary medical treatment for that condition. In the alternative, Claimant argues that his neck injury is a compensable consequence of his compensable left shoulder injury. In either event, Claimant seeks medical benefits, temporary total disability benefits, temporary partial disability benefits, and an attorney's fee. Respondents contend that Claimant's neck condition is unrelated to his compensable left shoulder injury, such that benefits may not be awarded.

DISCUSSION

_____ Claimant worked as a splicer for the Respondent employer when he sustained an injury on March 8, 2004. He explained how his injury occurred.

I was -- I'm a splicer. And I went to get a tube off the top of the skid. And in the process, pulled the tube off and all the weight shifted and went to my left hand, pulling the tube out of my right hand. And it just jerked me down.

...

In my job, the skids are high and you have a two-step stool. When you get your tubes off the top, you go up the stool, and they stick. They weigh 44 and a half pounds a piece, and you get two per leaf.

Claimant felt "burning in the front part of my shoulder and then the back part of my shoulder" immediately after the incident.

Later that day, the Respondent employer directed Claimant to receive medical attention. A note entitled History and Physical Examination Sheet, dated March 8, 2004, provides the following history:

He states that this morning he was lifting a very heavy tubing off one of the lines. He states that it started to fall. It was very heavy, it pulled on his left shoulder. He states he felt something give away; that it has been aching all day long and he has had now some numbness and tingling in his left hand. He denies any previous injury to the shoulder.

Conservative treatment by this clinic did not provide relief. Claimant underwent an MRI of his left shoulder on March 15, 2004; it produced an impression of “[l]ateral impingement with tendinosis and/or partial tears of the rotator cuff tendons....”

Claimant was referred to Dr. Jimmy Tucker. At his first examination by Dr. Tucker on April 2, 2004, the doctor opined that Claimant “possibly has a SLAP tear in addition to the partial thickness rotator cuff tear....” On April 12, 2004, Claimant underwent a diagnostic arthroscopy of the left shoulder with repair of a Type II superior labral anterior posterior tear, as well as subacromial decompression and acromioplasty. Claimant then began a course of follow-up visits with Dr. Tucker as well as physical therapy.

Claimant testified that the surgery “helped with the movement of my arm and taking away the pain of the stabbing pain in my shoulder.” However, he continued to have symptoms such as burning in the fingers and the palm of his left hand. He testified that “in the middle of May, I started having the numbness in my fingers and the burning back down my shoulder.” Claimant recalled that “about midway through physical therapy,” he began to notice that he “burned down my arms from my neck to my shoulder.” He testified as follows, upon questioning by the Commission:

Q. Can you tell me when your neck first started bothering you after your March 8th, 2004 injury?

A. It was sometime in the middle of my rehab.

Q. And that would have been about when?

A. I want to say it was in latter part of June, something like that.

Q. So you would say from March 8th until the latter part of June, you did not experience any neck pain or neck complaints?

A. Other than the burning and stuff in my hands.

Q. In your hand?

A. Yes, sir.

Q. Okay. Between March 8th and that latter part of June, do you recall any incidents at work, any injuries, any accidents that occurred?

A. I was not at work.

Q. Okay. So you -- what about at home?

A. I was off -- yes, I was going to therapy three days a week.

Q. Were you working odd jobs, doing chores at the house, going hunting, participating in any sports?

A. No, sir.

Q. So you would not point to any incidents between March 8th and the last part of June that could have caused your neck to begin hurting?

A. No, sir.

Dr. Tucker's June 23, 2004 note corroborates the timing of Claimant's initial neck complaints. Dr. Tucker noted that Claimant's "main complaint today is continued numbness and tingling in his index and ring finger. This has been present since his accident, but has not improved with his shoulder surgery. At this point in time I am concerned that we are dealing with a herniated disc or other type of compression on the ulnar nerve." Dr. Tucker noted that an x-ray of Claimant's cervical spine revealed "[t]he disc at 5-6 is definitely smaller. There also appears to be some changes to the foramen."

On June 25, 2004, Claimant underwent an MRI of his cervical spine. It produced the following impression:

Multi-level degenerative disk disease as described. The findings are most pronounced at the C5-6 and C6-7 levels. At both levels, there is asymmetric diffuse bulge of a disk, which is more pronounced on the right. There is multi-level foraminal narrowing as described.

In his note dated June 25, 2004, Dr. Tucker commented on this study. He recommended an epidural steroid injection and noted the possibility that a nerve conduction study might be needed.

Claimant's treatment was then expanded to address his cervical spine complaints. He underwent at least one epidural steroid injection at C6-7, on July 1, 2004. In the meantime, Claimant's left shoulder condition resolved to the extent that he was released to return to work with restrictions on August 20, 2004. Claimant actually returned to work on August 23, but only worked seven days until his neck pain became intolerable. He then returned to Dr. Tucker, reporting stiffness in his neck and a burning sensation in his arms.

Dr. Tucker reported in his September 1, 2004 medical record that Claimant had "difficulty moving because of severe pain and stiffness in his neck. He has begun having more radial nerve symptoms with numbness in the index finger and thumb." Dr. Tucker took Claimant off work and recommended a referral to Dr. Wayne Bruffett. On September 8, 2004, Dr. Tucker authored the following letter "To Whom It May Concern":

[Claimant] sustained a shoulder and neck injury at work on 3/8/04 and underwent surgery on the shoulder 4/12/04. At that time the severity of the shoulder pain masked his neck pain. His shoulder injury is now resolving and the neck pain has become more prominent. It is my medical opinion that the neck pain is a result of the injury he sustained on 3/8/04.

Rather than seeing Dr. Bruffett, Claimant was instead referred to Dr. Scott Schlesinger.

Claimant presented to Dr. Schlesinger on September 20, 2004. After examining Claimant and his studies, Dr. Schlesinger offered the following observations:

I have carefully reviewed the multiple images of the MRI of the cervical spine independent of the radiologist and have requested and compared this to the radiologist's interpretation. There are degenerative changes only at C5-6 and C6-7. There is no disc herniation, nerve root compression, spinal stenosis or foraminal stenosis. There is no abnormal signal in the cord. My

findings are in agreement with the radiologist's interpretation....

A decision was made to order plain x-rays of the cervical spine as clinically indicated for the patient's condition. The AP & lateral flexion/extension x-rays reveal mild multilevel degenerative changes. There is no fracture or dislocation. There is no spinal instability on flexion/extension views. There is normal alignment without abnormal curvature seen.

Dr. Schlesinger then offered his opinion of Claimant's condition.

In this case, it is my neurosurgical consultative opinion that the neck pain is due to aggravation of underlying cervical degenerative disc disease, which he certainly had prior to the accident. If his history is accurate, then the physical therapy done for his shoulder may have aggravated underlying degenerative arthritis of his neck. I believe the numbness and tingling in the ulnar three digits of the left hand are probably related to stretching of the brachial plexus at the time of his shoulder injury. This does not conform to an ulnar nerve distribution, but rather lower portion of the brachial plexus. There is nothing that can be done about this and no further workup or treatment is indicated for this complaint.

Dr. Schlesinger did not see a basis for a disability rating. He recommended physical therapy, anti-inflammatory medications, and perhaps additional epidural steroid injections.

Dr. Schlesinger evaluated Claimant again on October 25, 2004. He noted Claimant's report of continuing numbness and pain, and recommended a neurology consultation. He also noted the possibility of an FCE, but emphasized that "[t]here is nothing I can do surgically." He still did not see a basis for a disability rating in Claimant's cervical spine.

On November 5, 2004, Dr. Tucker declared Claimant at maximum medical improvement for his compensable left shoulder injury. He assigned Claimant a 7% permanent impairment rating; as noted, the parties stipulated that Respondents accepted and are paying this rating.

On November 23, 2004, Claimant presented to Dr. Steven Cathey, who recorded

Claimant's continuing complaints of pain in his neck radiating into both upper extremities and that Claimant "denies any previous history of neck pain or injury." Dr. Cathey examined Claimant, and then reported as follows:

The patient had an MRI scan of his cervical spine earlier this year. By report, degenerative changes were noted at C5-C6 and C6-C7. There was however no resulting nerve root compression, cord impingement, etc. on the study. Due to his continued pain, I went ahead today and updated an MRI scan of his cervical spine. This study too is unremarkable. There is specifically no evidence of a disc herniation, spinal stenosis, nerve root impingement, etc.

... I believe [Claimant] is experiencing neck and upper back pain secondary to a musculoskeletal injury that should eventually go on and resolve. His problem is most likely compromised by a comorbid depression. Unfortunately, this is not something that will respond favorably to cervical disc surgery or other neurosurgical intervention. This opinion is consistent with that which he received from Dr. Scott Schlesinger.... Since the patient tells me that chiropractic treatment has helped some unrelated chronic lower back pain, I suggested that [Claimant] give this a try now that we have ruled out an indication for operative intervention.

Dr. Cathey extended Claimant's leave from work until December 6, 2004.

Prior to seeing Dr. Cathey, Claimant had begun to see Dr. Wes Thomas. On January 13, 2005, Claimant reported to Dr. Thomas that he had seen a chiropractor, Dr. Russell Pearson, three times a week "and that has helped quite a bit." Nonetheless, Claimant continued to report pain.

On May 18, 2005, Dr. Tucker authored another "To Whom It May Concern" letter:

It is my medical opinion that [Claimant's] neck pain was caused by his injury on March 8, 2004. I believe the injury involved both the neck and shoulder. I think the injury to [sic] that he sustained on March 8, 2004 is the major cause of his continued neck pain and left arm numbness. I do believe that his continued treatment for the neck pain was necessary and reasonable and that the restrictions placed on him from September 1, 2004 through November 5, 2004 was due to the March 8, 2004 injury to the left shoulder and neck. This is my medical opinion within a reasonable degree of medical certainty.

The parties deposed Dr. Tucker on July 6, 2005. Dr. Tucker affirmed that he does not do cervical or lumbar spine surgery, and that he limits his practice to that area “[f]rom the neck down, shoulders, elbows, hips and knees.” He agreed that Dr. Schlesinger and Dr. Cathey do treat cervical and lumbar spine complaints and that he would defer to these two doctors regarding the type of injury Claimant sustained.

June 23, 2004 was the first time Claimant indicated problems with his neck or cervical spine to Dr. Tucker. He originally questioned whether Claimant had a herniated disc or some type of pinched nerve. Concerning the impression on Claimant’s June 25, 2004 MRI, Dr. Tucker explained:

The degenerative nature of the disc disease is more consistent with something that’s chronic. The asymmetry of the disc bulge is more likely something that would make you expect it to be more of acute injury than just degeneration. But neither of those are 100%. It’s more an indication than something where you can look at it and say, oh, this is definitely one or the other.

Dr. Tucker took Claimant off work on September 1, 2004, due to his complaints of neck pain and stiffness as well as radial nerve irritation.

Regarding Claimant’s neck condition, Dr. Tucker related it to Claimant’s March 8, 2004 incident, even though Claimant waited some time before first reporting neck pain. He explained that “it’s not an uncommon occurrence that because the neck and shoulder injuries are a lot of times an overlapping type injury and whichever is most severe is the one that gets focused on until it starts to clear and then the lesser of the two injuries become[s] more apparent at that time.” He addressed the type of injury Claimant sustained to his neck.

Q. Okay. What type of injury did he sustain to his neck?

A. I believe Dr. Schlesinger felt like he had a stretch type injury that was exacerbated by the fact that he did have some degenerative changes in his neck. You know, I really would have to defer to his diagnosis because it's his area of expertise.

Q. Okay. So, you would defer to him as for his opinion as to what type of injury, if any, he sustained?

A. Right.

Q. Now, was it ever your opinion that his neck pain complaints were actually a referred pain from his shoulder injury?

A. No. Because they -- the complaints he had with his neck were predominantly, although there was some pain involved which could come from the shoulder, they were predominantly neurological numbness problems which are very infrequent from the shoulder.

Q. As far as the numbness and tingling that he was reporting in his I believe ring finger, or his middle finger and his index finger, would those be symptoms of a neck problem or would those be symptoms of the shoulder injury?

A. A neck problem.

He conceded that his opinion with regard to Claimant's neck was based upon the history Claimant provided; it was not based on any objective findings or physical examination performed by Dr. Tucker.

On cross-examination, Dr. Tucker explained the term "brachial plexus" used in Dr. Schlesinger's September 20, 2004 letter: "It's where the nerves come out of the neck. It's sort of the relay box where different nerves as they come out of the neck become the nerves that go down to your shoulder and arm." Dr. Tucker interpreted Dr. Schlesinger's letter as stating "that he felt like there was a stretch injury to the nerves and they come out of the neck when the actual injury to the shoulder occurred." He further explained that such an injury would cause pain in the neck and numbness in the hand. Dr. Tucker then

directly related Claimant's history to Dr. Schlesinger's opinion.

Q. And, Doctor, you've treated several shoulder injuries I think it's fair to say. How many injuries have you seen, shoulder injuries that have also resulted in a stretching of this brachial plexus?

