

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110789

BOBBY LAMB, EMPLOYEE

CLAIMANT

DOLLARWAY SCHOOL DISTRICT, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER

RESPONDENT

OPINION FILED MARCH 18, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on December 17, 2004, at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of additional medical expenses and temporary total disability benefits.

At issue is whether or not the claimant developed high blood pressure and mental illness as a result of his compensable knee injury pursuant to Ark. Code Ann. §11-9-114 and §11-9-113. Also at issue is the authorization of Dr. Davis and additional medical treatment for the claimant's knee injury pursuant to Ark. Code Ann. §11-9-514 and §11-9-508. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on September 5, 2001 at which time the claimant sustained compensable injuries to his right knee and ribs at a compensation rate of \$410.00/\$308.00. Medical expenses and temporary total disability benefits (from September 6, 2001 to September 19, 2001, September 20, 2001 to October 20, 2001) have been paid. A companion case to this claim is Lovelace v. Dollarway School District, Administrative Law Judge opinion September 18, 2003, Full Commission opinion March 3, 2004 (F106668). A Change of Physician Order was entered June 12, 2002 authorizing the claimant to change from Dr.

Mulhollan to Dr. Bryan.

The claimant was injured when he intervened in a student fight. As a result of several factors, (the altercation with the students, the death of his principal, Mr. Lovelace, a conflict with Superintendent Mr. Robinson and the carrier's decision to controvert this claim), Mr. Lamb has developed high blood pressure and depression. The claimant seeks payment of medical and mileage expenses, and temporary total disability benefits from December 5, 2001 to March 25, 2002.

The respondents contend all appropriate benefits have been paid with regard to the knee and rib injuries with the knee injury being an aggravation of a preexisting condition.

The respondents have controverted this claim for additional benefits as unrelated to the compensable injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript. The respondents' objection to documents the claimant offered on the day of the hearing was sustained pursuant to Ark. Code Ann. §11-9-705(c).

The claimant, age 57 (D.O.B. September 19, 1947), has a masters degree and work experience as a school teacher, bus driver, and pastor. He has worked for the respondent-employer since 1979. His health history includes cancer, depression, high blood pressure, and arthritis in the right knee. According to the claimant, he has sustained injuries in several accidents at work in the past but did not file workers' compensation claims (see p. 4 of the recorded statement). He stated the school did not provide their employees with any instruction about filing claims. The claimant was involved in an altercation with students in January 2001 when he fell (Tr. p. 17-18), causing him to seek treatment for his knee. No workers' compensation claim was filed for this incident.

The claimant was recovering from right knee surgery when he aggravated his condition on September 5, 2001 (WCC #F110789), intervening in a student fight. He reported the injury to his superintendent and sought treatment at the emergency room (ER) where he was advised to follow up with his family physician. The ER bill was submitted to his group carrier, Blue Cross Blue

Shield, but the workers' compensation carrier Risk Management, subsequently accepted liability. The claimant stated the ER asked for his group insurance carrier because they had trouble in the past collecting on workers' compensation claims.

The claimant saw his family physician, Dr. Davis for his elevated blood pressure. He admitted he did not seek permission from the carrier or the Commission to see Dr. Davis, he was merely following the advice of the ER physician. Dr. Davis excused him from work (September 11-12), prescribed an antidepressant, and advised him to return to Dr. Mulhollan to check his knee.

Under cross-examination, the claimant stated that he filled out "paperwork" about the September 5, 2001 accident on September 13, 2001, (Tr. p. 23-26/28). This "paperwork" was later referred to as a Form AR-N (change of physician notice), however, the form could not be located in the exhibits. No testimony was offered as to the identity of the "company physician" and there is no evidence that the claimant was directed to any specific physician by his employer or by the carrier.

The claimant returned to Dr. Mulhollan in September, 2001 and it is clear from the correspondence that neither the claimant nor the doctor knew the identity of the workers' compensation carrier. This lends credence to the claimant's testimony that his employer offered no instruction to him.

The workers' compensation claims adjuster took a recorded statement from the claimant on September 26, 2001. She was aware the claimant was seeing Dr. Davis and Dr. Mulhollan but she did not tell him any doctor was unauthorized nor did she direct him to the "company physician". Ultimately she seemed to acquiesce to Dr. Mulhollan but not to Dr. Davis.

Because the carrier paid his ER bill and because the adjuster was aware of his treatment and did not advise him of any problems with the physicians who were treating him, the claimant was under the impression that his claim was accepted by the carrier. In effect, the claimant is making an estoppel argument with regard to Dr. Davis' authorization.

The claimant returned to work on September 19 or September 20, 2001 teaching but not driving a bus, based on Dr. Davis' report. He remained symptomatic and sought a change of physician to Dr. Bryan but the carrier has refused to pay for additional treatment.

The claimant also mentioned specific bills that are outstanding, (Tr. p. 32-33) to Dr. Davis for a \$300.00 Holt monitor to check his blood pressure and a bill of \$186.00 to Dr. Bryan.

MEDICAL EVIDENCE

A review of the medical evidence shows the claimant came under the care of orthopaedic surgeon, Dr. Gullett, who performed arthroscopy on June 12, 2001 after a May 23, 2001 MRI scan showed degeneration and a possible tear. The claimant's post-op diagnosis was degenerative joint disease. There is some suggestion in the records that Dr. Gullett's treatment was inadequate.

