

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508090

MICHAEL PEARSON	CLAIMANT
HICKORY SPRINGS MFG. CO.	RESPONDENT
LIBERTY INSURANCE CORP. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 1, 2006

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

Claimant represented by CHARLES MULVEY, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 10, 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 April 17, 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 July 29, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his face.

4. The claimant is entitled to the maximum compensation rate.

5. Some medical expenses have been paid.

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

1. Compensability of the claimant's neck and low back problems.

2. Temporary total disability after December 12, 2005, to a date to be determined.

3. Temporary partial disability from September 4, 2005, until December 12, 2005.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that temporary partial disability benefits are due for a "closed" period of time during which the claimant worked at reduced pay for the respondent employer under "light duty" restrictions per Dr. Carson. The claimant contends that temporary total disability benefits are due for the period of time beginning with the date on which the respondent employer could no longer accommodate the restrictions per Dr. Martimbeau, and ending with a date yet to be determined. The claimant contends that the respondent carrier has failed to make payment in accordance with time period specified in the Commission's fee schedule, for reasonable and necessary treatment rendered for a compensable injury and by a physician appointed by the Commission to which neither respondent objected.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury to either his neck or lumbar spine in the accident of July 29, 2005. The respondents will further contend that they have paid all indemnity

and medical benefits to which the claimant is entitled as a result of the injury of July 29, 2005. The respondents further contend that there are no objective findings supporting an injury to the claimant's neck or low back arising as a result of his motor vehicle accident.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he began working for the Respondent in 1977 as a long haul truck driver. The claimant remembers that after a year or two of working for the respondent he was driving and hit a horse but was not hurt. The claimant testified that about twenty years ago he had a motor vehicle accident in Newport, Arkansas, and remembers that he was taken to the emergency room because he was experiencing side pain and thought he might have broken a rib. The claimant testified that he did not receive treatment after the initial ER visit and did not injure his neck or back. The claimant testified that he had another motor vehicle accident approximately ten years ago while driving in Oklahoma. The claimant testified that he was driving on a wet curvy road and slid off. The claimant testified that he was not injured nor did he seek medical treatment as a result of this

accident. The claimant testified that he was involved in another motor vehicle accident when he was crossing the bridge coming into Van Buren on US Highway 540 when he was rear ended. The claimant testified that then in November 2001 he was hit head on by a Camero. The claimant was uncertain whether the treatment he received by a chiropractor for complaints of neck, back and shoulder pain were as a result of his rear end accident or the head on collision with the Camero. The claimant agreed that he has had one other accident while working for the respondent and that was in May 2001 when he was cranking a dolly and pulled a muscle in his back. The claimant testified that he does not remember going to see the doctor as a result of this dolly incident but if there are medical bills showing that he did, he would not disagree.

The claimant testified that before July 29, 2005, he had been taking some aspirin for his back noting that he was experiencing a little pain but not that bad. The claimant testified that on July 29, 2005, he was going south on Highway 71 north of DeQueen and while driving through a construction site in order to miss a car he ran off the edge of the road. The claimant testified that he remembers the truck sliding sideways but does not remember anything else. The claimant testified that when he was found it was reported that he was some seventy-five feet from his truck. The claimant testified that he remembers being put in the ambulance and being at the hospital. The claimant testified that this accident happened early in the day and that after he had been taken to the hospital one of the respondent's employees came to pick him up but

he did not stay overnight in the hospital. The claimant testified that while he was at the hospital he began experiencing pain in his neck and back like he still has today. The claimant testified that he had numerous bruises all over his body as a result of this motor vehicle accident. The claimant testified that he also had scratches and cuts on his head, one on his forehead requiring staples to close up. The claimant testified that he had numerous cuts on his legs and still has scars as a result of these cuts. The claimant testified that he broke his glasses and had to have his upper front teeth replaced. The claimant agreed that these various problems have primarily resolved or are no longer a problem for him except for his low back and neck. The claimant agreed that Dr. Carson treated him following his last motor vehicle accident and after going through physical therapy, Dr. Carson eventually released him to return to work. The claimant agreed that when he was released to return to work, Dr. Carson gave him some restrictions dealing with the bending and twisting of his neck, upward gazing and no working with his hands above chest level. The claimant testified that when he got these notes with restrictions he took them to the respondent's personnel office.

The claimant testified that when he returned to work after the first of September, he began riding around in a service truck with Mike Smith. The claimant explained that a service truck is for local hauling. The claimant testified that he and Mr. Smith would go around and change tires as well as air up tires on trailers. The claimant testified that before his motor vehicle accident he

was paid milage as well as an hourly unloading fee and that after his accident he was paid hourly. The claimant testified that he was earning approximately one half of what he had been earning prior to his accident. The claimant testified that when he was driving long haul before his motor vehicle accident, he was earning approximately fifty thousand dollars a year and that after the was released to return to work and being paid hourly he was earning three hundred dollars a week. The claimant testified that currently he was being paid \$12.04 an hour and worked forty hours each week. The claimant testified that besides riding around in the service truck and airing up tires he also at the end of each day would pick up trash. The claimant testified that one of the other drivers was scheduled to retire and he began riding around with George Reeves in order to learn his routes in anticipation of taking over for him when he retired. The claimant testified that Dr. Carson had released him to see if he could return to truck driving. The claimant testified that the respondent was anxious for him to take over for Mr. Reeves and wanted him to go out and ride with Mr. Reeves and learn his routes. The claimant testified that he tried the truck driving job but was not able to turn his head to see to back in. The claimant explained that he could not turn his head enough to see where he was backing because of his neck. The claimant testified that the other driver, Mr. Reeves had to take over for him and made the rest of the deliveries. The claimant testified that he reported to the respondent that he was unable to do that job and that Mr. Reeves affirmed what he had

reported. The claimant testified that he then went back to riding around with Mike Smith and picking up trash. The claimant testified that he went to see Dr. Martimbeau on November 15 at which time he was given a list of restrictions which he took to the respondent. The claimant testified that he then again returned to riding around with Mr. Smith, airing up tires and picking up trash. The claimant testified that Mr. Coleman, the HR manager for the respondent, told him not to pick up too much, to empty a sack when he got just a little in it and not to carry around much weight. The claimant agreed that the respondent was working with him trying to help him. The claimant testified that on December 12, 2005, he was told by Bill Coleman that it was their understanding that he was going to be able to return to driving a truck and that these interim jobs have been in order for him to get back in shape so that he would be able to drive and that had not happened. The claimant testified that Mr. Coleman stated that they had placed him on desk duty but they did not have anything like that for him. The claimant agreed that the respondent had tried to keep him there as long as they could. The claimant testified that he is still under Dr. Martimbeau's care having last seen him on July 25 with a return appointment on September 26, 2006.

On cross examination, the claimant testified that he does not remember being seen by a doctor and having an MRI in the fall of 2004 due to having low back pain with pain running down his left leg. The claimant testified that he also does not remember being seen by the doctor in January and April 2004 for his continuing

problems with his low back for which he was taking arthritis medications. The claimant agreed that after his motor vehicle accident on July 29, 2005, the respondents paid for all of his medical bills and when he was released he discussed his situation with Mr. Bill Coleman. The claimant agreed that he reported to Mr. Coleman that he really did not have any interest in going back to driving a long haul truck anymore. The claimant agreed that the respondent was trying to work with him and made up a job for him to do which was not normally a job done with that company. The claimant testified that he continued to do this job until December 12 at which time the respondent put him on short term disability drawing \$150.00 per week. The claimant agreed that the doctor released him to drive a forklift but further agreed that he was not qualified to operate a forklift nor was he able to drive a forklift because he could not turn his neck. The claimant testified that Dr. Martimbeau has not restricted him from driving his motorcycle and that he has used his motorcycle to get to and from work.

On redirect examination, the claimant testified that he could not recall seeing a doctor for his neck between 2001 and 2005. The claimant testified that he does not wear a helmet when he rides his motorcycle because it hurts his neck due to the weight and he did not think he could see to the sides with a helmet on. The claimant agreed that he could not turn his neck enough to be able to see. The claimant agreed that Dr. Carson had restricted him from driving initially but at the time of his release to return to work Dr. Carson had encouraged him to see if he could drive. The claimant

testified that his daily activities are limited due to his back problems and he no longer helps in the yard because he cannot stand on his feet because it hurts his back and neck. The claimant testified that he used to help with household tasks on the weekends when he was in but he no longer can do this because of the discomfort. The claimant testified that his wife does all of the shopping because he cannot keep up with her and it is difficult for him to do all of the walking. The claimant testified for recreation he used to like to fish and take trips on his motor cycle but he no longer does this because he cannot stay on his bike that long. The claimant testified that usually someone will drive him wherever he needs to go but if no one is around and he needs to get around he will ride his motorcycle.

Bill Coleman testified that he is the HR manager for the respondent and has been in that position for almost thirty years. Mr. Coleman testified that he has known the claimant for almost thirty years and agreed that the claimant is a good long term employee of the respondents. This witness testified that he was fully aware of the claimant's motor vehicle accident in July 2005 and the subsequent medical treatment which he received. Mr. Coleman testified that he was involved in a discussion with the claimant when he was released by Dr. Carson to return to work in late August. Mr. Coleman testified that it was his understanding at the time of the claimant's release that his only problem was his neck. Mr. Coleman further testified that it was his understanding that Dr. Carson had released the claimant to try to

return to truck driving and that the claimant's job as a long haul truck driver was available if he had chosen to do so. This witness testified that the claimant told him that he did not want to return to truck driving because he was afraid of what might happen out there. Mr. Coleman testified that he told the claimant that he would try to find something for him to do. Mr. Coleman testified that he recalled that there was a local driver who was considering retiring so he discussed this position with the claimant and that the claimant indicated that he was interested in the position. Mr. Coleman testified that he told the claimant that there would be a couple of months before the job opened up so he put him with Mr. Smith. Mr. Coleman testified that the claimant tried out the local driving job and it was his decision that he could not do this job either. This witness testified that eventually he realized that they could not continue to pay the claimant indefinitely. Mr. Coleman stated that it was his understanding that up until the time the claimant was seen by Dr. Martimbeau there were no restrictions on the claimant that would have kept him from going back to his long haul job.

On cross examination, Mr. Coleman testified that it was his understanding that when Dr. Carson released the claimant back to work that that was to drive. Mr. Coleman read from page 32 of Respondents' Exhibit No. 1 stating, "Have him tested to see if he is able to drive. Head motion is limiting factor." This witness agreed that this was what was being done when the claimant was placed to ride with George Reeves. Mr. Coleman testified that when

the claimant tried to run the route which he might have permanently been assigned he was only able to do about half of the route before George had to take over. This witness testified that the claimant was concerned about the safety of long haul truck driving. Mr. Coleman testified that when the claimant was approached with the local driving job he seemed extremely interested.

On redirect examination, Mr. Coleman testified that when the claimant began driving with George Reeves, he was not testing to determine if he could go back out and do long haul truck driving. This witness testified that the testing which Dr. Carson suggested referred to long haul truck driving but that the going around with George Reeves was principally to show the claimant the routes.

The medical records set forth that the claimant was seen at the DeQueen Medical Center on July 29, 2005, following a motor vehicle accident. It is noted that the claimant was found twenty-five yards from his truck and had multiple lacerations to his head, arm, back, legs and chest. These surface wounds were treated conservatively. A CT scan of the claimant's head was made which revealed extensive air fluid levels of the paranasal sinuses on the right side due to the trauma or traumatic etiology suspected. The doctor notes, however, that an inflammatory process can also cause this picture. A CT of the claimant's cervical spine was negative. The claimant was also seen at Sparks Occupational Medicine on July 29, 2005, for his multiple bruises and abrasions due to his motor vehicle accident. An x-ray of the claimant's left femur showed no fracture and the claimant was given a soft cervical collar,

prescribe medications and an MRI was scheduled. The claimant was again seen at Sparks on August 1, 2005, where it is noted that he appears more comfortable than he did three days ago. The claimant was examined for his various injuries and it is noted that he is assessed with cervical and lumbar strain. An MRI of the claimant's right maxillary sinus made on August 3, 2005, reveals that no obvious fractures are seen. It is also noted that there is no displacement of the orbital contents inferiorly. The doctor writes that on the report from the CT done on July 29, 2005, extensive fluid was noted in the right maxillary sinus noting that no extensive fluid is seen on the current MRI. The claimant was again treated at the Sparks Medical Center on August 8, 2005, for his cervical and lumbar strain, concussion, contusions and abrasions as well as cellulitis and medications were prescribed. Dr. Lamar Kyle writes on August 12, 2005, that he has seen the claimant for refills of his medications and after examination, notes that the claimant has hypertension, gout and degenerative disc disease to his low back. Dr. Kyle prescribed medications for six months. On August 15, 2005, the claimant was seen at the Sparks Regional Medical Center where it is noted that he has less neck pain but is still stiff but has no headache. The medical notes set forth that the claimant's cellulitis on his back has resolved, his scalp wound is ok and that he cannot turn his head far enough to work rearview mirrors. The note from the Sparks Medical Center dated August 29, 2005, sets forth that the claimant started cervical traction last week and that the claimant has ridden his motorcycle but not driven

the car. These medical notes set forth that the claimant's range of motion is still markedly decreased from side to side and that his paraspinus muscles are tender. The claimant was returned to work on August 29, 2005, noting that he should test to see if he can drive, noting that his head motion is his limiting factor. There is also a return to work note dated August 29, 2005, which is not signed but indicated that it was faxed which sets forth specific restrictions for the claimant of no frequent bending or twisting neck, no upper gaze and no work with hands above chest level for a period of six weeks. The claimant continued to be followed for his continuing complaints of neck and back pain from September 7, 2005, through November 2, 2005, at the Sparks Medical Clinic. The report dated September 7, 2005, notes that the claimant is working at the plant but has no plans to return to driving. The claimant's diagnosis or assessment continues to be cervical strain.

Dr. Claude Martimbeau writes on November 15, 2005, that he has seen the claimant for his complaints of upper and lower back pain. The doctor notes that the claimant has no neurological symptoms involving his upper or lower extremities. Dr. Martimbeau notes that the claimant does have complaints of pain in the cervical spine area along the intrinsic muscle but no contracture, no spasm and no induration. The doctor writes that the claimant's lower back shows most of the pain being over the right iliac spine and the iliac crest along the glutei muscle but no spasm. Dr. Martimbeau writes that the claimant's neurovascular status of the

upper and lower extremities is negative. Dr. Martimbeau diagnosed the claimant with having upper and lower back muscle strain. The doctor administered an injection of cortisone and recommended physical therapy and assessed him with restriction of no lifting, carrying and no overhead work. Dr. Martimbeau writes again on December 6, 2005, that the claimant is still having quite a lot of pain and stiffness in his neck as well as low back pain. Upon examination, Dr. Martimbeau notes that the claimant is experiencing pain in the neck area as well as limited range of motion but no spasm and neural status is in tack. Dr. Martimbeau writes that as to the claimant's lower back that the claimant complains of pain in the left iliac spine area and along the left glutei muscles. The doctor notes that there is no induration and no spasm and that his neural status is in tack. The claimant was again diagnosed with upper and lower back pain soft tissue injury and again was administered a cortisone shot, a stimulator was prescribed, medications prescribed and physical therapy recommended. The claimant was seen by Dr. Martimbeau on January 10, 2006, for his continued complaints of neck and back pain. After examination, no objective findings were noted and Dr. Martimbeau changed his diagnosis to degenerative disc disease of the neck and facitis of the mid back. Again medications, physical therapy and light duty were recommended for the claimant. The claimant continued to be followed by Dr. Martimbeau through February and March 2006 with the same diagnosis and treatment program. It is noted in March 2006

that the claimant still has quite a lot of stiffness and soreness and that he is not improving much.

Claimant's old medical records set forth that the claimant was seen at the Sparks South Family and Occupational Medicine Clinic on May 25, 2001, with complaints of left low back pain radiating into his left hip and left lateral leg following an incident where he was cranking a dolly down on a truck. After examination, the claimant was diagnosed with left lower back pain and left lower extremity pain for which medications were prescribed. On November 29, 2001, the claimant was again seen at the Sparks Medical Clinic following a head on collision with a Camero. The claimant was seen for his complaints of neck and back pain and after examination, the claimant was assessed with a cervical sprain and medications were prescribed. The claimant was seen on August 14, 2002, at Sparks Preferred Clinic for complaints of left arm pain. After examination, Dr. Lamar Kyle writes that he thinks the claimant's arm pain is muscular skeletal and not cardiac but he wanted the claimant to go through a cardiac treadmill examination. The claimant was followed up for his complaints of arm pain where it is noted that his arm pain is suggestive of angina and that his cardiac stress test did not show any evidence of coronary insufficiencies. After examination, the claimant was diagnosed with hypertension and hyperlipidemia. The claimant was admitted to the Sparks Regional Medical Center on July 22, 2003, after attempting to hang himself while in the cab of his tractor trailer. The claimant reports that he has made previous attempts at suicide.

The claimant was discharged from Sparks Regional Medical Center on July 24, 2003, with a diagnosis of major depressive disorder and medications were prescribed. The claimant was seen at Sparks Preferred Medical clinic by Dr. Lamar Kyle on October 1, 2003, with complaints of right anterior chest pain radiation to his back. After examination, the claimant was given medications and was again seen by Dr. Kyle on October 6, 2003, for follow up of his chest and back pain. After examination, the claimant was diagnosed with bursitis right scapula area and an injection was provided as well as medications. Dr. Kyle saw the claimant on September 29, 2004, for complaints of low back pain for the past six months. The claimant's history relates that no particular injury was reported. After examination, the claimant was diagnosed with lumbar sacral syndrome, possible herniated disc and depression. X-rays taken that day revealed degenerative disc disease in the claimant's low back. The claimant underwent an MRI of his lumbar spine on October 7, 2004, which revealed a moderate size left paracentral herniated disc at L5. On April 29, 2005, the claimant was seen at the Sparks Preferred Medical Clinic for elevated blood pressure at which time it was also noted that he complains of still having his chronic low back pain but doing better taking Arthrotec. After examination, the claimant was assessed with hypertension and medications were prescribed.

After a complete review of this case, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck and low back as a result

of his motor vehicle accident on July 29, 2005. It is probably a miracle that the claimant survived the motor vehicle accident he experienced on July 29, 2005, after looking at the photographs and hearing the testimony of the claimant as well as the medical evidence which indicates that he was thrown seventy-five feet from his truck. It is not questioned and the respondents have accepted that the claimant sustained numerous contusions and abrasions all over his body as well as broke his glasses and knocked out some teeth. There is not, however, any objective medical evidence of injury to this claimant's neck and although there is an MRI indicating that the claimant does have a herniated disc at L5, this MRI, however, was carried out some months before the claimant's wreck. It is not questioned that the claimant's motor vehicle accident caused him to be sore from head to toe and caused him to have some soft tissue injuries. Arkansas law, however, requires objective medical evidence to establish an injury requiring medical treatment. Dr. Martimbeau who has placed restrictions on the claimant as well as continues to treat him has diagnosed the claimant with having upper and lower back muscle strain noting no objective medical findings only complaints of pain and tenderness. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On July 29, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his face.
4. The claimant is entitled to the maximum compensation rate.
5. Some medical expenses have been paid.

6. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his neck and back in a motor vehicle accident while working for the respondent on July 29, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his neck and back while working for the respondent on July 29, 2005. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE