

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E901674**

**JOHN NEWSOM, EMPLOYEE**

**CLAIMANT**

**CITY OF WEST MEMPHIS, SELF-INSURED EMPLOYER**

**RESPONDENT**

**MUNICIPAL LEAGUE W.C. TRUST, TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 14, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 22, 2006, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE J. CHRISTOPHER BRADLEY, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefits.

On August 22, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The testimony of John Newsom, the claimant, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

John Newsom, the claimant, with a date of birth of July 12, 1957, is a high school graduate with a couple of years of trade school. Claimant commenced his employment with respondent on February 1, 1984, and continued in the employment of same until July/August 1999.

At the time that he sustained his compensable respiratory injury on January 30, 1999, claimant discharged the employment duties of wastewater superintendent. Claimant received medical treatment relative to the compensable injury and ultimately came under the care and treatment of Dr. Forrest Ward, an internist. The claimant sustained a 20% permanent physical impairment as a result of the compensable injury, which was accepted and paid by respondent.

The testimony of the claimant reflects that he did not encounter any difficulty regarding the payment of medical bills or cost of treatment by respondent until March 2006. Claimant testified, regarding the March 2006, visit to Dr. Ward:

I had had respiratory problems for about two months, and I done - - I was using all of my inhalers, using all my medicines, wasn't getting any better. It was progressively getting worse. And I called Dr. Ward for an office visit. Scheduled it. Went in. He required some testing to see what was going on. He felt like, at the time, that probably needed to change some of my medicine.

Went and had the test. Had to pay for the test out of pocket at the hospital. They wouldn't - - Workers' Comp refused to pay for it, so I had to have the test and I paid for the test. Which I give them a thousand dollars down and they billed me the rest.

Dr. Ward got the results and did change my medicine. He added some different stuff, inhaler type stuff, Spiriva and something else. I probably got a list of them. (T. 10-11).

Claimant acknowledged that prior to the March 2006, office visit to Dr. Ward his last office visit was December 15, 2003. Claimant's testimony reflects that he had phone consultations with Dr. Ward "about once every six months" between 2003 and 2006:

I would call him. He would call me. You know, I would call in and ask the nurse to have him call me. Because his office is way out in east Memphis. And with the price of gas, that's a long way over there.

Anyway, Forrest would call me - - or Dr. Ward, and I would tell him what was going on with me. He would either adjust it or tell me just keep going. (T. 11-12).

Claimant's testimony reflects that respondent paid for the cost of the December 15, 2003, office visit to Dr. Ward. Further, the testimony of the claimant reflects that he had his prescriptions refilled every 30 days and that respondent paid for the cost of same. Claimant added, regarding the prescriptions:

I've got maybe three or four that I paid for that - - I needed it right then and they couldn't get a hold of the Municipal League. Ken would be out or gone, and I would have to have my medicine and I would go ahead and pay for it. I can get you a list of all those.

\* \* \*

Ken - - Ken told me to turn it in and he would pay for it. I mean, I'm not denying that he said they would pay for them. (T. 12-13).

Claimant concedes that he did not turn in the receipt for reimbursement.

Regarding the adjustment in his medication as a result of the March 2006, office visit to Dr. Ward claimant's testimony reflects that the respondent paid for the same. The cost of the test which was ordered by Dr. Ward was in excess of \$1,200.00. Claimant was billed by the hospital for the amount in excess of the \$1,000.00, that he paid out of pocket.

Claimant testified that he spoke with Mr. Martin about the refusal of respondent to pay for the cost of the test:

His response was that Arkansas law states that if you haven't been back to the doctor in a year, they don't pay nothing else. He said it's clear. It's definite. It's been tried in court. And he says my - - I asked Ken. I said, "Mr. Martin, I's deadlocked here. What do I do?"

He said, "Your only other alternative is to go before an administrative law judge." And he gave me the number to the Workers' Comp Commission. (T. 14).

The claimant observed that respondent had paid partially some of cost associated with the March 2006, visit to Dr. Ward, to include a prostate exam which was not related to his compensable injury, however they just refused to pay for the respiratory testing.

Claimant is now self-employed. The testimony of the claimant reflects that every once in a while he does miss work due to his respiratory problems:

Some days if it's - - it depends on - - we get a lot of smog here.

\* \* \*

They have got a monitor set up out here by the senior high. And on the days that the air is just extremely bad, they give you an alert out of Memphis on the TV stations. And those days, if it's real hot and that air is bad, I just can't make it outside.

\* \* \*

I've got two choices: sit in the truck and let the air conditioner run or stay in the house. (T. 16).

The testimony of the claimant reflects that he did not receive a bill for the telephone consultations that he had with Dr. Ward. Claimant's testimony reflects that respondent was billed by Dr. Ward's office for his December 15, 2003, visit. The evidence in the record reflects that the claimant was seen by another doctor on March 14, 2005, and February 16, 2006, for which services he was billed and paid them out of pocket.

Dr. Forrest Ward is the claimant's authorized treating physician relative to the January 30, 1999, compensable respiratory injury. Claimant was seen by Dr. Ward on March 28, 2006,

at which time the claimant had a prostate examination performed.(T. 17-21).

Regarding his prescription medication, claimant acknowledged that respondent has paid for and continue to for the refills:

Sure.

That would - - we talked about that earlier. They paid it. I'm not complaining about my medication. They have paid for it right along.

Been slow sometimes to get it, and we've had some foul ups with Walgreen's and them. (T. 21).

Claimant noted that Dr. Ward has adjusted his medication from time to time in 2006. The testimony of the claimant reflects regarding his current medication regimen:

Well, some of the - - some of the medication that I take is from the drugs - - there is medication I take that - - that I have to take it because of what I'm taking for my lung. (T. 22).

The medical in the record reflects that the claimant was seen on March 14, 2005, and February 16, 2006, by medical providers associated with Coast to Coast Medical, under the directions of Dr. Floyd R. Shrader. (CX #1). Dr. Sharader was not the claimant's authorized treating physician relative to the January 30, 1999, compensable respiratory injury.

A March 31, 2006, correspondence of Dr. Forrest C. Ward of Bartlett Raleigh Internal Medicine, the claimant's authorized treating physician, to respondent regarding the claimant, reflects, in pertinent part:

. . . . . Mr. Newsom was last seen in my office on March 28, 2006. He has been under my medical care since his accident in 1999. Today he presented with complaints of worsening shortness of breath and dyspnea on exertion. At this time I have scheduled a Cardiac Echo Pulmonary Function Test to further assess his condition.

Regarding his medication, he is continuing with the following, Prevacid, Bromfed, Klonopin, Flonase nasal spray, Combivent inhaler and Albuterol inhaler. He has been taking these medications since his accident. In

addition, I have added two inhalers today to his present regimen, Spiriva and Advair. I have supplied him with samples today and I will further evaluate him over the next month. Should he have success with these inhalers, they will be added to his current regimen and prescriptions will be written. In the past I have been able to provide Mr. Newsom with samples, but will be unable to supply these on a regular basis in the future. (RX. #1).

In correspondence of May 9, 2006, respondent inquired of Dr. Ward if there were visits and treatment rendered to the claimant between December 15, 2003, and March 28, 2006. A handwritten notation of the correspondence reflects, "There were no visits between those dates". (RX. #1).

The payment records of respondent reflect that payments were made to Walgreen Co., where the claimant has his prescriptions filled, consistently through June 11, 2006. As noted by the claimant during cross-examination respondent paid for the cost of a prostate examination which was performed by Dr. Ward during the March 28, 2006, visit. (RX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 30, 1999, the relationship of employee-employer existed between the parties.
3. On January 30, 1999, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$375.00/\$282.00, for temporary total/permanent partial disability.

4. On January 30, 1999, the claimant sustained a compensable respiratory injury arising out of and in the course of his employment, which resulted in a permanent physical impairment in the amount of 20 % to body as a whole.

5. Dr. Forrest C. Ward has been the claimant's authorized treating physician relative to the compensable January 30, 1999, respiratory injury, since 1999, and has provided consistent and regular treatment to the claimant, to include the recommended March 28, 2006, Cardiac Echo and Pulmonary Function Test.

6. The March 28, 2006, Cardiac Echo and Pulmonary Function Test recommended by Dr. Forrest C. Ward, relative to the claimant's January 30, 1999, compensable respiratory injury, is reasonable, necessary, related and not barred by the provisions of Ark. Code Ann. §11-9-702 (b).

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the respiratory injury of January 30, 1999.

8. The respondent has controverted the claimant's entitlement to additional workers' compensation benefits subsequent to March 28, 2006.

### **CONCLUSIONS**

On January 30, 1999, the claimant suffered a compensable respiratory injury in the employment of respondent which was accepted as such and for which respondent paid medical and indemnity benefit. On March 28, 2006, claimant was seen by his authorized treating physician who recommended and scheduled a Cardiac Echo and Pulmonary Function Test to further assess the claimant's condition. Respondent refused to pay for the cost of the test on the basis that the statute of limitation served as a bar to the claim for addition benefits.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The claimant has treated with Dr. Forrest C. Ward relative to his compensable January 30, 1999, respiratory injury since its occurrence in 1999. The injury resulted in a 20 % permanent physical impairment to the claimant which was accepted and paid by the respondent. The claimant resides in Marion, Arkansas. Dr. Forrest is located in Bartlett, Tennessee. The credible evidence in the record reflects while the claimant did not have an office visit with Dr. Ward between December 15, 2003, and March 28, 2006, medical services were provided to the claimant by Dr. Ward on a regular and consistent basis in the interim. Specifically, the claimant's prescription medication relative to the January 30, 1999, compensable respiratory injury had been had pursuant to the directions of Dr. Ward. The claimant's prescriptions are refilled on a monthly basis.

The claimant consulted via telephone with Dr. Ward on a regular basis, every six months, between the December 15, 2003, office visit and the March 28, 2006, office visit. The afore consultations at times resulted in either an adjustment of the claimant's medication, directions to discontinue, reduce or change medicines. The March 31, 2006, correspondence of Dr. Ward to the respondent detailed the extent of his medical treatment to the claimant, the addition of medication to the claimant regimen on the years, and the fact that at time he has provided samples to the claimant during the adjustment periods. Respondent was clearly aware of the claimant's continued medical treatment with Dr. Ward relative to the compensable injury of January 30, 1999.

Ark. Code Ann. §11-9-702 (b) provides, in pertinent part:

(1) In cases where any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

(2) The time limitations of this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, where the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the running of the statute of limitations.

The furnishing of medical services constitute “payment of compensation” within the meaning of the limitations statute and such payment of compensation or furnishing of medical services tolls the running of the time for filing a claim for additional compensation. *Heflin v. Pepsi-Cola Bottling Co.*, 244 Ark. 195, 424 S.W.2d 365 (1968). The purpose of the one year statute of limitations is to give the claimant that much extra time to decide whether his has been fully compensated for his injury. *Superior Federal Savings & Loan Association v. Shelby*, 265 Ark. 599, 580 S.W.2d 201 (1979).