The claimant remained symptomatic and sought treatment from orthopaedic surgeon, Dr. Mulhollan in August, 2001. He prescribed crutches, medication and injections. On August 5, 2001 Dr. Mulhollan performed surgery and found a torn medial meniscus.

The claimant returned to work and re-injured his knee on September 5, 2001 in the altercation with students. He went to the ER and returned to his family physician, Dr. Davis, who referred him back to Dr. Mulhollan.

Dr. Mulhollan characterized the incident at work as a set back in the claimant's recovery, specifically exacerbating his lack of strength. However, he indicated the major cause of the claimant's disability is his preexisting condition of osteoarthritis (see Dr. Mulhollan's correspondence dated January 23, 2003). Orthopaedic surgeon, Dr. Bowen, also agreed with Dr. Mulhollan (see his report of March 3, 2003). The "major cause" analysis is a factor to be considered in assessing permanent benefits.

At this point, Dr. Mulhollan and Dr. Davis seem to have a difference of opinion about whether or not the claimant was able to return to work. Dr. Mulhollan released the claimant on October 11, 1001 to return to work driving a bus and questioned the claimant's sincerity (see Dr.

Mulhollan's correspondence of October 22, 2001, January 31, 2002, February 7, 2002 and March 25, 2002).

Dr. Davis, however, excused the claimant from work from December 8, 2001 to January 8, 2002 for high blood pressure and depression which he stated was aggravated by the claimant's accident (see his reports of December 8, 2001 and December 6, 2001). As I interpret the evidence, Dr. Davis was commenting on high blood pressure and depression while deferring to Dr. Mulhollan on the knee injury.

It should also be noted that some conflict developed between the claimant and his superintendent Mr. Robinson around December 2001.

Even though the claimant stated his blood pressure is now controlled and he has returned to work, he is still not driving a bus. His knee remains symptomatic and he seeks continuing medical treatment with Dr. Bryan.

FINDINGS AND CONCLUSIONS

With regard to the knee injury, this aggravation of a preexisting condition is similar to the case of Williams v. L & W Janitorial, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The claimant's injury has combined with his preexisting condition to produce disability. Based on this precedent, I find the respondents are liable for the claimant's continuing medical treatment with Dr. Bryan and payment of his expenses, including the initial visit of \$186.00.

With regard to Dr. Davis, I find the respondents are estopped to deny his authorization. The evidence shows that the employer was immediately notified of the injury and the claimant's decision to seek help at the ER. For reasons unknown, the employer never designated a physician for the claimant to use in follow-up after the ER visit. Therefore, I find Dr. Davis was an authorized physician.

Concerning the claim for mental illness, I find the claimant was a victim of violence contributing to anxiety and depression documented and treated by Dr. Davis. Although Dr. Davis is not a psychiatrist and does not make a diagnosis based on the Diagnostic and Statistical Manual

of Mental Disorders (DSM) as required by Ark. Code Ann. §11-9-113, his records do support the need for further evaluation in accordance with Terrell v. Arkansas Trucking Service, Inc., 60 Ark. App. 93, 959 S.W.2d 70 (1998). Accordingly, I find the respondents are liable for a psychiatric evaluation and payment of antidepressants prescribed by Dr. Davis.

The claim for high blood pressure is governed by Ark. Code Ann. §11-9-114. To be compensable, an accident must be the major cause of the physical harm. The claimant testified that although he had been treated for high blood pressure in the past, his blood pressure was greatly elevated immediately after the accident because of his knee pain and Dr. Davis had to increase his medication after the injury at work. Another element of proof requires extraordinary and unusual exertion or the occurrence of some unusual and unpredicted incident which is the major cause of the physical harm. The altercation with students was extraordinary exertion and according to Dr. Davis aggravated the claimant's preexisting condition. Accordingly, I find the respondents liable for treatment of the claimant's high blood pressure including the \$300.00 Holt monitor.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on September 5, 2001 at which time the claimant sustained a compensable injury at a compensation rate of \$410.00/\$308.00. Medical expenses and temporary total disability benefits (from September 6, 2001 to September 19, 2001 and from September 20, 2001 to October 20, 2001) have been paid.
2. The respondents are liable for continuing medical treatment and/or pain management with Dr. Bryan based on a compensable aggravation of a preexisting knee condition.
3. The respondents did not adequately instruct the claimant about their workers' compensation policy and are estopped from denying the authorization of Dr. Davis.
4. The respondents are liable for a psychiatric examination based on the claimant's testimony and Dr. Davis' records indicating the claimant is suffering from depression as a result of the violent altercation with students and resulting injury.

5. The respondents are liable for Dr. Davis' treatment of the claimant's hypertension aggravated by the extraordinary exertion involved in the accident which was the major cause of the physical condition.
6. The respondents are directed to pay additional temporary total disability benefits from December 8, 2001 to March 25, 2002 based on Dr. Davis' treatment as the claimant remained in his healing period and had not returned to work.
7. The respondents are directed to pay mileage expenses associated with treatment provided by Dr. Davis, Dr. Mulhollan, Dr. Bowen and Dr. Bryan.
8. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge