

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F011654**

**MICHAEL BELL, EMPLOYEE**

**CLAIMANT**

**IDEAL CONSTRUCTION CO. INC.,  
EMPLOYER**

**RESPONDENT**

**NATIONAL FIRE INSURANCE COMPANY  
OF HARTFORD, INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 16, 2006**

On remand before Administrative Law Judge Cynthia Estes Rogers.

Claimant represented by Mr. Wm. Kirby Mouser, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

This case, having originally been heard and decided by then-Administrative Law Judge (ALJ) Dail Stiles, is remanded on an opinion and order of the Arkansas Court of Appeals delivered October 26, 2005, (CA05-196), and on an opinion and order entered by the Full Workers' Compensation Commission on December 14, 2005.

A hearing was initially held in this case on September 12, 2003, to determine claimant's entitlement to additional benefits. An opinion was filed on October 16, 2003, by then-ALJ Dail Stiles, finding that claimant had not demonstrated by a

preponderance of the evidence of record that he had closed head injuries or low back injuries as a result of his compensable injury of September 30, 2000.

The stipulations, contentions, and statement of the case contained in ALJ Stiles's opinion of October 16, 2003, are incorporated by reference into this opinion as if set forth word for word.

After ALJ Stiles's opinion of October 16, 2003, the case was appealed to the Full Commission, and on November 8, 2004, the Full Commission entered an order and opinion which stated, in part: "[W]e affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal."

Following the Full Commission's opinion of November 8, 2004, the case was appealed to the Arkansas Court of Appeals. On October 26, 2005, the Court of Appeals delivered an opinion reversing and remanding the case to the Commission for specific findings on issues relating to unpaid medical and additional temporary total disability benefits, issues that were enumerated by ALJ Stiles but were never ruled upon by him or the Commission.

On September 30, 2000, claimant sustained an admittedly-compensable neck-fracture injury, when he was struck by an automobile while employed as a flagman by respondent-employer. The claimant was immediately transported to a local hospital where he then was evacuated by air to U.A.M.S. in Little Rock. On October

3, 2000, the claimant had a diskectomy and fusion at C2-3, performed by Drs. T. Glenn Pain and Wade Ceola. Claimant ultimately came under the care and treatment of a physiatrist at U.A.M.S., Dr. Sonia Williams, who became claimant's primary treating physician.

Claimant's neck injury was accepted by respondents and temporary total disability (TTD) benefits were paid through October 14, 2001. On June 28, 2001, claimant was seen by Dr. Earl Peebles, an orthopaedist, for purposes of an independent medical evaluation (IME). Dr. Peebles opined that claimant had, at that time, reached maximum medical improvement (MMI) for his neck injury and could return to work. Dr. Peebles did state that he felt the claimant would have benefitted from possibly a couple of weeks of physical rehabilitation toward the view of getting him out of his cervical collar. Dr. Peebles issued an impairment rating of 10 percent to the body as a whole, as a result of his cervical surgery.

Respondents accepted the rating and began paying permanent partial disability (PPD) benefits, based on that rating, following the termination of the TTD benefits in October of 2001. Testimony revealed that all benefits were ceased in March or April of 2002, with the completion of payment for the impairment rating for the neck injury. Claimant then filed a claim seeking unpaid past medical and mileage expenses, as well as additional TTD benefits, for his neck injury. He further asserted

that he also sustained lower back and head injuries as a result of the accident that required treatment.

ALJ Stiles denied and dismissed claimant's claim on the strength of his finding that claimant failed to prove by a preponderance of the evidence that he sustained low back and head injuries as a result of his compensable injury. The Full Commission affirmed and adopted ALJ Stiles's finding and opinion. Claimant then appealed to the Arkansas Court of Appeals. The Court of Appeals declined, at that time, to address claimant's arguments regarding the sufficiency of the evidence to support the Commission's finding that claimant failed to prove he had sustained low back and head injuries, because both the ALJ and the Commission had failed to make specific findings on the issues relating to unpaid medical and additional temporary total disability benefits with regard to claimant's neck injury. As such, only those issues will herein be addressed, and the following findings of fact are made after carefully reviewing the evidence originally submitted before ALJ Stiles:

1. The previous opinions and orders in this matter, along with the briefs and other filings as previously designated are admitted and made part of the record herein;
2. Any and all unpaid medical bills and/or mileage expenses that were reasonably and necessarily incurred with regard to claimant's compensable neck injury, prior to his release at MMI and the issuance

of the 10 percent impairment rating by Dr. Peeples, remain the responsibility of respondents;

3. Claimant has failed to prove that any additional medical treatment was reasonable or necessary in relation to his compensable neck injury of September 20, 2000; and, as such, claimant is not entitled to additional benefits for same;
4. Claimant has failed to prove entitlement to any additional TTD benefits for his neck injury.

#### **DISCUSSION**

With regard to claimant's argument that some medical and mileage expenses concerning his neck injury were unpaid, it is this examiner's opinion that any and all unpaid medical bills and/or mileage expenses that were reasonably and necessarily incurred with regard to his neck injury, prior to his release at MMI and the issuance of his impairment rating by Dr. Peeples, obviously remain the responsibility of respondents.

With regard to any medical bills and/or mileage that claimant incurred in regard to his neck injury *following* the ceasing of benefits by respondents, it is this examiner's opinion that claimant has failed to prove that any additional medical treatment was reasonable or necessary in relation to his compensable neck injury of September 20, 2000; and, as such, he is not entitled to additional benefits for same.

Claimant testified that he had stopped seeing Dr. Williams for his neck injury because “they didn’t call [him] to set up an appointment.” He testified that he thought the doctor’s office would call *him* to set up appointments, rather than him being the one to call as-needed. Dr. Williams testified in her deposition that claimant was “lost to follow-up,” meaning that she did not know why he had not followed up in treatment with her. Claimant testified at the hearing that his neck was now “fairly well” and in pretty good shape, despite occasional cramping.

As for claimant’s contention that he is entitled to an award of additional TTD benefits, Dr. Peeples found in his June 28, 2001, report that claimant was then within a few weeks of being at MMI. Dr. Peeples also assigned a 10 percent impairment rating to the body as a whole for claimant’s cervical condition on June 28, 2001. Despite this, respondents continued to pay TTD benefits through October 14, 2001, until Dr. Peeples reiterated his 10 percent rating in correspondence dated October 15, 2001. Thereafter, the rating was paid out, with benefits ceasing sometime in March or April of 2002.

In Dr. Williams’s February 28, 2003, deposition, she indicated that claimant had not yet reached MMI with regard to his cervical condition as of August 29, 2002, the date on which she had last seen claimant. Dr. Williams had deferred placing claimant at MMI on grounds that his cervical range of motion had not yet returned to normal. Dr. Peeples opined, however, in his deposition of July 15, 2003, that Dr.

Williams's goal of re-establishing normal range of motion in claimant's neck was unrealistic and unattainable.

Having reviewed the medical records and deposition testimony of both physicians, as well as the transcript of claimant's testimony at the hearing in this matter, this examiner is persuaded that the opinion of Dr. Peeples, in regard to claimant's neck injury and the date claimant reached MMI for that injury, should be afforded greater weight than that of Dr. Williams. As such, it is this examiner's opinion that claimant has failed to prove entitlement to any additional TTD benefits for his compensable neck injury of September 30, 2000.

**AWARD**

Respondents are directed to pay any and all unpaid medical bills and/or mileage expenses that were reasonably and necessarily incurred, with regard to claimant's compensable neck injury of September 30, 2000, prior to his release at MMI and the issuance of the 10 percent impairment rating by Dr. Peeples.

With regard to all other issues addressed herein, the claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge

