

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F504966

RUSSELL WEAVER, Employee	CLAIMANT
NABORS DRILLING USA, INC., Employer	RESPONDENT
FARA, Carrier	RESPONDENT

OPINION FILED OCTOBER 6, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by J. RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 12, 2005, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 20, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties on March 3 and March 4, 2005.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$466.00 for temporary total disability benefits and \$350.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's cervical spine, bilateral upper extremities, and hands on or about March 3 or March 4, 2005.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.
5. Notice.

The claimant contends he suffered an accidental injury to his cervical spine, bilateral upper extremities, and hands arising out of and in the course of his employment on or about March 3 or 4, 2005. He contends he is entitled to temporary total disability benefits from the date of the injury through a date yet to be determined, reasonable and necessary medical expenses, and the maximum statutory attorney's fee.

The respondents contend that claimant did not suffer a compensable injury on or about March 3 or March 4, 2005. Respondents also contend that there was no notice of an alleged injury until the claimant filed his form AR-C on or about May 26, 2005.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 20, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has proven by a preponderance of the evidence that he suffered a compensable injury to his cervical spine while employed by the respondent.
3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.
4. Claimant is entitled to temporary total disability benefits beginning March 6, 2005 and continuing through a date yet to be entitled.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

#### FACTUAL BACKGROUND

The claimant is a 42-year-old man who has primarily performed work as a roughneck and as a roofer. Claimant began working for the respondent in December 2004 as a floor hand. Claimant testified that his job duties as a floor hand required him to perform whatever jobs the driller gave him including making connections, mixing mud, digging ditches, et cetera. Claimant testified that his job duties with the respondent were very strenuous.

Claimant testified that on or about March 3 or March 4, 2005, his crew was working shorthanded which required additional work. After working several hours on that particular day and after "tripping" pipe he took a break and his head "felt real heavy." After that break claimant was required to mix mud which consisted of picking up 100-pound sacks of mud and carrying them several feet to a hopper. Claimant testified that mixing mud would require numerous sacks. In fact, claimant testified that on this particular day they mixed several pallets of mud. As claimant was performing the job of mixing mud he developed a stinging, tingling, and numbness sensation in his hands. Claimant testified that he mentioned this problem to Ricky, a derrick hand, who told him to slow down his job activities because they were almost at the end of their shift.

Claimant testified that after work he went home, took a bath, and went to bed. Claimant testified when he woke up the next morning his hands were swollen. Claimant called Harold, the respondent's tool pusher, and reported the swelling. Claimant testified that at that time he believed that the problem might have been caused from chemicals in the mud he had been mixing the day before.

On March 6, 2005, claimant sought medical treatment from the Sparks emergency

room complaining of swelling in both hands and feet, along with right shoulder and arm pain radiating into his neck. Claimant was taken off work at that time and according to claimant's testimony he reported this to Leland, an individual in respondent's human resources department. Claimant testified that he contacted the respondent on several occasions to inquire about medical treatment, but was told to take care of treatment himself. The medical records indicate that claimant sought medical treatment from the emergency room on several occasions and in April 2005 an MRI scan was performed which revealed a herniated disc at the C5-6 level.

Claimant has filed this claim contending that he suffered a compensable injury and requesting payment of temporary total disability benefits, medical benefits, and a controverted attorney fee.

#### ADJUDICATION

Claimant contends that he suffered a compensable injury while performing the job duties of "tripping" pipe and mixing mud on March 3 or 4 of 2005. Therefore, claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identi-

fiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

First, I find that claimant has met his burden of proving by a preponderance of the evidence that the injury arose out of and in the course of his employment and that it was caused by a specific incident identifiable by time and place of occurrence. Here, claimant testified that his neck pain began after "tripping" pipe on March 3 or March 4, 2005. Claimant took a break immediately after this incident during which time his head felt very heavy. After claimant's break he was required to mix mud and while performing this job activity noticed a stinging and tingling sensation in his hands as if they were going to sleep. Claimant reported these problems to Ricky, a derrick hand, who told claimant to slow down because their work shift was almost over. After claimant went home and slept he woke up with swollen fingers and eventually sought medical treatment from the Sparks emergency room. While the emergency room record of March 6, 2005 does not contain a detailed history regarding claimant's work activities, the notes do indicate that claimant's complaints had begun while at work on March 5, 2005.

Based upon the claimant's testimony, which I find to be credible, as well as the emergency room records of March 6, 2005 indicating that claimant's complaints began at work on March 5, I find that claimant has met his burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment and that the injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has proven by a preponderance of the evidence that the injury caused internal physical harm to his body which required medical services or resulted in disability and that claimant has offered medical evidence supported by objective findings establishing an injury. Here, as previously noted, claimant sought medical

treatment from the Sparks emergency room. Claimant underwent an MRI scan on April 26, 2005, which revealed a herniated disc at the C5-6 level. As a result claimant was referred to a specialist for additional treatment. Based upon this evidence I find that claimant has satisfied the remaining elements of compensability.

In reaching this decision, I note that claimant testified at the hearing that the pain in his neck did not begin until several days after he sought medical treatment and that apparently at his deposition he indicated that the pain in his neck did not begin until approximately one month after this incident. However, after having the opportunity to observe the claimant throughout the hearing and listen to his responses to questions, I believe that claimant at times is simply a poor historian. In this particular case, regardless of claimant's testimony as to when the neck pain began, claimant did testify at the hearing that his head felt heavy after "tripping" pipe at work. Furthermore, and more importantly, the Sparks emergency room report of March 6, 2005 indicates that claimant was complaining of arm pain which radiated into his neck. This would indicate that claimant's neck pain did in fact begin earlier than several days after he went to the doctor and certainly earlier than one month after the incident.

In summary, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of a herniated disc at the C5-6 level. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). In this particular case, I find that claimant has remained within his healing period and that he has suffered a total incapacity to earn wages beginning March 6, 2005 and continuing through

a date yet to be determined. When claimant sought medical treatment from the Sparks emergency room on March 6, 2005, he was taken off work at that time. Based upon claimant's continued complaints of pain the MRI scan was performed which revealed a herniated disc at the C5-6 level. As a result, claimant was referred to a specialist for additional medical treatment; however, claimant has been unable to receive said medical treatment due to a lack of funds.

Claimant testified that he has not worked since the day of his injury and that he currently has no feelings in his fingers, a burning pain in his neck, and has trouble gripping and holding things.

Based upon the foregoing evidence, I find that claimant has remained within his healing period and that he has suffered a total incapacity to earn wages beginning March 6, 2005 and continuing through a date yet to be determined. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Finally, respondent contends that it had no notice of claimant's injury until the AR-C was filed on or about May 26, 2005. I find no merit to this argument. First, claimant testified that he initially reported the problems to Ricky, a derrick hand, who was above him in authority on the day of his injury. Furthermore, claimant testified that after he awoke the next day with swelling he contacted Harold, the respondent's tool pusher, and reported his symptoms. Finally, after claimant had sought medical treatment from the emergency room, he went to a scheduled safety meeting at the respondent and provided a copy of his off-work note to Leland, an individual in the respondent's human resources department. Given this evidence, I find that claimant provided notice of his work-related injury to the respondent.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that

he suffered a compensable injury in the form of a herniated disc in his cervical spine while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. In addition, claimant is entitled to temporary total disability benefits beginning March 6, 2005 and continuing through a date yet to be determined.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE