

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407316

LEE MERILA, EMPLOYEE

CLAIMANT

DELTA MATERIAL HANDLING, EMPLOYER

RESPONDENT

LIBERTY MUTUAL INS. CO., CARRIER

RESPONDENT

OPINION FILED APRIL 12, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 18, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE PHILLIP WELLS, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On December 14, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Lee Merila, the claimant, and the January 12, 2005, deposition testimony of Dr. Roland Hollis, coupled with medical reports and other documents comprise the

record in this claim.

DISCUSSION

Lee Merila, the claimant, with a date of birth of October 24, 1974, is a high school graduate with two and one-half years of post-secondary education who has been employed by respondent since August 4, 1997, as a sales representative. Claimant resides in Paragould, Arkansas. Claimant sells parts, service, forklifts, and allied product for respondent. In the discharge of his employment duties claimant was furnished a vehicle, GMC pick-up truck, by respondent. Respondent-employer is located in Jonesboro, Arkansas.

Claimant's testimony reflects that his normal route from his home in Paragould to the office of respondent in Jonesboro is to take Highway 49 South, which he takes if he is going to the office. Claimant explained that he leaves his house going to different location, however if he does not have to see a customer he does go in to the office. Claimant concedes that after stopping at the customer's business, American Railcar, on July 1, 2004, he had returned to the normal route which he usually took to the office of respondents when the accident occurred.

The testimony of the claimant reflects that since he does not have "set hours" his work starts when he sees his first customer of the day. Claimant explained:

I go to the office and from the office, when needed, my job is to sell stuff to the customers, I'm talking to them on the phone at my house, because I have an office at my house, or you know, it fluctuates. Yes, I was going to the office but I was working before I was already heading to the office. (T. 18).

One of the claimant's customers is American Railcar, located in Paragould, Arkansas. In describing the mechanics of his job duties as a sales representative of respondent claimant's testimony reflects:

Stopping at customer's locations, visiting with customers, taking them to lunch, demonstrating products, quoting repair estimates for breakdowns of equipment, things of that matter. (T. 6-7).

Claimant used his respondent-provided vehicle in discharge of his employment duties taking it home with him each night.

There is not a dispute that claimant was involved in a motor vehicle accident on July 1, 2004, while operating his respondent-provided vehicle. In describing the events of the morning of July 1, 2004, claimant testified:

I went to American Railcar - - after leaving my house, I went to American Railcars. I don't remember the specifics, if I was dropping off or if I was quoting. They purchase quite a few pieces of equipment from me. From there I left to go to the office heading down Highway 49 and from that point that was when I had my collision at the hilltop. (T. 7-8).

Claimant noted that during the course of a week he stopped at American Railcar three to four times a week, either for parts or for quotes. Claimant's testimony reflects that after his stop at American Railcar he was en route to the office at the time the accident occurred. The testimony in the record reflects that the motor vehicle accident occurred at an area commonly referred to as "hilltop", the intersection of Highway 351 and Highway 49, the first intersection entering Jonesboro.

In describing the mechanics of the accident, claimant's testimony reflects:

I was in the left lane coming into the intersection with the flow of traffic. There were cars in front of me, one car in front of me and one car in the side of me. I don't know who was behind me. As we were coming in to the intersection there was a pickup truck in the turning lane to turn left onto hilltop or on to 351. We all, or the ongoing traffic had the green light and we were proceeding into the intersection and I don't remember if it was a white or a beige colored car that was in front of me went through the intersection and then the pickup decided to turn in between us and he did not make it through and I did not have time to stop.

I had a collision with him. I don't know the gentleman's name.

* * *

You know, I believe I was going somewhere between 45 and 50, I was going with the flow of traffic. I was wearing my seatbelt. I tried to veer to the right to try to avoid him but he kept going and the cars, I do remember them - - I don't know if it was me because I was taking off to the right but I remember the gap widening and I just remember a white flash and an impact. I have bits and pieces of a lady pulling on my arm saying don't walk over the traffic because I had gotten out of my vehicle. Ironically the first person I called was not my wife, it was Delta, to tell them that I was in a car accident. Then I called my wife and told her, my wife, that I was in a car accident. And then they sat me down on the ground and a gentleman, there was another gentleman hollering at me telling me that he had the right of way and I remember, you know, getting an ambulance ride to the hospital. It was kind of sketchy in between, you know, I don't know how much time was actually there from the collision to making it to the emergency room. (T. 8-10).

Claimant acknowledge that following the accident very dazed, although he does recall some of his actions, to include making several telephone calls on his cell phone. Claimant also recalls that his right arm was shaking quite significantly to the point that it was being held down, but he does not remember how he got out of his vehicle nor does he remember the complete ambulance ride.

Claimant was transported to the emergency room of St. Bernards Medical Center in Jonesboro. In terms of his areas of complaints from the accident at the time he arrived at the emergency room, claimant's testimony reflects:

I had a burn on my left arm. I had some scratches and some bruising on my left ankle. At the time I don't know if I was still in shock, you know, the emergency technician in there asked me how I was feeling and, you know, he pushed on a couple of areas and said you were good to go and they released me. The didn't do anything except put salve on my burn on my arm and that was the extent of what - - I was in the emergency room I believe all of 15, 20 minutes. (T. 11-12).

Following his discharge from the emergency room, claimant went to office of respondents and completed an accident report. Claimant then went home after notifying supervisory personnel of the accident and his well-being. Claimant noted that he had scheduled vacation for the following week.

The following day, July 2, 2004, claimant's testimony reflects:

I hurt from head to toe. Anything, I felt like a train had run over me. I couldn't move. We still went on our vacation up to Bull Shoals with our motor home but I ached all over. We got up to the campsite and set up camp but I sat around and watched everybody do everything because I just couldn't move. As the time went on, the aches got worse. I don't know if that answers your question. (T. 12).

Regarding the progression of his symptoms and complaints as well as his activity during the remainder of his vacation at Bull Shoals, claimant testified:

Probably, and I don't know if it was three days or four days after, at first I thought I had a hemorrhoid starting because I did have bruising come across my right shoulder and across my waist from the where the seatbelt had left some marks and my mother and my father and my wife figured that in the commotion, you know, I had gotten excited and that I had a hemorrhoid starting and I went and got some hemorrhoid cream from Wal-Mart and applied it and it never did, it just kept getting bigger and bigger and pretty soon, you know, there was quite a large swollen area on my left side of my butt cheek. And we left the campsite a day early so I could go back to the emergency room. I came back from Jonesboro and went to the emergency room, sat there for four hours and they had multiple collisions coming in and they could not see me that afternoon so we had left the hospital. That evening, I don't know if it was that evening or if it was the next morning my wife was bringing stuff in from Wal-Mart and we were going to plan on going to the Paragould Emergency Room for my problem on my lower end. And she had dropped a bottle on he foot and we had to go to the emergency room for her at that time I asked the emergency room there what they thought it was and, you know, again they told me they thought it was just a swollen hemorrhoid and to see my family physician. On that following Monday I saw my family physician. I believe I was running a temperature and he told me that I had to go and be admitted into the hospital immediately. And if I remember correctly

I had to get my commissions done so I did do my commissions for Delta before I was admitted into the hospital. Then once I was admitted in the hospital the swelling just kept increasing until the operated on me. (T. 13-14).

Claimant underwent a surgical procedure for an abscess on his bottom. Claimant's family physician was Dr. Roland Hollis.

Claimant denies that he ever had trouble with hemorrhoids prior to July 1, 2004.

Claimant's testimony reflects that a couple of years earlier he had received medical treatment from his family physician for a complaint that was described as an upset bowel and for which he was provided medication. Claimant maintains that aside from the afore, he had never experienced problems in that area prior to July 1, 2004. Further, claimant denies that he engaged in any activity during his vacation at Bull Shoals that either injured his bottom/rectum or aggravated the condition. Claimant explained that he bought his bass boat up to the lake and put it in the water, however he was too sore to use it, and spent the remainder of his time sitting around the campsite because he was too sore to move.

Claimant noted that he received a telephone call from the workers' compensation carrier while he was in the hospital and was informed that his claim was denied. Following his surgery and discharge from the hospital claimant returned to work on July 19, 2004. Claimant asserts that although he was off-work on vacation from the day of his accident, had he not been he would not have been able to work due to his injury. Claimant's testimony reflects that he missed a total of 12 days from work as result of his hospitalization, surgery, and recovery.

Following his return to work on July 19, 2004, claimant was working full time. The testimony of the claimant reflects, with respect to additional complaints and medical treatment received following his return to work:

I don't know if it was three weeks ago or four weeks - - or three months ago or four months ago when I would use the bathroom I did notice some red, bloody color in, you know, when I would clean myself and I did go back to Dr. Hollis and he said that in that area where they had sewn it up it looked like, you know, I had, it was a little tissue that was bleeding again and he prescribed some penicillin or some antibiotics just to be on the safe side. Besides that, I have not had a recurrence down there for the abscess. (T. 16).

Claimant's testimony reflects that following the accident of July 1, 2004, he was "stiff" for three to four days, where but for he was already scheduled out for vacation, he would not have done anything but laid around. Claimant noted that following the accident and his return to the office, after completing the accident report, he was sent for a drug test, and did not until 3:00 P.M. on the day of the accident.

Claimant acknowledged that he did not know that he had hurt himself in the rectal area at the time of the accident. Claimant testified:

It could have five or six. It could have been three or four. After the accident we went on vacation. It was, my mon and dad up there Sunday. We were up there, no, my mon and dad got up there Saturday and we were up there Friday evening and had the campsites. They stopped off at Mountain Home and we stayed at Bull Shoals. So, it was Monday afternoon when I told my wife the problem I was having. And she discussed it with my mother so, Friday, Saturday, Sunday, Monday, it was four days when I complained to my wife about the swelling down there. (T. 20).

Claimant noted that Dr. Hollis diagnosed his complaint as a abscess, and explained that it could be bought on by pushing real hard, lift something real hard, or by a car accident. Thereafter claimant relayed the history of the July 1, 2004, automobile accident to Dr. Hollis. (T. 21).

Claimant first saw a physician for his rectal complaint approximately ten days following the accident when he was seen by his family physician, Dr. Hollis.

The medical in the record reflects that claimant was seen at the emergency room of St.

Barnards Medical Center on July 1, 2004, after having been transported to same by ambulance following a motor vehicle accident. The emergency room record reflects that the claimant has a small burn to his right arm from the airbag deploying during the accident, and registered complaints of mild discomfort in the neck and left ankle. The emergency room record also recites that the claimant had “involuntary jerking of the right arm and hand”. (JX. #1, p.5). Finally the medical records reflect that at the time of his discharge from the emergency room claimant did not want any pain medicine or anything for the burn. (JX. #1, p. 3).

On July 11, 2004, claimant again reported to the emergency room of St. Bernards Medical Center for treatment due to a complaint of “buttock pain”. (JX. #1, p.9). The history as recorded by the triage nurse during the July 11, 2004, reflects:

pt states he was involved in a mvc on july1 st. pt states he was seen here but had no x-ray or tests. pt states the next day he began having pain around rectal area and now has severe pain in rectal area and pain from left leg to left butt cheek. (JX. #1, p. 12).

Other than obtaining the initial history there is no evidence that medical treatment was rendered to the claimant during the July 11, 2004, emergency room visit.(JX. #1, p. 9-14).

The medical in the record reflects that on July 12, 2004, claimant was seen by his family physician, Dr. Roland Hollis. The office note of Dr. Hollis reflects that claimant relayed a history of the July 1, 2004, motor vehicle accident. Following his examination of the claimant Dr. Hollis diagnosed the claimant’s complaint as a “large perirectal abscess” for which claimant was admitted to the hospital for surgery. (JX. #1, p. 15).

Claimant was admitted to Arkansas Methodist Hospital in Paragould on July 12, 2004, pursuant to the directions of Dr. Hollis. A consultation report of Dr. Mark Tullos, relative to the

claimant reflects, in pertinent part:

PRESENT ILLNESS: The patient is a 29 y/o male who was a driver in a MVA 7-1. he was evaluated in the hospital after that accident. Beginning approximately 7-3 or 7-4 he began having discomfort in the perianal area. He states that this has developed to the point where it is painful for him to have a bowel movement and that the swelling had increased. (JX. #1, p. 17).

The examination by Dr. Tullos reflects the presence of some soft tissue swelling, however no external hemorrhoids and no anal fissure. The consultation report concludes:

ASSESSMENT: The patient with perianal cellulitis. An abscess is not definitely palpable. I will return for further exam. Will plan to have IV pain medication given to permit a better exam and will place on broad spectrum antibiotic coverage. If no palpable abscess can be identified and patient does not respond promptly to antibiotic coverage will then pursue further imaging modalities with Ct scan and any other studies as needed based on clinical progress. (JX. #1, p. 18).

A July 13, 2004, CT scan of the claimant's pelvis disclosed perirectal abscess slightly left of midline. (JX. #1, p. 21). On July 14, 2004, claimant underwent an excisional debridement of the peri-rectal abscess under the care of Dr. Stanley Ziomek (JX. #1, p. 23).

Dr. Hollis in two separate documents relayed that the claimant's perirectal pain and the peri-rectal abscess was the product of the claimant's July 1, 2004, motor vehicle accident. (JX. #1, p.31-31). On January 12, 2005, the parties obtained the deposition of Dr. Hollis. The testimony of Dr. Hollis reflects that he had treated the claimant as a patient for approximately four (4) years prior to July 2004.

Regarding the history he obtained from the claimant at the time he provided medical treatment on July 12, 2004, Dr. Hollis testified:

Okay. Well he basically came in, he was in a great deal of pain in his rectal area, just as described in the notes from St.

Bernards when he was in the ER there. He had fever and, again, the most obvious thing, he was in quite a bit of pain in the rectal area. And he told me that he had been in an accident and he told me he'd been in the St. Bernards ER and that he had had quite a bit of pain starting right after the accident, probably about a day or so after the accident and he did - - had been to the St. Bernards ER, you know, the day before.

And, again, on examination he was very swollen and had a tender mass around his rectal area, he had fever, he just looked sick, he looked very toxic looking and in a lot of pain with fever. So I decided to put him in the hospital. And so that's what I did, basically. (CX. #1, p. 6).

Dr. Hollis observed, based on his review of the prior emergency room records, that the claimant's pain in the rectal area started on the day following the July 1, 2004, accident.

In describing his observation of the claimant at the time of the July 12, 2004, visit, Dr.

Hollis' testimony reflects:

Well he was having a lot of pain there and swelling, you know, he couldn't - - he just couldn't get comfortable. Obviously sitting on it would increase the pain, he couldn't hardly sit, and at this point he couldn't even hardly lay on his side. He was just having intense pain no matter how or where he laid, stood, sitting, laying. He just was obviously in a lot of pain from that abscess. That's just the biggest thing that sticks out in my mind, the degree of pain that he was having.

And then we started to take this vital signs and his heart rate was slightly increased and he had some fever. I believe it was about 100.2, 100.4 at that time. And these rectal abscesses can be very serious and life threatening, they can cause blood poisoning. And, you know, it's pretty much a given when you find something like this, you immediately put somebody in the hospital and put them on IV antibiotics, get a surgery consult for possible surgical drainage and release of that abscess in that area. Those infections tend to be really, really bad when you see them. (CX. #1, p. 7-8).

Dr. Hollis noted that claimant receive relief following the surgical procedure. The testimony of

Dr. Hollis reflects that approximately two to three months following the claimant's discharge

from the hospital claimant was seen in follow-up and was having the some peri-rectal pain in that

same area. Dr. Hollis testified:

. . . . And when I examined him there he didn't have an abscess at that time like the first time but he had a small ulceration in the skin in that area.

What I guess I had assumed that to be is, you know, maybe the surgical site where they had drained the abscess maybe wasn't fully healed back up, was my thoughts. But there was a little bit of redness around it and I was kind of concerned about the infection maybe starting back up at that time. And we put him on some antibiotics by mouth. But certainly he wasn't as toxic as he was the first time.

But 3 months later I felt like there was a little bit of infection in the skin there starting to crank up, so to speak - - and I'm looking at my record her now - - we put him on some keflex; that's an antibiotic. (CX. #1, p. 9-10).

In terms of the objective evidence of having an injury at the time of his initial evaluation of the claimant on July 12, 2004, Dr. Hollis described the peri-rectal abscess that he observed as "a large swollen mass". (CX.#1, p. 10). Regarding the nexus of the diagnosed peri-rectus abscess to the July 1, 2004, motor vehicle accident, Dr. Hollis' testimony reflects:

I really feel like it was. You know, he had no problems - - no history of any problems ever before there and just, you know, the timing of the events, I mean, to come on so acute and sudden like that right after the accident, and there was a pretty good, you know, trauma to that area. It wasn't just, you know, he slipped and fell. I mean, there was an impact.

Physiologically, I feel like that that impact could cause some small tears in the rectal mucosa and bacteria gain entry underneath the mucosa or the skin there and, you know, that's how an abscess sets up. It doesn't immediately set up the same day. You know, a day or two later it starts setting up and hurting. The history is consistent.

He comes in a week later but this time it's all pus'd (phonetic) out and a big ole abscessed mass there. It has time to really enlarge and get worse and start to spread.

So, you know, I can see how that could happen from a pathological/ medical point of view. And the history and the timing is all perfect, so, you know, I just have to believe that the accident had to have something to do with it. (CX. #1, p. 11-12).

Dr. Hollis also testified that in his opinion the July 1, 2004, was the major cause the resulting

condition.

The testimony of Dr. Hollis reflects that peri-rectal abscesses may occur without trauma, however it's not the most common thing he sees. Dr. Hollis added that in his experience as a family physician he sees a variety of problems, however during the course of a year he may see two or three. Dr. Hollis concedes that a peri-rectal abscess could be associated with a history of hemorrhoids, he has never treated the claimant for hemorrhoids. Dr. Hollis noted that a hemorrhoid is a dilated swollen vein, and that an abscess is an infection in the subcutaneous tissue in the rectal area, and that the two are two different things. (CX. #1, p. 13-14).

Dr. Hollis testified regarding the mechanics of the occurrence of an abscess:

You know, there would have to be but you may not see it, it may be so small. Almost microscopically, you know, bacteria could gain entry into those areas. I mean, obviously if there was a pretty large tear, you know, they would gain entry there but sometimes they can be very linear and thin and small, that you just can't see them, you know, they're so small. They're microscopic tears. (CX. #1, p. 14).

Dr. Hollis noted that with microscopic tears the claimant would not feel pain in the area at the time of the occurrence/accident. Dr. Hollis provided the following testimony regarding the role of the motor vehicle accident in the claimant's resulting peri-rectal abscess:

Fifty (50) is what I have heard or what he had told us in the history. He had told my nurse that, and I did review that. He said that - - you know, when he come in, the history that we got when he come in, he was in a motor vehicle accident on 7/1, he was driving the vehicle, and he was going 50 miles an hour. He didn't describe it as a t-bone at that time, but when I reviewed the ER records at St. Bernards, you know, he had apparently t-boned someone. I assume someone pulled out in front of him or something. And he said he was doing 50 miles and hour. And he was taken to the St. Bernards ER.

So, you know, a 50-mile-an-hour impact, I mean, to me that could've done anything, that could've - - it just depends on exactly what happened. If your head hit the windshield, you know, it could've caused a head injury or

broke your neck. I mean, if you're - - I mean, the impact could've been hard enough that that could've caused some microscopic tears in the rectal mucosa.

You know, that kind of an impact, it's not just a casual impact like you said earlier like riding a horse or on vacation or something. It had to - - just - - and to give you an example, like constipation, a little bit of constipation, you're not going to get a rectal tear. I mean, I'm talking about you're going to have to have a stool that's as hard as a rock and as big as a bolder and you're going to sit in there on the commode for probably an hour or two and you're going to strain so hard you're going to about pass out. And that's how you get a tear in the rectum. So, I mean, it's not just a casual constipation or casual horseback riding, there's going to have to be a pretty good impact, you know, to cause some tears there. And that's kind of what I'm basing that on.

I mean, if there was a pretty good impact, enough of an impact, it could've broke something or it could've tore something.

* * *

Rear end sliding on the seat, that's a possibility, just being jammed down into the seat. . . I realize there's no contact with an object there that we would typically think of that would cause it, but, you know, there are forces at work there. You know, when you're - - it's just like in your neck, you know, when you get whiplash, you know, your neck is slung forward. I mean, you're talking about your pelvis is being catapulted forward too, just like your neck. I mean, there's some shearing forces there at work, you know, that could cause some tears like that.

* * *

And that's why my whole point was smaller more microscopic tears because, you know, obviously it would probably take something, you know, an object or something just to rip a hole there, more direct force. (CX.#1, p. 20-23).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 1, 2004, the relationship of employee-employer-carrier existed among the

parties.

3. On July 1, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$453.00/\$340.00, for temporary total/permanent partial disability.

4. On July 1, 2004, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant was temporarily totally disabled for the period beginning July 2, 2004, and continuing through July 19, 2004.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 1, 2004.

7. The respondents have controverted this claim in its entirety.

CONCLUSIONS

On July 1, 2004, claimant was involved in a motor vehicle accident and received medical treatment at the emergency room of St. Bernards Medical Center. After receiving emergency medical treatment claimant was released. Claimant reported to work following the emergency room visit where he completed an incident/accident report and underwent a drug test in connection with the accident. Claimant commenced his previously scheduled vacation on July 2, 2004. Within two to three days of the July 1, 2004, motor vehicle accident, in addition to pain, soreness, and stiffness associated with the accident, claimant also pain in his rectal area. The claimant was ultimately diagnosed with a peri-rectal abscess for which he underwent surgery.

Claimant asserts entitlement to corresponding workers' compensation benefits associated with his injuries growing out of the July 1, 2004, motor vehicle accident, to include medical and indemnity benefits. Respondents assert that the claimant was not performing employment

services at the time of the July 1, 2004, motor vehicle accident, and that the claimant's condition (peri-rectal abscess) was not related to or caused by the accident. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

EMPLOYMENT SERVICES:

Claimant has been employed by respondents as a sales representative since August 4, 1997. In his capacity as a sales representative claimant is furnished a vehicle by respondents for business use only; does not have set hours; work start when he sees his first customer of the day; has an office in his home from which he works; calls on customers when he departs his residence; goes to and from the office of respondent when needed. Claimant is paid by commission.

Claimant resides in Paragould, Arkansas. Respondents' offices are located in Jonesboro, Arkansas. On July 1, 2004, after leaving home in the respondent-provided vehicle, claimant made a call/stop on a customer, American Railcar, in Paragould, Ark. After completing the transaction at American Railcar, claimant was en route to the Jonesboro office of respondent when the motor vehicle accident occurred.

The evidence reflects that at the time of the accident claimant had completed his business with his customer, American Railcar, and had returned to Highway 49 South, the road that he generally took when going to the Jonesboro office of respondent. The evidence further reflects that because claimant departed directly from his residence to call on customers, which were in different locations, the trip to and from work is "embraced" within the course of employment.

Olsten Kimberly Quality Care v. Petty, 328 Ark. 381, 944 S.W.2d 524 (1997). Claimant was not permitted to use his respondent-provided vehicle for other than job-related activities.

Employment services are performed when the employee does something that is generally required by his employer. *Collins v. Excel Specialty Products*, 347 Ark. 811, 69 S.W.3d 14 (2002); *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002). The test of whether an employee was performing employment services is whether the injury occurred “within the time and space boundaries of employment, when the employee [was] carrying out the employer’s purpose or advancing the employer’s interests directly or indirectly.” *Collins, supra*; *Pifer, supra*.

In the instant claim, respondents benefitted directly by the claimant being furnished a vehicle. Claimant is a sale representative whose job duties entail traveling and calling on customers to sale products/services of respondents. Claimant is not required to report to the office of respondent at a designated time. On the date of the July 1, 2004, claimant had in fact called on a customer. While generally an employee said not to be acting within the course of employment when he is traveling to and from the workplace, one of the recognized exceptions is where the journey itself is part of the service. Professor Larson recited the well-settled law that “traveling men are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.” 1Arthur Larson, The Law of Workman’s Compensation §16.01 (1996). The evidence preponderates that the claimant was providing employment services on July 1, 2004, at the time of the motor vehicle accident.

COMPENSABLE INJURY:

The claimant has the burden of proving the compensability of his claim by a preponderance of the evidence. *Georgia Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). An accidental injury is caused by a specific incident, identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4)(A)(i). In order for an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that the injury caused physical harm to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Further, the claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. § 11-9-102 (4)(D). Objective findings are those finding which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102 (16). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

On July 1, 2004, at the time of the motor vehicle accident, claimant was wearing his seatbelt and traveling 50 m.p.h. at the time of impact. The force of the impact caused the claimant's airbag to deploy. The medical evidence reflects that claimant was transported to the emergency room of St. Bernards Medical Center via ambulance. Claimant is employed as a sales representative with duties requiring driving to various locations to call on customers. The day following the accident, July 2, 2004, claimant experienced stiffness, muscle soreness, and pain. Although claimant was scheduled off work commencing July 2, 2004, for vacation, the credible evidence in the record reflects that claimant was physically unable to discharge his assigned job duties the day following his accident.

The evidence, testimony and medical reports, preponderates that claimant begin experiencing pain in his rectal area within two to three days of the accident, followed by swelling, fever, and an ultimate diagnosis of a peri-rectal abscess which required surgery. There is no medical evidence in the record to reflect that claimant suffered from or obtained medical treatment for hemorrhoids prior to July 1, 2004.

The evidence reflects that each time claimant sought medical treatment subsequent to July 1, 2004, he provided a history of the July 1, 2004, motor vehicle accident as the basis for the need. While claimant initially assessed his buttock complaint as hemorrhoids, the failure to obtain relief from symptoms with over-the-counter medication along with a progression of symptoms resulted the shorting of his scheduled vacation in order to obtain medical treatment and the July 11, 2004, second emergency room visit.

Claimant was seen by his family physician, Dr. Roland Hollis, on July 12, 2004, who diagnosed the complaint as a peri-rectal abscess. Claimant was admitted to the hospital, and following a surgical consultation, later underwent surgery. Dr. Hollis, who has been the claimant's family physician for several years, had access to the claimant's medical record subsequent to the July 1, 2004, accident and was familiar with his prior medical history, testified regarding the nexus of the peri-rectal abscess to the July 1, 2004, motor vehicle accident. Dr. Hollis also provided testimony regarding medical evidence of the claimant's injury which was supported by objective findings. As the court note in *Stephens Truck Lines v. Millican, supra.*, there will be times when a claimant's account of a work-related incident and the resulting injury is the only evidence available as to the causation between the two. The issue of causation resolves down to a matter of credibility. There is no credible evidence in this record to reflect

that the claimant suffered an other event between the July 1, 2004, motor vehicle accident and the July 12, 2004, emergency room visit with complaints of buttock pain. The evidence preponderates that the claimant's diagnosed peri-rectal abscess grew out of the compensable motor vehicle accident of July 1, 2004. Respondents have controverted this claim in its entirety.

A claimant is entitled to temporary total disability during his healing period if he shows by a preponderance of the evidence that he had a total incapacity to earn wages. *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period is defined as the period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102 (12). In the instant claim, claimant did not discharge employment duties or work between July 2, 2004, and July 19, 2004. Claimant was scheduled off work due to vacation during a portion of the afore time period. Nevertheless, the evidence preponderates that claimant was totally incapacitated from engaging in gainful employment and within his healing period. Ark. Code Ann. § 11-9-501 (a)(3). Respondents have controverted the claimant's entitlement to all workers' compensation benefits, to include temporary total disability, growing out of this claim.

Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764. Whether a medical procedure or device is reasonable and necessary treatment is a question of fact. The medical evidence preponderates that the claimant's medical treatment relative to the July 1, 2004, compensable motor vehicle accident was reasonable and necessary in connection with injury received. Respondents have controverted this claim in its entirety, to include claimant's entitlement to medical benefits.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits for the period July 2, 2004, through July 19, 2004, at the weekly compensation benefits rate of \$453.00, as a result of his compensable injury of July 1, 2004. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable injury of July 1, 2004, to include medical related travel.

The claimant's attorney, the Honorable Phillip Wells, is herein awarded maximum attorney fees on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 1, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On July 1, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$453.00/\$340.00, for temporary total/permanent partial disability.
4. On July 1, 2004, the claimant sustained an injury in a motor vehicle accident, which occurred within the time and space bounds of his employment, and as such arose out of and in the course of his employment.
5. The claimant was temporarily totally disable for the period beginning July 2, 2004, and continuing through July 18, 2004.
6. The claimant's healing period ended on July 19, 2004.
7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 1, 2004.
8. The respondents have controverted this claim in its entirety.

CONCLUSIONS