

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512490

JOSH LAWRENCE

CLAIMANT

RIVER VALLEY HOMES

RESPONDENT

COMMERCE & INDUSTRY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 31, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville,
Arkansas.

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

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 3, 2006, in Springdale, Arkansas. A pre-hearing order was entered in this case on January 31, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved, at that time. However, subsequent to the entry of the pre-hearing order, the parties agreed that the claimant's accidental injury to his right leg, on October 8, 2005, was a "compensable injury". They also agreed that on October 8, 2005, the relationship of employee-employer-carrier existed between the parties. Thus, the first two issues in the pre-hearing order were rendered moot. The parties also agreed to add another issue, that being whether the claimant is barred from receiving benefits, prior to October 9, 2005, by the provisions of Ark. Code Ann. §11-9-701. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On October 8, 2005, the claimant sustained a compensable injury to his right leg.
2. The claim is controverted in its entirety.
3. On October 8, 2005, Commerce & Industry Insurance provided workers' compensation coverage for River Valley Homes.
4. On October 8, 2005, the relationship of employee-employer-carrier existed between the parties.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to the payment of medical expenses for his right leg injury.
2. Whether the claimant is barred from receiving benefits by Ark. Code Ann. §11-9-701 prior to October 8, 2005.

In regard to these issues, the claimant contends that the medical services he received by and at the direction of the physicians at Washington Regional Medical Center, on October 8, 2005, represent reasonably necessary medical services for his compensable injury and that the expense of these services is the liability of the respondents herein. He further contends that he gave the appropriate notice to the respondents, as required by Ark. Code Ann. §11-9-701.

The respondents deny that the claimant provided them with appropriate notice of his injury, as required by Ark. Code Ann.

§11-9-701, until October 9, 2005. Therefore, the respondents contend that they are not liable for any benefits, including medical services, received by the claimant prior to that date.

DISCUSSION

_____The first issue concerns the claimant's entitlement to the payment of expenses incurred, as the result of medical services rendered him at the Washington Regional Medical Center emergency room on August 8, 2005. Clearly, the claimant is entitled to reasonably necessary services for his admitted compensable right leg injury. However, the still burden rests upon the claimant to prove that such medical services were "reasonably necessary" within the meaning of Ark. Code Ann. §11-9-508. In order to meet this burden, the claimant must prove that the medical services were necessitated by or connected with his compensable right leg injury and had a reasonable expectation of accomplishing the purpose or goal for which they were intended.

After consideration of the evidence presented, it is my opinion that the claimant has proven that the medical services provided him by and at the direction of various personnel at Washington Regional Medical Center emergency room, including Dr. R. Bryan Benafield (an orthopaedic surgeon), represents "reasonably necessary medical services" for his compensable right leg injury. The evidence shows that all of the services provided were necessitated by or connected with his compensable right leg injury. The evidence further shows that the type of medical services provided were reasonably appropriate for the type of injury

sustained. Thus, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-508.

The next matter concerns application of Ark. Code Ann. §11-9-701. The claimant testified that, at the time of his compensable injury, there were no supervisory personnel at the job site to report his injury. He further testified that upon his discharge from the emergency room (on October 8, 2005), he called and reported his injury to his supervisor. The respondents presented no evidence concerning any particular required reporting procedure. As the claimant's method and manner of reporting his injury would appear to be reasonable, I find that it complies with the statutory requirements of Ark. Code Ann. §11-9-701(a).

I would also note, that due to the nature of the claimant's injury, his concern for obtaining medical treatment as quickly as possible, rather than reporting his injury, would be reasonable. His delay in reporting his injury until emergency treatment was obtained is clearly understandable. Thus, even if the claimant's reporting of his injury did not comply with the provisions of Ark. Code Ann. §11-9-701(a), his failure to do so would clearly be excusable under Ark. Code Ann. §11-9-701(b)(1)(c).

In summary, I find that the provisions of Ark. Code Ann. §11-9-701, do not relieve the respondents from their obligation to provide the claimant with appropriate medical services for his compensable right leg injury that is imposed by Ark. Code Ann. §11-9-508. Thus, the respondents are liable for the expense of medical services provided the claimant by and at the direction of personnel

at the emergency room of Washington Regional Medical Center on October 8, 2005. This liability is subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 8, 2005, the relationship of employee-employer-carrier existed between the parties.
3. On October 8, 2005, the claimant sustained a compensable injury to his right leg, in the form of a nail penetration.
4. The medical services provided to the claimant by and at the direction of personnel of the emergency room of Washington Regional Medical Center including Dr. R. Bryan Benafield, Jr., represents reasonably necessary medical services for the claimant's compensable injury, under Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.
5. The respondents are not relieved of liability for the expense of these medical services by the provisions of Ark. Code Ann. §11-9-701(a). Specifically, the claimant gave the respondents reasonable and appropriate notice of his injury on the date it occurred, and any minor delay in providing such notice is excused by the claimant's reasonable desire to obtain emergency medical treatment

for his compensable injury.

6. The respondents have controverted the claimant's entitlement to medical services, at least prior to October 9, 2005.
7. As no controverted benefits have been awarded to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney.

ORDER

The respondents shall be liable for the expense incurred by the claimant as a result of reasonably necessary medical services provided him for his compensable right leg injury, including services rendered him by personnel at the emergency room of Washington Regional Medical Center on October 8, 2005. Such liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

