

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F501804**

<b>MARVIN G. WOODBERRY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>H &amp; H CONCRETE CO., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN HOME ASSURANCE CO., TPA</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 3, 2005**

Hearing before Administrative Law Judge J. Mark White on October 6, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Scott Morgan, Attorney at Law, Pine Bluff, Arkansas.

**STATEMENT OF THE CASE**

On October 6, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on August 29, 2005, and a Prehearing Order was entered that same day. A copy of the August 29, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including January 11, 2005; that the claimant sustained a compensable injury on January 11, 2005; that the respondents accepted the January 11, 2005 injury as compensable and paid benefits; and that the claimant earned an average weekly wage of \$412.53, entitling him to a compensation rate of \$275 for total disability benefits.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional temporary total disability benefits; whether the claimant is entitled to additional medical treatment; and controversion and attorney's fees.

The claimant contends that the respondents should be ordered to pay temporary total disability benefits from April 11, 2005 to a date yet to be determined; that the additional medical treatment being recommended is reasonable, necessary, and related to the claimant's compensable injury; and that respondents should be ordered to pay attorney's fees as permitted by law.

The respondents contend that the claimant is not entitled to additional benefits.

#### **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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 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 proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with the compensable injury.
4. The claimant has proven by a preponderance of the evidence that he remains in his healing period and that he has been totally incapacitated from earning wages from April 11, 2005, until a date yet to be determined.
5. The claimant has therefore proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from April 11, 2005, until a date yet to be determined.
6. The respondents have controverted all benefits sought herein.

## DISCUSSION

### I. History

The claimant sustained a compensable injury on January 11, 2005, by electrocution when a metal pole he was holding touched a power line. The claimant initially sought treatment at Wadley Regional Medical Center, where the medical staff noted entry wounds in his hands and a “quarter-sized” exit wound in his left foot. They also quoted the claimant as saying that the shock “threw him down,” but that he denied “any real pain” except for headache. He was discharged that day and instructed to return the following day.

Instead of returning to the hospital, at the direction of his employer he went to the company doctor, Dr. Rodney Chandler. Dr. Chandler’s notes are handwritten and frequently illegible, though a prescription of “Vicoden” for pain is visible. Dr. Chandler instructed the claimant to stay off work for the rest of the week and to return on January 19. Before the claimant could return to Dr. Chandler, his employer contacted him and directed him to return to work, as Dr. Chandler’s work excuse had expired. The claimant returned to work and travelled to Memphis, Tennessee to work on a job for eight days. He testified that he was unable to do his work, and he saw Dr. Chandler when he returned to Arkansas. Dr. Chandler referred him to a surgeon, Dr. Dennis O’Banion, for a skin graft to repair his

damaged left foot. Dr. O'Banion performed surgery on February 18. On March 21, Dr. O'Banion indicated he would release the claimant from care in two weeks. A few days later, though, the claimant sought treatment at UAMS for headaches, joint stiffness, and loss of memory. The doctors at UAMS recommended he follow-up with the neurology clinic.

On April 4, the claimant went to the emergency room of St. Michael's Hospital complaining of back, leg and feet pain, numbness in his feet, and continued headache pain. He underwent an MRI exam on April 9, which revealed only "mild degenerative disk disease" at L4-5. The claimant returned to Dr. Chandler, and Dr. Chandler again took him off of work until he saw a "neuro," presumably a neurologist or neurosurgeon. Despite the referrals from UAMS and Dr. Chandler for neurological treatment, the respondent-carrier arranged for a visit with Dr. John Sklar for the purpose of assigning a permanent impairment rating. On the advice of his attorney, the claimant declined to see Dr. Sklar and asked that he be allowed to follow through with the referrals.

On April 25, on his own the claimant saw Dr. Roshan Sharma, a physical medicine and rehabilitation specialist. Dr. Sharma noted the presence of muscle spasms in the lower back and "significant muscle atrophy" in the left leg. Dr. Sharma gave his "assessment" as, "Patient with multiple soft tissue injures [sic] as

a result of electrocution accident on 01/11/05, lumbar sprain, thoracic sprain, chronic headaches, burn wounds to both hands and left foot, parasthesias to both lower extremities, significant depression and anxiety disorder." Dr. Sharma recommended "very aggressive treatment for his multiple soft tissue injuries" including physical therapy, pain management, and nerve conduction studies. On May 27, the Commission granted the claimant a change of physician to Dr. Sharma.

On July 9, the claimant was assaulted in his home by an unknown assailant and hit on the head with a baseball bat. A subsequent CT scan revealed "multiple hemorrhagic contusions" to the temporal lobe and nasal fractures.

On July 28, the respondents sent the claimant to Dr. Reginald Rutherford for an evaluation. Dr. Rutherford performed an examination but reviewed none of the claimant's prior medical records, nor any of the prior diagnostic testing. Dr. Rutherford suggested that the claimant's symptoms were functional rather than organic, based on two tests, but he did not recommend against further treatment. Instead, he indicated that he would offer an opinion once he had reviewed the prior records, but there is no indication in the record that he ever did so.

The claimant testified that he still suffers from headaches, foot pain, joint stiffness, tingling in his hands, pain and spasms in his back and neck, muscle weakness, and poor memory.

## II. Adjudication

### A. Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

Dr. Sharma has recommended additional treatment for the claimant's compensable injuries. Both Dr. Chandler and a doctor at UAMS recommended treatment by a neurologist, but the claimant has received no such treatment aside from a brief visit with Dr. Rutherford. I recognize Dr. Rutherford's observation of a possible "functional overlay," but Dr. Rutherford specifically postponed any opinion as to future treatment. In short, Dr. Sharma's recommendations are essentially uncontradicted in the record before me.

Considering the lack of evidence to the contrary, and the consensus opinion of at least three physicians that additional treatment is appropriate, I decline to second-guess Dr. Sharma's recommendations. I find that the claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with the compensable injury.

## **B. Temporary Total Disability Benefits**

An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Dr. Chandler and Dr. Sharma have kept the claimant off of work since April 11, 2005, and there is no medical opinion in the record contradicting their decisions. Given this, and given my finding above, I find that the claimant has proven by a preponderance of the evidence that he remains in his healing period and that he has been totally incapacitated from earning wages from April 11, 2005, until a date yet to be determined. I therefore conclude that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from April 11, 2005, until a date yet to be determined.

## AWARD

The claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with his compensable injury, and that he is entitled to temporary total disability benefits from April 11, 2005, until a date yet to be determined. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

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.**

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**HON. J. MARK WHITE**  
Administrative Law Judge