

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F506160

KEITH JERRELL, Employee

CLAIMANT

AERT, INC., Employer

RESPONDENT

CANNON COCHRAN MANAGEMENT SERVICES, Carrier

RESPONDENT

OPINION FILED APRIL 13, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 15, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 19, 2006, 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 relationship existed between the parties on June 1, 2005.
3. The claimant sustained a compensable injury on June 1, 2005.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$466.00 for 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. Whether claimant's hemorrhoids are causally related to his compensable injury.

2. Temporary total disability benefits.
3. Medical related to hemorrhoids and unpaid medical from compensable injury.

The claimant contends his hemorrhoids are causally related to his compensable injury. He requests temporary total disability and medical relating to the hemorrhoids. Claimant also requests payment of unpaid medical associated with his compensable injury.

The respondents contend the claimant injured his stomach on June 1, 2005 and the claim was accepted. He was paid temporary total disability and his medical expenses have been paid. The claimant later complained about hemorrhoids, but the hemorrhoids apparently existed prior to the injury date and were not aggravated by the injury. Dr. Gary Moffitt has stated that the cause of his problem cannot be related to the June 1, 2005 injury.

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 January 19, 2006, and contained in a pre-hearing order filed January 20, 2006, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that his hemorrhoids are causally related to his compensable injury of June 1, 2005.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's hemorrhoids. In addition, respondent is also liable for payment of any outstanding medical associated with the compensable injury of June 1, 2001.

4. Claimant is entitled to temporary total disability benefits beginning June 2, 2005 and continuing through July 8, 2005. Respondent is entitled to a credit for any and all temporary total disability benefits previously paid for this period of time.

FACTUAL BACKGROUND

_____The claimant is a 48-year-old man who attended two years of college and obtained an associate's degree. Claimant went to work for the respondent in May 2005 as lead maintenance.

On June 1, 2005 the claimant was working on a grinding machine when a cylinder on a hydraulic jack broke. According to claimant there were 3000 pounds of hydraulic pressure on the jack when it broke and struck him in the right lower portion of his stomach. After sitting in the break room for approximately 30 minutes the claimant was taken by his wife to the emergency room where he was hospitalized. Claimant eventually underwent surgery by Dr. John Kendrick on June 21, 2005.

Claimant testified that while he was in the hospital he began having problems with bowel movements and following his discharge these problems continued and included blood in his stool. Claimant continued to receive medical treatment from Dr. Kendrick and was diagnosed as suffering from hemorrhoids.

The respondent accepted the injury to claimant's stomach as compensable and paid some compensation benefits including medical and temporary total disability benefits. However, respondent has denied liability for treatment of claimant's hemorrhoids, including surgery proposed by Dr. Kendrick.

As a result, claimant has filed this claim contending that his hemorrhoids are causally related to his compensable injury. He also seeks payment of temporary total disability benefits, medical benefits related to the hemorrhoids, and unpaid medical relating to the compensable injury.

agree that claimant suffered from hemorrhoids. He went on to state:

However, I do not feel that I could state with any certainty that the hemorrhoids at this time stem from constipation because of pain medication.

I find that the opinion of Dr. Kendrick is entitled to greater weight than that of Dr. Moffitt. First, Dr. Kendrick is a specialist. In addition, Dr. Kendrick has evaluated the claimant on a number of occasions, not one time as did Dr. Moffitt. This included surgery and evaluations immediately after claimant's injury. Accordingly, I find that the opinion of Dr. Kendrick is entitled to greater weight than that of Dr. Moffitt.

Based upon the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that his hemorrhoids are causally related to his compensable injury of June 1, 2005. Claimant's primary treating physician, Dr. Kendrick, has opined that a causal connection exists in his letter of August 18, 2005. I find that Dr. Kendrick's opinion is credible and entitled to great weight.

Having found that claimant has met his burden of proving by a preponderance of the evidence that his hemorrhoids are causally related to his compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with treatment of claimant's hemorrhoids. This includes but is not limited to any past medical treatment provided by Dr. Kendrick and any future medical treatment which may be reasonable and necessary.

It should also be noted that claimant contended at the time of the hearing that there were some unpaid medical bills associated with his original injury of June 1, 2005. Counsel for respondent indicated that it is its belief that all medical treatment other than treatment relating to the hemorrhoids has been paid. To the extent that there remains unpaid medical relating to the June 1, 2005 injury, respondent is liable for payment of that medical treatment as well.

The final issue for consideration involves claimant's request for temporary total disability benefits. I find that claimant is entitled to temporary total disability benefits beginning June 2, 2005, and continuing through July 8, 2005. During this period of time the claimant was under the care of Dr. Kendrick who had performed surgery. In an off-work slip dated June 23, 2005, Dr. Kendrick noted that claimant needed to remain off work until a subsequent evaluation on June 30, 2005. The medical reports do not indicate that claimant was released to return to light-duty work by Dr. Kendrick until July 8, 2005, when he indicated that claimant could return to light-duty work with no climbing or lifting more than 25 pounds for one month. There is no indication that claimant was taken off work by Dr. Kendrick subsequent to that date. In fact, a September 28, 2005 letter from Dr. Kendrick indicates that claimant was released from his care at that time.

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). Under the facts presented in this case, I find that claimant's total incapacity to earn wages ended as of July 8, 2005, the date he was released to return to light-duty work by Dr. Kendrick.

According to the documentary evidence, the respondent paid some temporary total disability benefits during this period of time. In fact, claimant acknowledged receiving two checks in the amount of \$854.00 each. However, those checks were not at the correct compensation rate. Apparently respondent issued a third check to claimant in the amount of \$356.00 to make up the difference in the compensation rate and to pay an additional three days of temporary total disability benefits. According to claimant's testimony he did not receive that check. Although respondent is entitled to a credit for any and all temporary total disability benefits paid from June 2, 2005 through July 8, 2005, respondent is instructed to make a determination as to whether claimant "cashed" his third check for

additional temporary total disability benefits and the difference in his correct compensation rates. If not, additional monies may be due claimant.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that his hemorrhoids are causally related to his compensable injury of June 1, 2005. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's hemorrhoids. Respondent is also liable for any unpaid medical which might exist from the claimant's June 1, 2005 injury. Finally, respondent is liable for payment of temporary total disability benefits beginning June 2, 2005 and continuing through July 8, 2005. Respondent is entitled to a credit for any and all temporary total disability benefits previously paid and received by the claimant.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE