

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F114351

RICHARD PHELPS

CLAIMANT

USA TRUCK, INC.
SELF INSURED

RESPONDENT

OPINION FILED FEBRUARY 4, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by J. RODNEY MILLS, Attorney, Van Buren, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 19, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on September 16, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. All prior opinions are res judicata and the law of this case.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional temporary total disability from April 1, 2004, to a date to be determined.

2. Additional medical.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that as a result of the compensable injury of December 21, 2001, to the cervical spine, the claimant has been treated by the authorized treating physician, Dr. David C. Miller of Michigan city, Indiana. Dr. Miller has opined that the claimant has reentered his healing period as of April 1, 2004. The claimant is entitled to temporary total disability benefits from April 1, 2004, to a date yet to be determined. The claimant is entitled to the maximum attorney's fees on the indemnity benefits claimed.

In regard to the foregoing issues the respondents contend that all benefits due and owing the claimant have been paid, or are being paid. The claimant has not "re-entered his healing period," and he is not entitled to additional TTD or other disability benefits from the respondent. Contrary to the claimant's position, Dr. Miller has not opined that the claimant "re-entered his healing period as of April 1, 2004." As a review of the medical notes will reflect, it has been Dr. Miller's opinion that the claimant never reached MMI. Three separate neurosurgeons (Dr. Armstrong, Dr. Gropper and Dr. Knox) have treated and evaluated the claimant and determined that he has, in fact, reached MMI. Moreover, in its opinion of November 17, 2003, the Commission determined that the claimant reached MMI on April 18, 2002. That finding is now final,

res judicata, and constitutes the law of the case. The record reflects that the claimant has not worked for the respondent since July 10, 2002. Consequently, if it is determined that the claimant has "re-entered his healing period" as he now alleges, such "re-entry" was not occasioned by any compensable event and is not the liability or responsibility of the respondent. In the event the Commission determines that the claimant is within a healing period, no compensable event is the major cause of the condition that caused the claimant to enter into such healing period, or seek medical attention related thereto.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a packet of documentary evidence marked Claimant's Exhibit No. 1 and an additional packet marked Claimant's Exhibit No. 2. The respondents submitted a packet of documentary evidence marked Respondent's Exhibit No. 1. It was agreed by the parties that the transcript of the previous hearing which was held on September 4, 2003, should be incorporated by reference. All these documents were admitted without objection.

DISCUSSION

The opinion dated November 17, 2003, is incorporated into this opinion by reference. The parties have previously stipulated to a compensable injury and the claimant has previously been found to be entitled to a 9 percent whole body impairment rating as well as wage loss in the amount of 9 percent giving him a disability rating of 18 percent to the body as a whole. The claimant agreed that the

Commission's prior opinion permitted him to continue treatment with Dr. David Miller in Michigan City, Indiana. The claimant testified that he is currently under active treatment with Dr. Miller and wishes to continue with such treatment. The claimant testified that the respondents have denied some of his ongoing treatment with Dr. Miller as well as the doctor's recommendation that he undergo an MRI. The claimant testified that he was authorized to get one epidural and that he has been doing his exercises as recommended.

The claimant testified that since April 2004 the spasms in his neck have gotten worse, he sometimes begins to stutter if he gets nervous or agitated and he has started falling down. The claimant explained that because he was losing his balance and falling Dr. Miller prescribed a cane for him. The claimant testified that since November 17, 2003, he has been unable to work but has been attending Ivy Tech State College. The claimant testified that because of his pain medications the school has made special accommodations for him and he has been able to attend two semesters. The claimant testified that he is enrolled in a computer aided drafting program and architectural design class. The claimant testified that he was unsure as to his ability to work in this field due to the requirement of sitting at a desk most of the day, noting that after he sits for a period of time he begins to have pain starting in his neck, down his back, into his hips and down into his leg. The claimant testified that he has muscle spasm in his neck all the time but at times they are more intense than at other times. The claimant testified that Dr. Miller has requested

that he be referred to another specialist for evaluation so that an appropriate treatment plan can be worked out.

The claimant testified that his symptoms have increased since the hearing in September 2003. The claimant stated that his spasms have increased, he started falling down, his pain has increased, his medication has increased and his short term memory has gotten worse. The claimant agreed that he does have spells of depression. The claimant testified that if he were allowed to receive proper treatment his condition would improve. The claimant testified that since the spring of 2004 his condition has deteriorated to the point where he cannot even sit through a class.

On cross examination, the claimant admitted that he was taking prescription drugs that affects his memory and ability to answer questions. The claimant explained that he can understand the questions and answer questions, he just has a hard time remembering. The claimant testified that he did not know why he reentered his healing period on April 1, 2004. The claimant was asked questions concerning the letter written by Dr. Miller dated April 1, 2004, which is marked as Respondents' Exhibit No. 1, page 2. The claimant admitted that Dr. Miller's letter is incorrect when it set forth that he was just one year out from having a major neck fusion. The claimant agreed that it was more than two years since he had had his neck surgery. The claimant testified that since the last hearing in this matter, his symptoms have increased, noting that his spasms have increased, his pain has increased and that his balance has become worse, noting that he has started

falling. The claimant testified that he started falling not long after he had his epidural injection. The claimant agreed that he has continued to be treated by Dr. Miller since the doctor's letter of April 1, 2004, and that the respondents have paid for this treatment. The claimant was asked concerning the cervical injection which he had at Dr. Miller's direction. The claimant responded that he did not receive any relief from that injection. The claimant testified that he does not know why the doctor recommended the cane because his falling is not caused from dizziness or weakness in his extremities. The claimant agreed that he has applied for and is receiving social security or perhaps SSI, not being sure which one. The claimant also agreed that he has not followed Dr. Miller's recommendations to quit smoking. The claimant testified that he smoked approximately one pack of cigarettes a day. The claimant testified that he was not sure when he began to experience his stuttering problem but agreed that he had discussed it with his medical providers. The claimant testified that he was unsure as to when he began to experience pain traveling down his leg. The claimant testified that the pain would start in his neck, travel down his back, into his hip and down his leg.

On redirect examination, the claimant testified that he has continued to treat with Dr. Miller but that some of the recommended treatment plan has been denied by the respondents. The claimant agreed that from the first of 2004 up to April 2004 he continued to be treated by Dr. Miller. The claimant testified that the physical

therapy recommended by Dr. Miller has not been authorized by the respondents.

The medical evidence presented in this particular case sets forth that the claimant was seen by Dr. David Miller on January 19, 2004, with complaints of persistent back pain. The doctor notes that the claimant reports pain in the left side of his neck, his arms, low back and he has migraines. Dr. Miller writes that the claimant's physical examination is unchanged. The doctor adjusted the claimant's medications and encouraged the claimant to enter into some physical therapy. Dr. Miller writes on April 1, 2002, to the claimant's attorney stating that he believes the claimant is still in his healing period. Dr. Miller writes that the claimant is just one year out from his neck fusion surgery and although he is making progress it is slow. Dr. Miller writes that he is considering other treatment strategies for the claimant's pain relief and functional improvement. Dr. Miller writes on May 17, 2004, that the claimant continues to make gradual recovery from his cervical spine fusion, noting that he does have concerns about possible long term limitations. Dr. Miller writes that he does not feel that the claimant has reached maximum medical improvement and that he still has persistent symptoms since his January 2004 evaluation. Dr. Miller recommended a long term treatment plan to include medication, gradual increase in flexibility and strength. The doctor also suggested that they might look to work the claimant up for facet syndrome including a diagnostic facet block and possible RF lesioning of the medial branch nerves and facets. Dr.

Miller writes to the claimant's attorney on June 30, 2004, setting forth the claimant's injury history as well as his current status. Dr. Miller writes that the claimant has developed a regional myoclonus in the neck that he would like to have evaluated by a neurologist for possible treatment. Dr. Miller opined that the claimant probably has an element of cervical facet syndrome which would be amenable to direct interventional treatments and would benefit from additional high quality physical therapy neck stabilization evaluation and treatment. On July 23, 2004, Dr. Miller administered to the claimant a medical branch nerve block at the cervical facets on the right side at C5, C6 and C7 under fluoroscopic control. On August 19, 2004, Dr. Miller writes that the claimant had a cervical epidural injection that did not help and recommended that they get an updated imaging study, renewed his prescriptions and gave the claimant a prescription for a cane. Dr. Miller writes on November 1, 2004, that the claimant has severe neck pain radiating out toward the right shoulder, down his back, into his right low back and leg. Dr. Miller mentioned the claimant's previous fusion and added that he has had intermittent treatment due to difficulty with coverage from his workers' comp carrier. Dr. Miller changed the claimant's medications.

After a review of this case including the prior opinion and medical records from the first hearing, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injuries. Dr. Miller is the claimant's authorized treating physician and has

recommended treatment as well as diagnostic testing which should be authorized and paid for by the respondents. Dr. Luke Knox in his evaluation of the claimant on June 12, 2003, set forth in his summary that typically after a patient has had fusions, further diagnostic testing should be done to make sure that there are no other correctable lesions which could or can be causing problems. Dr. Knox notes that this follow up diagnostic testing has not been done in the claimant's case. Dr. Miller has recommended diagnostic testing and Dr. Knox has indicated that diagnostic testing would be the more reasonable and necessary follow up for fusion surgery. The claimant has been approved for and the respondents have been paying for Dr. Miller's office visits but they also should pay for recommended treatment for the control of this claimant's ongoing complaints of pain from his compensable injury. This approved treatment should also include physical therapy and medications as recommended by his treating physician. I further find that the claimant has failed to prove by a preponderance of the evidence that he has reentered his healing period thus entitling him to additional temporary total disability. The claimant had previously been found in the opinion dated November 17, 2003, to have reached the end of his healing period on April 18, 2002. Dr. Miller, in his letter dated April 1, 2004, sets out that it is his opinion that the claimant is still in his healing period as to his initial compensable injury. In this same letter, Dr. Miller is forming this opinion based on incorrect information that the claimant's fusion surgery was just one year prior to the April 1, 2004, date.

There is no indication in this record that there has been any event which has caused this claimant to reenter his healing period nor is there any indication, at this time, which indicates that the claimant has developed physical problems resulting from his compensable injury for which additional treatment is necessary other than his pain management.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. All prior opinions are res judicata and the law of this case.

3. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment and testing for his compensable injury. See discussion above.

4. The claimant has failed to prove that he is entitled to additional temporary total disability from April 1, 2004, to a date to be determined. See discussion above.

5. The respondents have controverted this claimant's entitlement to additional medical treatment.

6. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment and testing. Therefore, the respondents shall pay for the additional medical

treatment and testing recommended by his authorized treating physician.

The claimant has failed to prove his entitlement to additional temporary total disability.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE