

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508597

JAMES M. MILLER, EMPLOYEE

CLAIMANT

MAIL CONTRACTORS OF AMERICA, INC., EMPLOYER

RESPONDENT

**AMERICAN HOME ASSURANCE CO./
AIG CLAIM SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER FILED JULY 14, 2006

Hearing before Administrative Law Judge Barbara W. Webb on April 17, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on April 17, 2006. A Pre-hearing Order was entered in this case on February 3, 2006. The Pre-Hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Pre-Hearing Order was made Commission Exhibit No. 1 to the hearing record. The following stipulations were submitted by the parties and are hereby accepted:

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. That the employer/employee relationship existed at all relevant times, including June 1, 2004.

3. That the respondents accepted the claim as a compensable medical only claim for treatment through July of 2004, but controvert claimant's right to additional medical treatment sought in April of 2005.

4. That the claimant earned wages sufficient to entitle him to the maximum compensation rate allowable by law.

By agreement of the parties, the issue to be litigated at the hearing was whether claimant was entitled to additional medical benefits associated with his June 1, 2004 injury.

The record consists of a one-volume transcript of the April 17, 2006 hearing, consisting of the testimony of James Miller, J. D. Dasch, and Sarah Jack and contains all documentary evidence, including Claimant's Exhibit No. 1 (Letter) and Exhibit 2 (Medical records) and Respondent's Exhibit No. 1 (Medical records) and 2 (Other records).

DISCUSSION

The claimant contends that he suffered a compensable injury to his left arm, left shoulder and back when he fell from his truck and needs additional medical treatment for injuries caused to his back.

The respondents contend that all appropriate benefits have been paid with regard to claimant's injury; that additional medical treatment is not reasonable and necessary; that the medicals do not support any indemnity benefits associated with claimant's injury. In the alternative, respondents contend that claimant's current need for medical treatment is associated with pre-existing or underlying conditions and not any work-related activity; that the claimant's need for medical treatment is associated with unrelated physical conditions; that there are no objective findings to support such injuries; and that the claim for additional benefits is barred by the applicable statute of limitations.

A. WITNESS TESTIMONY

The claimant is 64 years old. He is currently employed by Mail Contractors of America as a truck driver. His job duties include driving a semi-truck from

Memphis, Tennessee, to Bloomfield, Iowa, and back. The claimant described the incident in June of 2004, as follows:

I pulled into a rest area at 160 mile marker in Missouri. And I went to get up, I opened the door, I snapped my britches. I usually ride with them loose so I don't get tight. I stepped up and I put my foot on the fuel tank and I pushed the door on open. And when I did, the wind come up and jerked me out. I lost my balance and fell down.

I didn't fall flat on the ground. I fell down where my hand was still holding onto the door and my back hit the step on the fuel tank and the side – the inside of the truck area. And that's when it all started hurting in there.

Claimant testified that the specific parts of his body that were injured were his left thumb at the hand, left elbow, left shoulder and the right side of his back at the waist. After the incident, the claimant continued to drive the truck, stopped at a motel, and went to bed. He stayed in the motel all day long until the truck returned. He filled out a report of injury and sought medical treatment the next day at the Concentra Medical Center in Memphis. He was examined and released. He returned to work approximately a week later. He was treated with physical therapy for approximately three weeks. He testified that he went to physical therapy before he went to work. He was examined by Dr. Peterson and eventually referred to Dr. Sorenson, an orthopedic surgeon. He testified that Dr. Sorenson took x-rays and recommended physical therapy to be followed by surgery, if the therapy didn't work. He testified that he did not undergo the recommended treatment due to respondent's failure to authorize the treatment. Respondents further denied coverage for payment of the \$389.00 bill for the April 20, 2005 visit to Dr. Sorenson on the basis that the treatment was not work related. A portion of the bill, i.e. \$101.24, was subsequently paid by claimant's health care provider, leaving a balance of \$287.76. Claimant testified that he is seeking payment of his unpaid

medical bill of April of 2005 in the amount of \$389.00, continued treatment, and an independent medical examination. On cross-examination, he testified that his last medical treatment was July 29, 2004, (except over-the-counter pain medication). He did not seek further medical evaluation until April of 2005. He admitted that he had problems with his spine as a result of twisting his back while cranking a trailer in 1995. At that time, he underwent physical therapy for his back and right rotator shoulder injury. He continued to have trouble with his lower back. An MRI was ordered on his lower back in February of 1996, but it was never performed. He had an altercation on January 1, 1999, when he was beat up by an irate trucker. On August 12, 2001, he fell from his truck and injured his low back, right leg, and left shoulder. In November of 2002, doctors indicated that he had arthritis in his joints, hands, back, and neck. He currently works full-time, making two trips a week to Bloomfield, Iowa. He testified that since his injury he has continued his hobbies of purchasing items and equipment, both large and small, from auction sales. He has moved three or four trailer loads in connection with the sale of his house in Memphis. He also purchased and replaced the tires on all of his vehicles. In connection with his job duties, he testified that he had to alter the way he drives as a result of weakness in his left hand and resulting pain.

James E. Dasch was called as a witness by the respondents. Dasch is the Terminal manager in Dallas. He worked with the claimant at the time of the incident on June 1, 2004. He testified that the claimant returned to full duty work after about a week and did not request that his job be modified in any form or fashion due to his injury. He had not observed the claimant performing his job differently. He believed that the claimant has a slight scratch on his back. The claimant did not complain of any problems in his back after the injury. He left the terminal in January of 2005. Prior to that time, the claimant did not complain of any physical problems but did

complain about his truck on a regular basis. He maintained an open door policy and spoke with the claimant about the personal things going on in his life. He was aware that the claimant was into yard sales, rummage sales, and buying all kinds of different things. He did not believe the claimant was having problems with his back in light of discussion that he was remodeling his trailers, moved and loaded up the trailers, and carrying truckloads of items, including little trinket items as well as entire legs to a trailer. The claimant had never complained to him that he had difficulty raising the doors. He noticed the claimant had worn a hand and wrist brace prior to the incident in June of 2004.

The respondents also offered the testimony of Sarah Beth Jack. She works at Mail Contractors as a terminal assistant from January of 2005. She testified that the claimant had never complained to her about physical problems with his back, left hand, thumb, or shoulder. She testified that the claimant had made complaints about his truck. She had never observed him having difficulty getting out of a chair, moaning and groaning, or getting up or out of his big truck.

B. MEDICAL EVIDENCE

The medical records in this case reveal that claimant first presented for a drug and alcohol screening and physical examination on June 3, 2004, at Concentra Medical Center in Memphis, Tennessee. At that time, the claimant's chief complaint was that he injured his shoulder on June 1, 2004, when the wind blew the door open and jerked his arm while getting out of his truck. He further reported that "I scraped my back on the fuel tank after I lost my balance." Shoulder and left hand x-rays were ordered to be done. His condition was assessed to include a bicipital tenosynovitis, shoulder strain, hand pain, and abrasion. He was treated conservative with medications including Ibuprofen and Flexeril and ordered to discontinue use of Aleve. He was scheduled for physical therapy three times per

week for one week. He was scheduled to return for an evaluation and released to return to work on 6/3/04 with restrictions of no reaching above shoulders, no repetitive lifting over 20 pounds, and no pushing/pulling over 20 pounds of force, and limited use of left upper extremity. He returned for physical therapy on June 7, 2004. Records reflect that he presented with the assessed condition of "Rotator Cuff Strain Elbow Contusion Sprain carpometacarpal joint". It was noted that the physical therapy would be put on hold until completion of x-rays. The claimant returned for re-evaluation by Dr. Peterson and x-rays on June 8, 2004. Records from that visit reflect that the claimant

feels the pattern of symptoms is improving. Patient has not been working because no light duty available. Patient has been taking their medications and has noted improvement. Patient has had physical therapy 2 times and feels better. Here today for xrays and re-eval. Most pain is in his shoulder though thumb is painful and olecranon is tender with certain pressure . . .

Preliminary readings of the shoulder x-rays revealed no evidence of dislocation, no fracture, and degenerative changes and abnormal infra-acromial bony spurring. The left hand x-ray revealed no evidence of dislocation and no fracture. The claimant was instructed to continue previous medications, physical therapy 3 times per week for 1 week, home exercise program, and released to return to regular duty on 6/8/2004. On June 15, 2006, the claimant returned for evaluation with Dr. Peterson. At that time, the claimant indicated his symptoms were "only slowly" getting better, shoulder better, thumb still in a lot of pain, elbow doing okay, and work going okay as well. The left shoulder was treated with steroid injections. The claimant was instructed to continue his medications, physical therapy, and home exercise program. He was instructed to wear a splint on his thumb and released to regular duty on 6/15/2004. On June 24, 2004, the claimant returned to Dr. Peterson for recheck of his injury. He reported that the pattern of symptoms were no better and minimal improvement. He was prescribed Bextra and Lortab, for use at night.

He was instructed to continue his home exercise program, released to regular duty on 6/24/2004, and referred to an orthopedic surgeon. On July 1, 2004, the claimant was evaluated Dr. Jeffery Cole with Orthomemphis, P.C. with the chief complaint of left shoulder pain with additional left thumb and wrist pain. He was treated with a prescription of Ultram for pain, a LCML splint, and scheduled for an MRI on his left shoulder. The MRI was performed on July 8, 2004. Results of the MRI reflect the following findings: (1) Supraspinatus tendinopathy. (2) No evidence of rotator cuff tear, and (3) DJD of the acromioclavicular joint. On July 29, 2004, the claimant returned for a follow-up with Dr. Cole. At that time, Dr. Cole informed the claimant of the results of the MRI and his opinion that surgery was not needed but if symptoms persisted or worsened, it would be his recommendation that arthroscopy with subacromial decompression be considered. He was released to full duty work status and scheduled to return on an as needed basis.

On April 15, 2005, the claimant returned to Dr. Peterson for a recheck of the June 1, 2004 injury. At that time, the medical note reflects that the claimant reported that his symptoms had worsened. He indicated that he had been sent back by his company to reopen his case because of persistent complaints of lower right back pain.

Now he is back and is focusing on the right lower back claiming his back has never been right since the fall. Claims he has a mass that changes size and swells and hurts and then goes down . . . Review of records from OM reveals left shoulder injury and ultimately surgery right shoulder in 95/96 but also low back pain and extensive workup with L spine films and bone scan and no real findings but no real resolution either.

Following the examination, Dr. Peterson assessed the claimant with a Lumbosacral strain and referred him to Dr. Mike Sorenson at Orthomemphis, PC. On April 20, 2005, the claimant was examined by Dr. Sorenson. X-rays revealed mild-to-moderate narrowing of the right hip joint, some facet arthropathy and moderate

degenerative disc at L4 and L5 levels. Dr. Sorenson recommended an MRI scan for the lumbar spine with views to include the PSIS region, therapy for the low back, and no new medications. On April 22, 2005, the Respondents notified the claimant in writing that his claim was not found compensable due to the statute of limitations, denied further medical treatment, and recommended he forward all outstanding bills to his health insurance.

C. COMPENSABILITY

Claimant contends that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, Ark. Code Ann. § 11-9-101 et seq. Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4)(A) defines

“compensable injury”:

(i) an accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence.

The employee must prove by a preponderance of the evidence that he sustained a compensable injury. In addition, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are those findings which cannot come under voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

In the instant case, it is not disputed that the June 1, 2004 incident involving the claimant occurred at work. It is equally clear from the medical evidence that objective medical evidence established the claimant's need for medical treatment to his shoulder, thumb and wrist. Medical treatment was provided and all associated benefits were paid by Respondents. Claimant was released to return to work immediately after the incident. The primary dispute is whether claimant has established a causal connection between his compensable injury and any need for

medical treatment for his lower back given the fact that claimant suffered from a preexisting lower back problem.

The Arkansas courts have frequently discussed the distinction between a recurrence and an aggravation of a preexisting injury. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. *Atkins Nursing Home v. Gray*, 54 Ark.App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from the previous injury. *Pinkston v. General Tire & Rubber Co.*, 30 Ark.App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. *Georgia-Pacific Corp. v. Carter*, 62 Ark.App. 162, 969 S.W.2d 677 (1998).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). However, an aggravation is a new injury resulting from an independent incident. *Id.* An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Id.*

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows

from that injury. Jeter v. B.R. McGinty Mech., 62 Ark.App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark.App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. Wal-Mart Stores. Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962). If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

Following the June 1, 2004 incident, Claimant presented for examination and treatment to Dr. Peterson, Dr. Cole, and physical therapists on numerous dates between June 3, 2004, and July 29, 2004. Each report reflects the complaints of

the claimant and assessment of claimant's medical condition at each visit. There is simply no mention of complaints or medical findings in connection with a lower back injury in any of the related medical notes or reports. The only reference to his lower back was the complaint and observation of a healing skin flank abrasion where he allegedly scraped his right hip against on the fuel tank after he lost his balance. It is noteworthy that medical records reflect prior medical treatment in 1995 and 1996 for complaints of pain in his shoulder and lower back. In addition, the evidence reveals that claimant reported back problems following an altercation with another truck driver in January of 1999, a fall from his truck in August of 2001, and treatment for arthritis in his back in November of 2002. Following the specific incident of June 1, 2004, the medical records reflect that claimant did not complain of problems in his lower back as a result of the work-related injury until April of 2005, some ten months after the incident occurred.

After review and consideration of the testimony and medical records, I find that the preponderance of the evidence fails to show that claimant's current need for medical treatment to his lower back is causally related to his work related incident of June 1, 2004. In the alternative, I would further find that to the extent the evidence shows that claimant suffered a previous work-related injury to his lower back in 1995, 1999, or 2001, any claim for additional benefits or continued treatment for injury to his lower back is barred by the applicable two year statute of limitations. A.C.A. § 11-9-702(b)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The employer/employee relationship existed at all relevant times, including June 1, 2004.
3. The respondents accepted the claim as a compensable medical only claim for treatment through July of 2004, but fully controverted claimant's right to additional medical treatment sought in April of 2005 in connection with his lower back.
4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his lower back on June 1, 2004.
5. The claimant has failed to prove that he is entitled to additional medical or other benefits associated with his June 1, 2004 injury.
6. Alternatively, any claim for additional medical treatment or benefits related to claimant's lower back arising from the claimant's preexisting condition is barred by the applicable statute of limitations.

ORDER

For the reasons discussed herein, this claim for payment of unpaid medical bills and additional benefits, and attorneys fees is respectfully denied.

IT IS SO ORDERED.

BARBARA W. WEBB
Administrative Law Judge