A. It's not a common injury but it occurs.

Q. Okay.

A. It just depends on the nature of the injury. If the shoulder injury is a direct blow it's very uncommon to injure your neck. If it's a pulling type injury then the nerves are stretched and it's more common, more commonly occurs with that type of injury.

Q. What do you mean by pull type injury?

A. Something's pulling on the arm or shoulder and there's some kind of force. In order for the nerves to get stretched, there has to be something that pulls against the neck. I don't want to make this confusing. If the shoulder injury is from something that strikes the shoulder then it's very uncommon to have a neck injury. If the shoulder injury is from something pulling on the arm or the patient pulling on something then it can occur.

Q. Did [Claimant] describe to you how he injured his shoulder?

A. Pulling tubes off of a skid, I believe. And that's one of the reasons why I felt like the injury that Dr. Schlesinger described would be consistent with the mechanism that [Claimant] had.

Q. Is there any way to determine where in the brachial plexus there was damage, stretch damage?

A. Only by the physical exam.

Dr. Tucker confirmed that such an injury is not amenable to surgery, but will have to heal over time.

A. Neck Treatment in Connection with Left Shoulder Injury

Claimant argues that he is entitled to reasonably necessary medical treatment for his neck complaints in connection with his compensable left shoulder injury. An employer

shall 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). Among other requirements, Claimant must demonstrate a causal connection between his neck complaints and his compensable left shoulder injury. Compare Underwood v. TEC, Full Workers' Compensation Commission Opinion filed April 10, 2003 (D708150) (finding that a Claimant was not entitled to reasonably necessary medical treatment based on medical opinions that "there was no causal connection between the Claimant's compensable injury and her continued need for medical treatment"). Claimant bears the burden of proving such a causal connection by a preponderance of the evidence. See id. "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

I find that Claimant did not sustain his burden of proving by a preponderance of the evidence that there is a causal connection between his compensable left shoulder injury and his neck complaints. At his deposition, Dr. Tucker discounted the possibility of such a connection:

Q. Now, was it ever your opinion that his neck pain complaints were actually a referred pain from his shoulder injury?

A. No. Because they -- the complaints he had with his neck were predominantly, although there was some pain involved which could come from the shoulder, they were predominantly neurological numbness problems which are very infrequent from the shoulder.

Dr. Schlesinger opined that Claimant's neck pain was due to aggravation of his underlying degenerative disc disease, and that the numbness and tingling in his ulnar three digits of

his left hand were “probably related to stretching of the brachial plexus at the time of his shoulder injury.” Similarly, Dr. Cathey opined that Claimant “is experiencing neck and upper back pain secondary to a musculoskeletal injury that should eventually go on and resolve.” None of these three doctors opined that there is a causal connection between Claimant’s compensable left shoulder injury and his continuing complaints of neck pain.

I acknowledge that the same activity - pulling a tube off a skid - produced Claimant’s compensable left shoulder injury as well as his neck condition. Dr. Tucker’s testimony is clear on this point. However, proof that the same activity resulted in harm to two separate areas of Claimant’s body is not the same as proving that treatment for one area is causally connected to the harm to the other. The law requires that Claimant prove the latter; based on the record, I cannot find that Claimant has met his burden of proof.

B. Neck Injury as a Compensable Consequence of Left Shoulder Injury

Claimant argues in the alternative that his neck injury is a compensable consequence of his compensable left shoulder injury. He does not argue that his neck injury is a separate injury.

Claimant must prove two things: (1) that there is a causal connection between the compensable injury and the alleged consequential episodes; and (2) that there are objective findings of a compensable consequence. See *Lowe v. University of Arkansas at Pine Bluff*, Full Workers’ Compensation Commission Opinion filed January 14, 2004 (E511115); *Long v. L & J Mechanical*, Full Workers’ Compensation Commission Opinion filed September 30, 2003 (F008439). The Commission interprets Ark. Code Ann. § 11-9-102(4)(D) as requiring objective findings to establish the full extent of a compensable injury, including alleged compensable consequences. See *Atchison v. John P. Marinoni*

Constr. Co., Full Workers' Compensation Commission Opinion filed September 19, 2001 (E616344). "Objective findings" are those which cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(i).

I find that Claimant did not sustain his burden of proving a causal connection between the compensable injury and the alleged consequential episode. As noted above, none of the three doctors testified to a causal connection between Claimant's compensable left shoulder injury and his neck condition. The evidence does not suggest a causal connection; rather, it suggests a separate injury to Claimant's neck arising out of the same activity that gave rise to Claimant's compensable left shoulder injury.

I further find that Claimant did not sustain his burden of proving objective medical findings that would establish his alleged compensable consequence, a neck injury. Although Claimant's June 25, 2004; September 20, 2004; and November 23, 2004 studies revealed degenerative disc disease and some disc bulging, no doctor related these findings to Claimant's neck condition. Dr. Schlesinger observed that "[t]here is no disc herniation, nerve root compression, spinal stenosis or foraminal stenosis." Dr. Cathey observed that there was "no resulting nerve root compression, cord impingement, etc." on one study, and that Claimant's November 23, 2004 study "too is unremarkable. There is specifically no evidence of a disc herniation, spinal stenosis, nerve root impingement, etc." Neither doctor attributes Claimant's neck pain to the findings on these studies. Further, no other objective findings related to Claimant's neck pain are in the record.

C. Temporary Disability Benefits

Claimant seeks temporary total disability benefits from September 1, 2004 through September 22, 2004; he seeks temporary partial disability benefits from September 23,

2004 through December 6, 2004. The testimony summarized above establishes that Claimant returned to work on August 23, 2004. He worked until September 1, 2004, at which point his neck pain was intolerable; Dr. Tucker took Claimant off work on that date due to his neck and neck-related complaints. Dr. Cathey kept Claimant off work until December 6, 2004 due to those same complaints.

“Disability” means incapacity because of compensable injury to earn the wages the employee received at the time of the compensable injury. Ark. Code Ann. § 11-9-102(8). Temporary disability is determined by the extent to which a compensable injury has affected the claimant’s ability to earn a livelihood, based on certain factors. Arkansas State Highway & Transp. Dep’t v. Breshears, 272 Ark. 244, 246, 613 S.W.2d 392, ___ (1981).

On this record, Claimant is not entitled to any form of temporary benefits, either total or partial. Any incapacity to earn wages sustained by Claimant between September 1, 2004 and December 6, 2004 was not due to his compensable left shoulder injury; he had already returned to work, and was taken off work on September 1 due to his neck complaints. As found above, there is no causal connection between Claimant’s neck condition and his compensable left shoulder injury; likewise, his neck condition is not a compensable consequence of his left shoulder injury. Because a compensable injury is not the reason for Claimant’s incapacity to earn wages during this time period, he cannot meet the statutory definition of “disability,” and is therefore not entitled to temporary disability benefits.

D. Attorney’s Fee

Attorney’s fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded. Ark. Code Ann. § 11-9-715(a)(2)(A)(ii). Since no

indemnity benefits are awarded herein, Claimant is not entitled to an attorney's fee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on March 8, 2004 and at all other relevant times.
3. Claimant sustained a compensable left shoulder injury on March 8, 2004.
4. Claimant's average weekly wage was \$683.00; his temporary total disability rate is \$453.00; and Claimant's permanent partial disability rate is \$340.00.
5. Respondents paid Claimant temporary total disability benefits from April 12, 2004 to August 23, 2004.
6. Respondents accepted a 7% permanent impairment rating to the body as a whole for Claimant's left shoulder injury, and are paying permanent partial disability benefits for that rating.
7. Claimant did not sustain his burden of proving that he is entitled to reasonably necessary medical treatment for his neck complaints in connection with his compensable left shoulder injury. While there is proof in the record that Claimant's neck condition arose out of the same activity that gave rise to his compensable left shoulder injury, there is no proof in the record of a causal connection between the left shoulder injury and his neck condition.
8. Claimant did not sustain his burden of proving that he suffered a compensable neck injury as a compensable consequence of his compensable left shoulder injury. None of the three doctors testified to a causal connection between Claimant's compensable left shoulder injury and his neck condition. Further, Claimant did not prove objective medical

findings that would establish his alleged compensable consequence, a neck injury. Although there are findings on the studies in the record, no doctor attributes Claimant's neck pain to these findings.

9. Claimant did not sustain his burden of proving that he is entitled to temporary disability benefits. He was off work from September 1, 2004 until December 6, 2004 due to his neck condition, not his compensable left shoulder injury. Thus, he cannot meet the statutory definition of "disability," which requires incapacity because of compensable injury.

10. Because no indemnity benefits are awarded herein, Claimant is not entitled to an attorney's fee.

ORDER

Based upon the foregoing reasons, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml