

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412188

GARFIELD HODGES	CLAIMANT
WILSON BROTHERS CONSTRUCTION	RESPONDENT
BITUMINOUS CASUALTY CORPORATION INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 28, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 3, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on February 24, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On November 17, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his back and left wrist on November 17, 2004.

4. Medical expenses have been paid to December 14, 2005.

5. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical from December 14, 2005.
2. Additional temporary total disability from December 14, 2005, to April 13, 2006.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that as a result of his compensable injury to his lumbar spine on November 17, 2004, he has been denied medical treatment for the treatment of his lumbar spine. The claimant contends he is entitled to additional medical treatment for his compensable injury. The claimant has been discharged from his employment as of December 15, 2005, and he is entitled to temporary total disability benefits from December 14, 2005, to a date yet to be determined. The claimant is entitled to an attorney's fee on all controverted indemnity benefits.

In regard to the foregoing issues the respondents contend that all appropriate medical expenses have been accepted and paid and that any treatment received or required by claimant subsequent to December 16, 2005, is not reasonable and necessary treatment for his job related injuries. Respondents contend that all appropriate TTD benefits have been accepted and paid and specifically contend that claimant is not entitled to TTD subsequent to his termination

for cause which occurred on or about December 14, 2005. Respondents contend that they are not responsible for the costs associated with claimant deposing employees of the respondent employer that can be available at the hearing of this case and see responses under subsection a and b.

The documentary evidenced submitted in this matter consists of the Commission's order marked Commission's Exhibit No. 1. The claimant submitted the deposition of Jeffery Martindale marked Claimant's Exhibit No. 1 and medical reports marked Claimant's Exhibit No. 2. The respondents submitted the deposition of the claimant marked Respondents' Exhibit No. 1, medical reports marked Respondents' Exhibit No. 2, an NCV test marked Respondents' Exhibit No. 3 and social security documents marked Respondents' Exhibit No. 4. The claimant objected to the admission of Respondents' Exhibit No. 4. After argument by counsel, the claimant's objection was overruled and the document was admitted noting the claimant's acceptance.

DISCUSSION

The claimant testified that he has had a DOT certification since he was twenty-one years old noting currently he is thirty-eight years old. The claimant also testified that he was a high school graduate and went to Northwest Arkansas Votech for diesel mechanic and truck driving school. The claimant testified that he is aware of the regulations in the DOT about securing loads and after having driven a refrigerated truck for a number of years, he

began driving a flat bed truck and that was when he got his schooling on driving a flat bed and securing loads.

The claimant testified that he began working for the respondent in May 2004. The parties have stipulated and the claimant testified that he sustained a compensable injury on November 17, 2004. The claimant testified that he had taken a load of pipe to a job in Alma. The claimant testified that in the process of unloading the pipe with the site supervisor, one of the pipes got away from them and started rolling back onto him at which time the claimant stepped back and fell. The claimant testified that the pipe was large in that it was longer than his trailer and about two and a half feet wide. The claimant estimated that each pipe would weigh about 100 pounds. The claimant testified that when he fell he hit the right side of his body and his rear end and buttocks and ended up falling to the ground. The claimant testified that initially his legs were numb for probably three or four minutes. The claimant explained that initially he was on the trailer itself unloading the pipe but when he slipped and fell he fell on the trailer and then off onto the ground. The claimant testified that the low boy trailer was approximately three or four feet off of the ground and when he landed on the ground, he landed on his right side, noting that he had tried to catch himself with his left hand. The claimant testified that he was not in immediate pain and when he got up, he walked about five feet and his legs went numb and he laid on the ground. The claimant testified that he felt a little bit of pain in his hand but it did not seem all

that bad. The claimant stated that it took a while before his hand started hurting, going to sleep and feeling numb. The claimant testified that he was taken by ambulance to the emergency room and when he arrived at the ER his supervisor, Jeff Martindale, had arrived. The claimant agreed that while in the ER his chief complaint was his low back and he has continued to have low back pain since this incident. The claimant testified that he was released from the emergency room that day and that the respondents arranged an appointment for him to see Dr. Rana. The claimant testified that he has continued treatment with Dr. Rana to date and has been compliant with all of his appointments to various doctors.

The claimant testified that he returned to work for the respondent about two weeks after his injury and at that time had a restriction of no lifting more than ten pounds. The claimant testified that after a period of time Dr. Rana amended his restrictions to lifting no more than fifty pounds. The claimant testified that he has been compliant with these restrictions but the respondent has not complied with the restrictions. The claimant testified that for a period of time the respondent provided a helper for him as long as he had a ten-pound restriction but once it was moved up to fifty pounds he lost his helper. The claimant testified that the ramps used on the trailers weigh over one hundred pounds a piece and these ramps have to be loaded on the truck and strapped down. The claimant stated that weight wise it was way over fifty pounds. The claimant testified that the nurse who had been assigned to him for his workers' compensation claim

had set up an appointment for him to see Dr. Rana. The claimant stated that when he told Jeff Martindale that he needed to go to the doctor, he was told that he needed to quit going to the doctor because it was interfering with the job. The claimant testified that he relayed this conversation to the nurse and when they went to see Dr. Rana she tried to get him to release the claimant back to work. The claimant testified that after discussion between the nurse and the doctor, she got mad and walked out. The claimant testified that a few days later he was contacted by the nurse and notified that he had an appointment with Dr. Bradley Short. The claimant agreed that prior to this incident, Dr. Rana had been trying to send him to an orthopedic surgeon but that the workers' comp nurse had refused to authorize a visit.

The claimant testified that he had been treated by Dr. Heim for his arm and that in February 2005 he underwent surgery. The claimant testified that after his surgery he did follow up with Dr. Heim until he was released. The claimant testified that he has subsequently gone back to Dr. Heim due to some more problems for which Dr. Heim has recommended additional treatment. The claimant testified that Dr. Heim has given him a shot in his elbow and recommended physical therapy. The claimant testified that he is left-hand dominant and his problems are with his left hand.

The claimant testified that Dr. Rana scheduled him to see another specialist for his back and set up an appointment with Dr. Queeney, a neurosurgeon. The claimant testified that Dr. Queeney evaluated him and referred him back to Dr. Rana who then referred

him to Dr. Walcott, a pain specialist. The claimant testified that he has undergone three treatments by Dr. Walcott and has another appointment August 22, 2006.

The claimant testified that on December 13, 2005, he had been instructed by Mr. Martindale to pick up a dozer and bring it back to the respondents' yard. The claimant testified that he picked up the dozer, brought it back to the yard, called his supervisor and told him he was back in, filled his truck, did his paperwork and left. The claimant testified that the next morning when he came into work the chains on his trailer were laying on the ground, his ramps were laying down and the dozer was not on his trailer, it was on another trailer. The claimant testified that his supervisor told him that he was going to have to fire him because he had not chained his load down properly. The claimant testified that he had properly secured his load but since the dozer had already been taken off of his trailer, there was no way to prove it. The claimant testified that he has been inspected by the DOT several times as well as had his load inspected at the scales in the Springdale area and he has never been written up for an improper load. The claimant testified that he was terminated December 14, 2005.

The claimant testified that when he tried to return to see Dr. Rana for his scheduled appointment on December 16, 2005, he learned that the appointment was not authorized. The claimant testified that on his own he has returned to Dr. Rana for treatment and continues under his care. The claimant testified that he takes

Tramadol and Cyclobenzaprine for his low back pain. The claimant testified that he has taken pain medication for his low back problems since the day he got hurt.

The claimant testified that approximately five months after his work-related accident, he began racing mini stock cars at the Tri State Speedway. The claimant testified that in the month of April 2005 he raced in four races and has not raced in any races before that date or after. The claimant testified that he was in a wreck at the racetrack which turned his car over but he was not injured. The claimant agreed that he was properly secured in his car and did not sustain any low back injury at that time. The claimant testified that his back condition is the same now as it was before April 2005. The claimant testified that he did not receive medical treatment following this car roll over and he was able to get out and walk away from it.

The claimant testified that in April 2006 he began working as a truck driver for Ozark Mountain Poultry. The claimant explained that this job does not require him to do any lifting or straining, just a lot of paperwork. The claimant testified that his new employer was aware of his work restrictions. The claimant testified that he is limited as to the number of hours he can sit in a truck for one period of time, noting that usually he is not in the truck more than ten minutes at a time, explaining that his job is to back trailers in so that they can be unloaded. The claimant testified that prior to getting this job he was unable to work.

On cross examination, the claimant was asked how many times he had raced at Tri State Speedway and the claimant again testified three or four times. The claimant was asked if it would surprise him to know that he raced five times in 2004 and nine times in 2005 and the claimant responded, "I don't recall that." The claimant was shown a document from Tri State Speedway that is a driver's register and the claimant was asked if his signature was on the sheet dated February 2, 2004. The claimant responded that he was not going to say that it was his signature because he did not know, indicating that it did not look like his writing but was not going to disagree with it. The claimant was shown several other documents from Tri State Speedway which bore his signature and each time the claimant testified that it did not look like his signature but he would not disagree with the document. The claimant again was asked if he would agree that he had raced at Tri State Speedway nine times in 2005 and five times in 2004 or did he have to go through each race record and the claimant responded, "I am not going to disagree, but I don't recall." The claimant testified that since the date of his termination on December 14, 2005, he has been seen by Dr. Rana, Dr. Queeney, Dr. Walcott, Dr. Short and Dr. Heim. The claimant agreed that none of these doctors have taken him off work and none of them have written him a list of restrictions. The claimant agreed that in his race accident his car did a complete roll over and blew out at least one of his tires. The claimant agreed that he underwent an MRI after his fall at work and before he had his wreck at Tri State Speedway. The

claimant testified that he was unaware that his MRI made in November 2004 was negative. The claimant testified that he was also unaware that the MRI made on February 24, 2006, showed that he had a disc protrusion. The claimant testified that from the time he was released by his doctor to return to work following his accident, he continued to work for the respondent until December 13, 2005, but he was in pain every day. The claimant agreed that other than the one time he went to the doctor to get his DOT certification he did not see a doctor for his back or arm from May 27, 2005, until two days after the date he was fired when he was seen by Dr. Rana. The claimant testified that the DOT regulations about securing loads have been in effect for many years. The claimant also agreed that these regulations were updated some three to four months before his firing.

On redirect examination, the claimant agreed that Dr. Rana in his examination for the DOT physical put down that the claimant had a history of left leg numbness and chronic backache which the claimant made his current employer aware of. The claimant was asked if Dr. Rana ever took off his fifty-pound weight limitation and the claimant responded, "No, he has not." The claimant testified that he was unable to find employment with anyone up until he found his current employer who had let him come to work with a lifting restriction of fifty pounds.

Carol Hodges testified that she was the claimant's mother and that he has been living with her for the past eight years so that she can help him raise his daughter. Ms. Hodges testified that

since the claimant's November 2004 accident it has been her observation that he appears to be in pain, that he cannot sit in one position for very long and that he has to move around. Ms. Hodges testified that her son did not have complaints about his back prior to November 2004.

On direct examination, Ms. Hodges testified that she was aware that her son raced at Tri State Speedway but that she could not keep count of the number of times he had raced. Ms. Hodges testified that she did not think that racing was any more dangerous than anything else but it just bothers her that her son races.

Michele Perkins testified that she was the claimant's sister. Ms. Perkins testified that on November 17, 2004, she recalls receiving a phone call that her brother was at the ER so she went to the hospital and, in fact, took him home. This witness testified that her brother's main complaints were about his back and about his legs. Ms. Perkins testified that since that time she has heard her brother complain about his back and observed that he cannot sit for very long in a chair, noting that he also had complaints about leg cramps. Ms. Perkins testified that she would go with her brother to Tri State Speedway when he would race and that she has been with him probably five or six times. Ms. Perkins testified that she was present when her brother turned his car over at Tri State Speedway. This witness remembers that the claimant was taken from the track by an ambulance because that was standard procedure and after they checked him out, he walked away with no complaints of injury. Ms. Perkins agreed that her brothers

condition, as to his low back, was no different before this roll over incident than after his accident in November 2004.

Jeffrey Martindale testified by way of deposition. Mr. Martindale testified that he worked as a supervisor over all the maintenance employees as well as he supervises the low boy equipment, drivers and equipment haulers. This witness testified that he has been employed by the respondent for four and a half years. Mr. Martindale testified that he hired the claimant to work for the respondent as a truck driver. Mr. Martindale testified that the claimant was compliant as far as he held all the proper endorsements and licences for a DOT certification. Mr. Martindale testified that on November 17, 2004, he received a call from an on site supervisor, Harold Peters, that the claimant had fallen off of a trailer while unloading pipe. This witness testified that he went to the accident site but believes that the claimant had already been taken by ambulance to the ER. Mr. Martindale testified that he gathered information about the accident and proceeded with the normal paperwork. Mr. Martindale testified that after a period of time the claimant did return to work and remembers that the claimant had with him a list of restrictions which were forwarded to the office. Mr. Martindale testified that the claimant's restrictions were honored and remembers that these restrictions were in effect for three to four months. Mr. Martindale testified that when the claimant was returned to full duty, he appeared to be doing fine and that he never observed the claimant having any problem after that point. Mr. Martindale

testified that the claimant did continue to be seen by a doctor for his hand because the claimant showed up at work with a brace on his hand at some point. This witness testified that he was unaware if the problem the claimant was having with his hand was related to his job related fall. Mr. Martindale testified that he was aware that the claimant raced at Tri State Speedway and was also aware that he had been involved in an accident but that the claimant indicated that it was not a big deal and he did not observe any specific limitations which the claimant had as a result of that racing event. Mr. Martindale testified that after the claimant was returned to full duty work, his work ethic seemed considerably less than what it had been when he was first hired, further noting that the claimant was less punctual and his attitude was not as appropriate. Mr. Martindale testified that on December 15, 2005, he arrived at the yard around 6:30 a.m. and observed that the piece of equipment which the claimant had picked up was improperly secured on the trailer. Mr. Martindale testified that he was not present in the yard when the claimant arrived with the equipment the evening before so he cannot say how the equipment was tied down. Mr. Martindale testified that when he arrived in the yard and saw the equipment on the low boy, it was secured in the front with a chain and one boomer and on the rear of the machine it was chained with one chain and one boomer. Mr. Martindale testified that the piece of equipment was to be brought into the yard for maintenance but that the claimant may not have been aware of the purpose of returning the equipment to the yard. Mr. Martindale

testified that one other time he can specifically remember that the claimant had improperly secured a load of concrete sewer pipe which he had spoken to the claimant about. Mr. Martindale testified that on the morning of December 14, 2004, after he had observed that the claimant had improperly secured the equipment on his low boy, he instructed some other employees to remove the equipment from the claimant's low boy. Mr. Martindale testified that he then instructed these employees to write out statements as to the condition in which they found the load secured. Mr. Martindale testified that around 8:00 a.m. he made the determination to terminate the claimant so he called him into the office and told him he was letting him go for failure to properly secure the load. This witness testified that the claimant got mad, stated he deserved another chance, did not deny that he had improperly secured his load and became belligerent. Mr. Martindale testified that at that time the claimant was escorted to his truck and told to leave the premises. Mr. Martindale was asked if he considered that the claimant's injury contributed in any way to his performance after his return to work and Mr. Martindale responded, "Not in any way." This witness testified that he attributed the difference in the claimant's work ethic to be bad attitude and burn out as to the job. This witness testified that he was unaware that the claimant was taking medications.

In an exhibit attached to the deposition there is a hand written note dated December 14, 2005, signed by Virgil Shipp which sets forth that he was unloading a dozer from truck number 224 and

noticed that only two chains and two boomers were used to secure the load. Mr. Shipp continued to write that proper loading would be to use four point chaining for a dozer which he reported to Jeff Martindale.

The medical record set forth that the claimant was seen at St. Edwards Mercy Medical Center ER on November 17, 2004, for treatment of his low back. X-rays taken at that time showed no overt abnormalities and the claimant was assessed with sciatica and medications were prescribed. The claimant also had x-rays made of his right elbow on November 22, 2004, which showed no fractures, dislocations or joint effusions. The claimant underwent an MRI of his lumbar spine on November 24, 2004, which was negative. Dr. Rana, on November 29, 2004, released the claimant to return to work with a ten pound lifting restriction. Dr. Steven Heim writes on December 22, 2004, that he has seen the claimant for his complaints of left upper extremity problems and recommended nerve conduction studies. Subsequent to the claimant's November injury he continued to be seen at the Cornerstone Clinic by Dr. Rana for his ongoing complaints of low back pain and left arm and wrist pain and on December 28, 2004, the doctor increased the claimant's lifting restriction to fifty pounds. On January 25, 2005, Dr. Heim writes that he has reviewed the claimant's EMG nerve conduction studies and assesses the claimant with having carpal tunnel syndrome. Dr. Heim writes that after discussion with the claimant, surgery was to be scheduled. The claimant underwent carpal tunnel surgery on February 10, 2005, performed by Dr. Heim. The claimant was

subsequently followed for his carpal tunnel surgery by Dr. Heim and on February 24, 2005, Dr. Heim released the claimant to return to work the following Monday instructing him not to lift anything more than ten pounds. Dr. Heim writes again on March 10, 2005, that after the claimant completes his physical therapy the following week, the following Monday he will be free to return to work with no restrictions and expected the claimant to have full recovery with no long term problems. The claimant continued to be seen by Dr. Rana throughout April for his complaints of back pain and left leg pain. Dr. Rana had the claimant undergo an NCV of his lower extremities on April 27, 2005, which was a normal nerve conduction study of the bilateral lower extremities with no evidence of nerve entrapment syndrome. On April 28, 2005, Dr. Heim completely released the claimant from his care following his carpal tunnel surgery and further released him to return to work with no restrictions. The claimant was again seen by Dr. Rana on May 9, 2005, for his complaints of chronic backache and left leg pain. Dr. Rana writes that he reported to the claimant that he can keep taking his pain medications as needed, noting that there is nothing else they can offer him. On July 26, 2005, the claimant underwent a physical examination for his department of transportation certification. At the time of this examination, it was noted that the claimant has complaints of low back pain and left leg numbness. The medical records set forth that the claimant came to the Cornerstone Clinic on December 16, 2005, but due to workers' comp not authorizing the visit, the claimant left without being seen.

The claimant was seen at the Cornerstone Clinic by Dr. Rana on January 25, 2006, with complaints of severe left arm pain and back pain with sharp pains radiating to the right leg. The claimant returned to see Dr. Heim on February 22, 2006, for his complaints of left elbow pain. After examination, Dr. Heim injected the claimant with medications and gave him a splint as well as prescribed medications. X-rays taken of the claimant's left elbow were negative. The claimant was seen by Dr. Joseph Queeney on March 15, 2006. After examination and review of the claimant's latest MRI of the lumbar spine on February 24, 2006, it is noted that there is no disc bulging in the lumbar spine but he does have a small central disc protrusion at T11-T12 but no significant spinal cord compression was noted. Dr. Queeney writes that the claimant does not have any objective evidence of nerve root compression at this time and feels that the claimant's symptoms are consistent with a lumbar myofascial dysfunction. No surgery was recommended by Dr. Queeney and he was referred back to his primary care physician. The MRI performed on February 24, 2006, which Dr. Queeney referred to revealed disc protrusions at T11-12 minimally more prominent than on the 2004 exam. It is also noted that the claimant has degenerative disc changes, L3-4, without other significant disc abnormality. The medical records set forth that the claimant continued to be seen by Dr. Rana throughout March and July 2006. The doctor recommended medications for the claimant's lumbar problems.

The claimant was seen by Dr. Bradley Short for an independent medical evaluation on May 24, 2005. After taking a history from the claimant and reviewing all of the claimant's medical records, Dr. Short examined the claimant. Physical examination of the claimant's thoracic and lumbar spine as well as lower extremities were negative in all aspects except for reports of tenderness. Dr. Short notes that the claimant does have some tenderness with superficial skin, he was negative with stimulation, negative with distraction and demonstrated regional weakness which cannot be explained on a localized or neurological basis. Dr. Short writes that there was a bit of over reaction and disproportionate verbalization and pain type behavior. Dr. Short assessed the claimant with having lumbago, back pain, lumbar strain and carpal tunnel syndrome post surgical release. Dr. Short assessed the claimant with a zero impairment rating.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his low back and left arm and wrist subsequent to December 14, 2005. As to the claimant's left arm and wrist, Dr. Heim did perform surgery, performing a carpal tunnel release, however, the claimant was followed up and was released with no restrictions and no impairment rating by Dr. Heim. As to the claimant's low back problems, there is little to no evidence of any objective medical findings of injury which would necessitate treatment. The claimant had an MRI which was negative as well as x-rays taken of his low back which

did not reveal problems which would be consistent with his complaints of pain. It is true that in February 2006 the claimant underwent a second MRI which revealed a protrusion at T11-12 which was minimally more prominent than his 2004 exam also it noted degenerative disc changes at the L3-4 level without significant disc abnormality. Dr. Queeney, in his report, has clearly set forth that there is no evidence of impingement and certainly no need for surgical intervention. Certainly it would seem more logical that the claimant's rigorous racing activities would be more likely to be aggravating any soft tissue problems which this claimant might be experiencing in his low back area but to relate them back to his original compensable injury in November 2004 seems unlikely. It is also noted that the claimant's MRI in February 2006, had more distinct findings than the claimant's earlier MRI made in 2004 albeit these changes were slight. Again it must be remembered that the claimant has been involved in a roll over automobile accident on a race track in 2005 which was after his initial MRI and before his February 2006 MRI. I also find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability from December 14, 2005, until April 13, 2006. There is nothing in this record that indicates that the claimant was temporarily totally disabled from December 14, 2005, until he found employment in April 2006. There is no indication that any doctor has taken the claimant off work or that he is in need to be off work as a result of his original compensable injuries during this period of time.

Therefore, this claim for additional benefits should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On November 17, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his back and left wrist on November 17, 2004.

4. Medical expenses have been paid to December 14, 2005.

5. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injuries subsequent to December 14, 2005. See discussion above.

7. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from December 14, 2005, to April 13, 2006. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment or temporary total disability subsequent to December 14, 2005.

Therefore, this claim for additional benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE