

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F403951

MARK SMITH, EMPLOYEE	CLAIMANT
SCOTTS UNDERGROUND CONSTRUCTION COMPANY, EMPLOYER	RESPONDENT
LIBERTY INSURANCE CORPORATION, CARRIER	RESPONDENT

OPINION FILED MAY 5, 2005

Hearing held on February 10, 2004 before the Honorable S. Dale Douthit, Administrative Law Judge, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Steven R. McNeely, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 10, 2005, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on December 29, 2004 and a prehearing order was entered on January 4, 2005. A copy of the January 4, 2005 prehearing order has been marked as Commission's Exhibit No. 1 and made a part of the record without objection. At the hearing the parties announced that the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to additional stipulations, contentions and issues agreed to at the hearing.

The parties stipulated the Arkansas Workers' Compensation Commission has jurisdiction of this claim, and that the employer/employee/carrier relationship existed at all relevant times,

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including April 8, 2004. The parties stipulated the claimant sustained compensable injuries on April 8, 2004 and that some benefits were paid.

The parties agreed the issues to be presented were whether additional medical treatment is reasonably necessary in connection with the compensable injury; whether the claimant is entitled to additional temporary total disability benefits; and determination of the applicable TTD/PPD rates.

The claimant contends he sustained a compensable injury to his neck on April 8, 2004 arising out of and in the course of his employment. That as a result, he is entitled to additional TTD benefits from May 20, 2004 through November 11, 2004, and that the extent of his injuries are significantly greater than a bump on his forehead as contended by the respondents. Claimant also contends he is entitled to reasonably necessary medical treatment for the compensable injury and attorney fees.

The respondents contend the claimant was injured in a motor vehicle accident on April 8, 2004 and that, as a result of that accident, he had a bump on his head. That there was no objective evidence of any other injury, and the claimant was released to full duty without impairment April 21, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with A.C.A. §11-9-704:

- _____ 1)_____ The Arkansas Workers' Compensation Commission has jurisdiction of 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 additional medical treatment is reasonably necessary in connection with the compensable injury beyond May 20, 2004.
- 4) The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits, as such, the issue of TTD/PPD rates determination is moot.

Discussion

A. History

The claimant worked for the respondent-employer as a tester of underground storage tanks, and put in monitor wells. On April 8, 2004 the claimant was driving through Memphis, TN in connection with his employment, and had a motor vehicle accident. The claimant testified as follows regarding the details of the accident:

A. We were - there was three of us, three vehicles, and we were driving through Memphis. The first one, Scott and - the guy that was driving for Scott run up on some traffic. He locked them up. A guy with another trailer, an enclosed trailer, he locked them up; but he didn't have brake lights.

Then by the time I seen it - I was driving a one-ton truck that had an air compressor in the back of it. When I locked my brakes up, it seemed like two tires tried to - it wasn't going to stop. So instead of locking them up again, I tried to swerve into the opposite lane onto the shoulder of the road.

When I did that and hit my brakes, it drove me into the concrete barrier Then I

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woke up in the hospital.

Q. So you were knocked unconscious at the scene?

A. Yes, sir. (T. p. 10, lines 8-21)

The claimant reported the incident and the respondents accepted it as compensable.

After the accident the claimant was transported to the Regional Medical Center in Memphis, TN. At Regional Medical Center a CT of the cervical spine was done and was normal. (JX 1, p. 2)

After being released from the Regional Medical Center, the claimant went to see Dr. Reginald Rutherford on 4/21/04. The claimant testified he went to Rebsamen Medical Center on 4/30/04 for treatment of pain. On 5/20/04, the claimant returned to see Dr. Rutherford who released him to resume regular work duties at that time. (JX 1, p. 25) Upon Dr. Rutherford releasing the claimant, the respondents ceased paying TTD benefits.

The day he was released to work by Dr. Rutherford, the claimant testified he called the respondent-employer to report for work and was terminated.

Q. And as of May the 20th of 2004, he said you could go back to your regular work duties effective immediately?

A. Yes, sir.

Q. Is that what you did?

A. I called Scott Taylor from the parking lot when he released me, and he fired me on the spot. So I went back to my house and started looking to see what I was going to do and everything. My neck was still - I was very limited in how I could even drive.

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Q. You called Scott from your house?

A. No, from the parking lot.

Q. When you were released?

A. Right.

Q. And you said, "I'm ready to go to work"?

A. I said that he'd just released me. Then before I could say another word, Scott said that my services were no longer needed there.

Q. Were you ready to go to work?

A. Well, the doctor said I was. I didn't think I was, but I figured the doctor knows more than I do.

Q. So you were going to go out there and go to work, but you didn't have a job?

A. I would have attempted to. (T. pgs. 20 & 21, lines 5-25 & 1-2, respectively.)

After being terminated on 5/20/04, the claimant testified he went to see his primary physician, Dr. Daugherty. However, no records from Dr. Daugherty were offered as evidence at the full hearing.

In July of 2004 the claimant started going to UAMS for various reasons. The claimant's testimony indicates he went to UAMS for the following reasons:

1. Fainting and dizzy spells;
2. Blood in the toilet;
3. Chest pains.

At UAMS the claimant underwent an EEG and a second CT scan of his cervical and

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thoracic spine, both tests were reported as normal. (JX 1, pgs. 54 & 59, respectively)

The claimant testified that as a result of his neck problem, he was unable to return to work until approximately one to two weeks prior to Thanksgiving of 2004.

Q. And when was it that you were actually able to go back to work?

A. It was - I want to say it was the week before Thanksgiving, but it might have been two weeks before Thanksgiving that he told me he didn't need - he gave me some stuff to do at home and told me that my doctor at UAMS - I would have to go see him to get more treatment for physical therapy.

According to the claimant's testimony, the last treatment he received for his neck was early to mid November of 2004. (T. p. 15, lines 17-23)

Adjudication

I. Temporary Total Disability.

An injured employee is entitled to temporary total disability compensation during the time he is within his healing period and is totally incapacitated to earn wages. Arkansas Highway & Transportation Dept. v. Breashers, 272 Ark. 244, 713 S.W. 2d 392 (1981)

The claimant was released to return to work on May 20, 2004 according to Dr. Reginald Rutherford:

“Mr. Smith is seen in clinical follow up. I have now received his records. He had a CT scan of his cervical spine as well as plain films of the cervical spine both of which proved normal.... He may resume regular work duties effective immediately.” (JX 1, pg. 25)

Nothing in any of the other medical records introduced indicate the claimant was instructed not to work or not to follow Dr. Rutherford's recommendations.

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By the claimant's own admission, he called the respondent-employer the same day he got his release-to-work and indicated he was ready to work. (See T. pgs. 21 & 22 @ lines 14-25 and 1-2.)

Only after being terminated from his employment did the claimant want a second opinion. Although he did get subsequent treatment, there is nothing in the record contrary to Dr. Rutherford's return-to-work recommendation.

As such, I find the claimant was not totally incapacitated to earn wages and therefore has not proven by a preponderance of the evidence entitlement to TTD for the period requested.

Further, based on the claimant's ability to meet his burden of proof regarding TTD benefits, the issue of the applicable TTD rate is moot.

II. Additional medical treatment.

An employer shall 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) The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, ___ Ark. App. ___, ___ S.W. 3d ___ (March, 2005)

The bulk of the additional medical treatment the claimant is seeking compensation for consists of the UAMS treatment between 7/7/04 and 11/12/04. As stated earlier, in this opinion, the UAMS treatment indicated various ailments other than the claimant's cervical spine. It is well settled that the respondent is only responsible for medical services which are causally related to the compensable injury. Scott v. Middleton Drywall, Full Workers' Compensation Commission

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Opinion filed February 9, 2005 (F212233 and F 307562). With regard to the complaints which could possibly be causally related to the compensable injury, (i.e. dizzy and fainting spells), we have the benefit of a second CT scan of the cervical and thoracic spine and an EEG which all came back normal. (JX 1, p. 59 & 54, respectively). These second tests confirmed the tests conducted on the date of the injury by Regional Medical Center of Memphis. (JX 1, p. 2)

It is worth noting that on May 20, 2004, the claimant was released without any recommended follow-up, called to report for work and didn't seek additional treatment, according to the medical records, for over a month. Then, the subsequent medical treatment indicates the claimant's cervical area is normal. Based on the record as whole, I find any medical treatment beyond 5/20/04 was not necessary in relation to the 4/8/04 compensable injury. However, there was treatment prior to 5/20/04 from Rebsamen Medical Center on 4/30/04, for which I find the respondents are liable. Therefore, I find the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury after 5/20/04.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment beyond 5/20/04, or temporary total disability benefits. Therefore, this claim must be, and hereby is, respectfully denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge