

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405584

CARL H. MURPHY, EMPLOYEE CLAIMANT

GEORGE H. FORD and
JOEY FORD, EMPLOYER RESPONDENT

L M INSURANCE CORPORATION,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED OCTOBER 25, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 7, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Richard A. Lusby, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 7, 2005, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on August 31, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including May 26, 2004; that the claimant sustained a compensable injury on said date; that he earned sufficient wages to entitle him to compensation

rates of \$174.00 per week for temporary total disability and \$154.00 per week for permanent partial disability; that respondents paid temporary total disability benefits from the date of the injury and continuing through July 7, 2004, and, again, for the period beginning July 26, 2004, through July 29, 2004; that respondents paid related medical through August 2, 2004; and that the respondents had controverted claimant's entitlement to all additional benefits.

By agreement of the parties, the issues to be presented for determination include:

- 1) Claimant's entitlement to additional and continued medical treatment.
- 2) Claimant's entitlement to additional temporary total disability.

Claimant contended, in summary, that respondents should be held responsible for outstanding medical treatment after August 2, 2004, maintaining that he required additional and continued medical treatment; that he was entitled to temporary total disability benefits after benefits were terminated and continuing through the present, maintaining that his healing period had not ended; and that a controverted attorney's fee should attach to any additional benefits awarded. Claimant reserved the issue of permanent disability, if applicable.

The respondents contended that it had paid all appropriate medical and temporary total disability to which the claimant was entitled. Respondents further contended that, based upon the medical and other evidence, additional medical treatment was not reasonably necessary, and, further, that the claimant was not entitled to additional temporary total disability or permanent partial disability benefits.

The claimant was the only witness to testify. The record is composed solely of the transcript of the October 7, 2005, hearing containing numerous medicals, specifically, a seventeen (17) page exhibit introduced as "Joint Exhibit A," together with a fourteen (14) page medical exhibit which was received over respondents' objection as "Claimant's Exhibit A." Respondents objection was based upon claimant's attorney's failure to send a copy of the medical to opposing counsel. However, a copy was sent to the claims adjustor for the insurance carrier who, likewise, failed to forward the exhibit to its own attorney. The exhibit was received; however, respondents were given thirty (30) days in which to cross-examine the medical provider. Subsequent to the hearing, respondents advised that they had elected not to depose the medical records offered by the claimant. Accordingly, the record is composed solely of the transcript of the October 7, 2005, hearing.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3. The claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional medical treatment.
4. The claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional temporary total disability.
5. Respondents have paid all appropriate benefits as the result of claimant's May 26, 2004, admitted injury.
6. The claimant has failed to prove, by a preponderance of the credible evidence, that his low back and hip complaints are causally related to the May 26, 2004, injury.

DISCUSSION

The facts in this claim are basically undisputed. On and before May 26, 2004, the claimant was employed by respondents as a general laborer, specifically, as an assistant for some bricklayers employed by the respondent. The claimant sustained an admitted, compensable injury on May 26, 2004. While carrying mortar and materials up to a scaffold, the claimant fell off the scaffold approximately nine (9) feet tall, landing on a metal dumpster. The claimant was knocked unconscious. He was immediately taken to the emergency room where he was treated for a laceration to his head, as well as an injury to the left shoulder. Following the claimant's release at the emergency room, he was next evaluated and treated by Dr. Michael Lack with Occupational Health Partners in Jonesboro, Arkansas. As reflected by the stipulations, the claimant was paid appropriate temporary total disability and medical treatment for the head and left shoulder injury. Following the claimant's release by

Dr. Lack, he, in fact, returned to work for the employer herein and worked through August, 2004, at which time he was laid off due to a lack of work. The claimant stated that he was advised that due to a slow down in the work, continued employment would be based upon seniority. The claimant has not returned to gainful employment since his lay-off. The record reflects that the claimant was not making a claim for additional benefits related to his head or left shoulder injury. Rather, the claimant subsequently developed additional problems involving his low back, hip, and lower extremity. Accordingly, the primary issue is whether the claimant's subsequent complaints are causally related to the May 26, 2004, admitted injury. The record reflects that the claimant did not seek any medical treatment related to his back, hip, and lower extremity for almost one full year following the May 26, 2004, admitted injury. A portion of the claimant's illuminating testimony is set out below:

Q And when you quit working in August of '04, did you seek any other employment?

A No, sir. At the time I figured he was going to call me back, because he usually does, you know. Work goes slow and he calls you –

Q So if they don't call you back, you don't seek any alternative work, is that right?

A At the time I didn't have a way to go, and in March there's not a whole lot of jobs. I was –

Q No, this is August.

A If I had my car, I would probably have got out and seeked, you know, other jobs.

Q And when Dr. Lack released you, did he not release you to return if you had any additional problems?

A He casually released me on temporary – not temporary work but light duty work.

Q Well, did you have any additional physical problems after he released you?

A Well, I was sore all over, yes, sir.

Q Did you seek any additional medical treatment from August of '04 until you went to the –

A Emergency room?

Q The Health –

MR. LUSBY: Jonesboro Church Health Center.

BY JUDGE GREENBAUM:

Q Jonesboro Health?

A Yeah, I went to the emergency room twice, St. Bernards.

Q Do you know when you went to the emergency room?

A Not right offhand, but I can get the dates probably for you.

Q What problems were you having when you went to the emergency room twice?

A It was like a pinched nerve in my hip, and it was getting worser and worser.

Q Okay.

JUDGE GREENBAUM: And do we have the emergency room records, also? I've not reviewed all these medicals.

MR. LUSBY: No, Your Honor. This is the first I've heard of it.

BY JUDGE GREENBAUM:

Q You can't even give me a guess as to when you went to the emergency room, is that right?

A I can't give you the date. It was in the hot part of the summer. I can get the dates for you probably. Since I got hit on the head, I can't remember as good as I

used to.

Q Hot part of the summer of this year?

A Yes, sir.

Q Well, that would still be almost a year later before you went to the emergency room, is that right?

A Yes, sir.

Q When, Mr. Murphy, is it that you first began experiencing problems with your lower extremity, in your hip?

A I'd say six months after the accident, you know, it started.

Q About six months after the accident?

A Yeah, it slowly – you know, I would go away and I'd think –

Q Well, let me ask you, what had you done – what activities had you performed between August of '04 and the summer of '05?

A Activities? What –

Q Did you watch TV?

A Yeah.

Q What else did you do?

A Rode a bicycle, walked.

Q You rode a bicycle?

A Yeah, I probably rode a bicycle or walked or something like that.

Q Did you do any work during that time?

A No, sir.

Q Okay. Why did you not go to work for any other employer from August of '04 until you started having these problems with your hip in the middle of '05?

A Well, at the time I didn't have a way to go, and I was living in Marked Tree. I was staying in my house. I didn't have no electric, gas or water. Without a car, there's not many jobs around Marked Tree.

Q Okay. And what makes you believe that your problems with your lower extremity are in any way related to this fall that you had in May of '04?

A Dr. David Pile, I asked him, "Do you think that –" –

Q No, I'm asking you what makes you believe that they are related?

A Because I never had them before till the fall.

Q Well, but you did not have them until six months after the fall, is that correct?

A Yes, sir.

Q Is that a correct statement?

A Yes, sir.

Q Okay. And so for six months you did not have these problems?

A No, not to the point that – I mean, like slowly a pinched nerve started coming up my leg. (Tr.36-40)

Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that the claimant's medical evidence reflects that he first sought medical treatment at the St. Bernards Hospital on May 2, 2005. Thereafter, the claimant obtained as needed medical treatment from the Jonesboro Church Health Center. Further, the medical evidence, including the diagnostic studies reflects that the claimant's physical problems were diagnosed as chronic spondylolysis rather than a work-related injury. (Cl. Ex. A, pp.1-14)

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical

evidence. *Wal-Mart Stores, Inc., vs. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall vs. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett vs. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962); *Wentz vs. Service Master*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of

proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

It would require sheer speculation and conjecture to attribute the claimant's subsequent low back problems to a May 26, 2004, injury. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that his physical problems, need for treatment, and disability after August, 2004, are in any way causally related to the May 26, 2004, admitted injury. Accordingly, the within claim is hereby, respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge