

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304774

LARRY W. McCURRY, EMPLOYEE	CLAIMANT
FIRST PRESBYTERIAN CHURCH, EMPLOYER	RESPONDENT
CHURCH MUTUAL INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED APRIL 28, 2005

Hearing held February 1, 2005, before the Honorable S. Dale Douthit, Administrative Law Judge, at El Dorado, Union County, Arkansas.

Claimant was represented by Mr. Robert L. Depper, Jr., Attorney at Law, El Dorado, Arkansas.

Respondents were represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February, 1, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A prehearing conference was conducted on October 6, 2004, and a prehearing order was entered that same day. A copy of the October 6, 2004 prehearing order was marked as Commission Exhibit "1" and made a part of the record herein without objection. At the hearing the parties announced the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to the modifications cited on the record.

The parties entered into the following stipulations at the hearing:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times,

including April 28, 2003

- 3) That on April 28, 2003, the claimant sustained an injury to his back for which the respondents accepted as compensable and paid some benefits.
- 4) That the claimant's applicable weekly TTD and PPD rates are \$401.00 and \$301.00, respectively.
- 5) The parties agreed all issues and defenses raised with regard to permanent physical impairment and statute of limitations would be reserved.

At the hearing, the parties modified the issues that were contained in the prehearing order to the following only:

- 1) Whether the claimant is entitled to additional TTD from September 14, 2004 to a date yet to be determined and attorney fees.
- 2) Whether the claimant is entitled to additional medical benefits after 7/29/04.

The claimant contends he has not reached MMI, and that he is entitled to additional medical treatment and to additional TTD benefits from September 14, 2004, to a date yet to be determined in connection with his April 23, 2003 compensable low back injury.

The respondent contends the claimant reached the end of his healing period for the April, 2003, injury no later than 3/5/04; and if the claimant is disabled, his disability flows from injuries sustained on or about 10/2/97, 10/2/01 and 11/9/01.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The stipulations submitted by the parties are reasonable and are hereby accepted as fact.

- 2) The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.
- 3) The claimant has proven by a preponderance of the evidence that additional medical treatment in the form of pain management from Dr. Thomas Hart is reasonably necessary in connection with the compensable injury.

DISCUSSION

1. History

The claimant worked as the building superintendent for the respondent-employer. On April 28, 2003, the claimant was moving a camera and screen down some stairs and felt something “give” in his low back. (T. pg. 20, lines 21-25)

The claimant had experienced other problems with his back prior to April 28, 2003. In 1997, Dr. Scott Schlesinger performed surgery on the claimant at the left L4-5 level. (CX 1, pg. 76). The claimant also had two injuries to his back in 2001. He was diagnosed with a compression fracture at L1 in December, 2001, but was treated nonoperatively and returned to work. Subsequent to the claimant’s compensable injury of April 28, 2003 the claimant testified he has been unable to work.

The day of the claimant’s 4/28/03 injury, he presented himself to Dr. Richard Davis and reported his low back problems (CX 1, pg. 13). Two days later (4/30/03), Dr. Davis conducted an MRI of the claimant’s lumbar spine. Dr. Davis concluded the following in his 4/30/03 MRI report:

“CONCLUSION:

L2-3, L3-4, L4-5 and L5-S1 degenerative disc disease described in detail above with evidence of previous L4-5 partial disectomy and some scarring about the left neural foramina. All of this appears relatively unchanged from November 21, 2001 examination except for the progressive healing of the L1 compression fracture.” (Emphasis added.) (CX 1, pg. 28-29)

On May 5, 2003, the claimant was examined by the same neurosurgeon who performed his 1997 back surgery, Dr. Scott Schlesinger. Dr. Schlesinger’s 5/5/03 report concluded the following:

“There are multilevel degenerative changes, but no evidence of new disc herniation, nerve root compression, spinal stenosis, or foraminal stenosis.”

“In his case, I think he will do well with the passage of time. He has gotten a lot better. We will go ahead and have him off work for another week. Then he can go back to light duty. There is nothing to base a permanent partial disability rating on.” (CX 1, pg. 77)

The claimant sought pain management from Dr. Thomas Hart and received an independent medical evaluation from Dr. Edward Saer on 3/5/04. Dr. Saer opined in his 3/5/04 report that “I would recommend repeat MRI to evaluate his worsening symptoms. If there is no structural change noted from his prior studies, or structural reason for the increasing symptoms, then I think he will be at MMI from April 2003 injury.” (CX 1, pg. 75)

Dr. Saer went on to say “...I cannot assign an additional impairment for the April, 2003 injury at this time.” (CX 1, pg. 75)

Evidently, based on the 3/5/03 recommendation from Dr. Saer, the claimant underwent another MRI on 4/1/04. Upon review of the 4/1/04 MRI Dr. Saer did not change his opinion

regarding his previous finding of MMI. (CX 1. pg. 78)

Adjudication

1. Additional Temporary Total Disability.

An injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and is totally incapacitated to earn wages. Arkansas State Highway & Transportation Dept. v. Breashers, 272 Ark. 244, 613 S.W. 2d 392 (1981)

The claimant contends he is entitled to temporary total disability from September 14, 2004 to a date to be determined. The credible evidence presented from Drs. Schlesinger, Davis and Saer indicates the claimant's healing period for the April 2003⁴ injury ended well before September 14, 2004. As stated above, Dr. Davis viewed the claimant's 4/30/03 MRI and found relatively no change since the claimant's 2001 injury. (CX 1, pg. 28-29). Further, Dr. Schlesinger saw the claimant on 5/5/03 and recommended he go back to work within one week. (CX 1, pg. 77) Dr. Saer conducted a very extensive independent medical evaluation and concluded the claimant reached MMI 3/5/04. Dr. Saer even conducted another MRI following his 3/5/04 report and again did not find the claimant still within his healing period. (CX 1, pg. 70)

The respondents actually paid the claimant TTD benefits through September 3, 2004, well after the claimant reached MMI. I find the claimant reached MMI no later than 3/5/04 and therefore deny the claimant's request for additional TTD from September 14, 2004, to a date yet to be determined. An employee is not entitled to TTD benefits after his healing period has ended. A.C.A. §11-9-521(a)

II. Additional Medical Treatment

An employee must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §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). Dr. Saer indicated in his 4/26/04 report that the claimant needed to go see someone who specialized in non-operative pain management. (CX 1, pg. 69) The claimant has been receiving pain management from Dr. Thomas Hart. (CX 1, pg. 43-56) In August of 2004, the claimant testified he received an injection from Dr. Hart. (T. pg. 27, lines 17-22). The claimant testified the August, 2004 injection left him “basically pain free.” (T. pg. 29, line 3) Even Dr. Schlesinger recommended injection for pain management in his 5/5/03 report:

“Should his pain come back to any significant degree, we will go ahead and try physical therapy and possibly epidural steroid injection.” (CX 1, pg. 77)

The Commission has long interpreted that medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Georgia Pacific Corp. v. Dickens, 58 Ark. App 266, 950 S.W. 2d 463 (1997). Based on the medical evidence, I find the claimant’s treatment for pain management with Dr. Thomas Hart is reasonable, necessary and related to his April, 2003, compensable injury. As such, the respondents are directed to pay for treatment by Dr. Thomas Hart for low back pain management only.

AWARD

The respondents are ordered to provide medical benefits for the claimant with regard to his low back pain management from Dr. Thomas Hart only. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits and the claim for additional TTD is respectively denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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