

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406284

JODY PIEPER

CLAIMANT

RALPH NICKS THOROUGHBREDS, INC.

RESPONDENT EMPLOYER

TRAVELERS

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 19, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE C. BURT NEWELL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on December 3, 2004. A prehearing conference was held on September 21, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on March 30, 2004.
2. The compensation rate is the maximum for a 2004 injury.

The claimant contends he sustained a compensable specific incident injury on March 30, 2004, and is entitled to medical benefits and attorney's fees. Temporary total disability benefits are reserved.

Respondents contend the claimant did not sustain a compensable injury arising out of his employment. The claim has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Attorney's fees.

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 witnesses and to observe their 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. There was an employer-employee relationship on March 30, 2004.
2. The compensation rate is the maximum for a 2004 injury.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury in the course of and arising out of his employment.
4. Respondents are responsible for all the reasonable and necessary medical care the claimant has incurred.

DISCUSSION

The claimant, 45 years old, worked as an exercise rider for thoroughbred horses. The claimant has performed this type work for 35 years and works for various trainers and moves from place to place. The claimant began working for the respondent employer about December 15, 2003, and worked during the Oaklawn racing meet from late January 2004 through April 10, 2004, and continued working until May 3, 2004. According to the claimant, on March 30, 2004, he was jogging a horse and the horse lunged into the air, stumbled and he was jerked and almost fell off. The claimant's neck began hurting and he advised his employer. The claimant went to a chiropractor, Dr. Eric Carson, and received an adjustment to his neck and back. The claimant returned to the chiropractor for a few visits and his neck felt better for a while. According to the claimant, his neck started to gradually get worse and worse and finally by the end of April 2004, he began having pain in his right arm. The claimant returned home and saw Dr. Janet Parchman on May 7, 2004, and saw several different doctors after that. The claimant has not returned to work.

The claimant confirmed that in addition to working for the respondent, he also worked for Oaklawn, saddling horses and taking care of the jockeys' equipment. He would saddle one horse per race and he would be at Oaklawn from 11:00 a.m. until 5:00 p.m. during the racing meet. The claimant would work for the respondent employer from 6:00 a.m. or 7:00 a.m. until about 10:00 a.m., working horses and that was usually three to four hours per day, receiving \$600 per week. The claimant confirmed that he had back surgery in 1995 from a work injury. The claimant also

confirmed that he had seen Dr. Carson, the chiropractor, for general maintenance before his March 2004 injury.

Under cross examination, the claimant explained the May 7, 2004, Dr. Parchman medical report that indicated “no injury” by stating the doctor asked if he had fallen off a horse or had an injury in the last week or so and he had not. The claimant continues a weekly visit with his chiropractor, Dr. Carson, and has had no surgery.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find the claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on March 30, 2004. I found the claimant to be a credible witness who presented a credible account of an incident involving a horse he was exercising. The claimant made an immediate report to his employer of an injury and sought medical treatment. The medical records

document muscle spasms and this satisfies the objective findings requirement for a compensable injury. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). Further, Dr. Schlesinger's reports indicate the diagnostic MRI revealed a C-6/7 right sided disc herniation involving the right C7 nerve root in the neural foramen. Dr. Schlesinger further opined that the claimant suffered a work related traumatic disc herniation at the C6-7 level and needs additional conservative care and might need surgery.

The claimant initially saw his chiropractor, Dr. Eric Carson, following the incident, and Dr. Carson opined in a letter dated June 9, 2004, that the claimant saw him on March 30, 2004, with complaints of neck and shoulder pain after being jerked by a horse. Jt. Exh. No. 1, p. 18. This account by Dr. Carson's letter corroborates the claimant's testimony of when his neck and shoulder pains began. Dr. Schlesinger's records also record the claimant's problems beginning after a horse riding incident.

Respondents are responsible for all the reasonable and necessary medical the claimant has incurred for treatment of his neck and shoulder and arm. Ark. Code Ann. §11-9-508.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury in the course of and arising out of his employment. Respondents are responsible for all the reasonable and necessary medical care the claimant has incurred.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

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 Ark. Code Ann. §11-9-809.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE