

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. C162499

WILFORD PENDERGRASS, Employee	CLAIMANT
JONES TRUCK LINES, Employer	RESPONDENT
MUTSUI SUMITOMO INSURANCE GROUP, Carrier	RESPONDENT

OPINION FILED MAY 15, 2006

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

Claimant appearing *pro se*.

Respondents represented by ROBERT J. DONOVAN, Attorney, Marianna, Arkansas.

STATEMENT OF THE CASE

On April 5, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 23, 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 prior opinion is final and res judicata.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment for his injury.
2. Payment of unpaid medical benefits, mileage, interest, and 20% penalty.

The claimant contends he is in need of additional medical treatment for his compensable injury. He also contends that respondent has failed to pay medical previously ordered as well as mileage, interest, and a 20% penalty.

The respondents contend that it has paid all benefits due claimant.

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 February 23, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. With respect to claimant's entitlement to additional medical treatment for his compensable injury, the parties have agreed that claimant can return to Dr. Hennigan for an additional evaluation.

3. Respondent is liable for payment of mileage expenses to claimant for 2,040 miles. Respondent is not liable for payment of a penalty associated with this mileage.

4. Respondent is liable for unpaid medical treatment from HealthSouth and for visits to Dr. Coker. On any unpaid medical treatment relating to HealthSouth, respondent is also liable for interest from the date of the original opinion of February 10, 2004. These medical bills are to be paid pursuant to Commission Rule 30.

5. In the event it has not previously paid, respondent is liable for interest on all benefits awarded under the prior opinion of February 10, 2004.

6. Respondent is also liable for payment of a 20% penalty on all indemnity benefits payable pursuant to the award of February 10, 2004.

FACTUAL BACKGROUND

This claimant suffered a compensable injury to various parts of his body including his left knee while working for the respondent as a truck driver on December 1, 1971. As

a result of that injury the claimant underwent surgery on his left knee in December 1972 and was assigned a permanent physical impairment rating in an amount equal to 25% to the left lower extremity. This surgery was performed by Dr. Tom Phillip Coker, orthopaedic surgeon. Dr. Coker noted that claimant would continue to have problems with his left knee and that he would probably need a joint replacement if those problems continued. The claimant's problems did continue and claimant underwent an arthroplasty to replace his left knee joint on December 4, 1974. Dr. Coker noted that the life of the arthroplasty was unknown and recommended that claimant receive follow-up treatment for the duration of his life to determine whether further treatment was necessary.

The claimant continued to be evaluated by Dr. Coker on a periodic basis and on July 28, 2003 Dr. Coker performed a total knee arthroplasty to repair the prior arthroplasty.

Although the respondent had previously accepted claimant's claim as compensable and paid compensation benefits, the respondent did not accept liability for the procedure in 2003. As a result, claimant filed a claim for compensation benefits including medical treatment and disability benefits. Respondent contended that claimant's claim for additional compensation benefits was barred by the statute of limitations.

Following a hearing which was conducted on January 7, 2004, an opinion was filed dated February 10, 2004 finding that claimant's claim for additional compensation benefits was not barred by the statute of limitations. That opinion also found that claimant was entitled to additional medical treatment for his compensable injury and that claimant was entitled to permanent partial disability benefits in an amount equal to 50% to the left lower extremity. The administrative law judge's decision was appealed by the respondent to the Full Commission which in an opinion filed June 10, 2004 affirmed and adopted the administrative law judge's decision. The respondent subsequently appealed the Full Commission's decision to the Arkansas Court of Appeals which affirmed the Commission's decision in *Jones Truck Lines v. Pendergrass*, ____ Ark. App. ____, ____

S.W. 3d ____ (April 6, 2005).

Following the Court of Appeals' decision the respondent eventually paid some compensation benefits, but claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable injury as well as payment of unpaid mileage expenses and unpaid medical expenses. In addition, claimant also requests interest and a penalty for failure to timely pay benefits.

ADJUDICATION

ADDITIONAL MEDICAL.

Since the time of claimant's last surgical procedure, he has developed an infection in his left knee. Claimant's treating physician, Dr. Coker, has recommended additional medical treatment to determine the source of the infection. The parties agreed at the time of the hearing that claimant would return to Dr. Hennigan for an additional evaluation of his infection. Therefore, at this time this issue has been resolved.

MILEAGE.

Claimant testified and submitted handwritten documentation indicating that he has unpaid mileage expenses associated with medical treatment for his compensable injury totaling 2,040 miles. This mileage has been incurred as claimant travels to Northwest Arkansas from Missouri for treatment of his compensable injury. I find that claimant has met his burden of proving by a preponderance of the evidence that the unpaid mileage was incurred for medical treatment associated with claimant's compensable injury. Therefore, I find that respondent is liable for payment of unpaid mileage in the amount of 2,040 miles. According to claimant's testimony, he did not believe that these mileage requests had previously been sent to the workers' compensation carrier. Accordingly, I find that respondent owes no penalty on the unpaid mileage.

UNPAID MEDICAL.

Claimant testified at the hearing that there are two unpaid medical bills. One of these was for rehabilitation treatment at HealthSouth following his knee surgery. Claimant submitted into evidence a HealthSouth bill which totals \$18,986.39 and covers the period of July 31, 2003 through August 13, 2003. I find that the medical treatment rendered by HealthSouth was reasonable and necessary and causally related to claimant's compensable injury. Respondent is liable for payment of the medical treatment from HealthSouth pursuant to Rule 30. In addition, I note that this medical treatment was for services which were provided prior to the previous hearing conducted on January 7, 2004 and awarded in an opinion filed February 10, 2004. That opinion was subsequently affirmed by the Full Commission and by the Court of Appeals. Pursuant to A.C.A. §11-9-809, respondent is liable for payment of interest to the claimant for this unpaid medical treatment. *Burlington Industries v. Pickett*, 64 Ark. App. 67, 983 S.W. 2d 126 (1998); *Eureka Log Homes v. Mantonya*, 28 Ark. App. 180, 772 S.W. 2d 365 (1989). This interest is to be calculated from the date of the original administrative law judge's opinion of February 10, 2004.

Claimant also testified that respondent has failed to pay four office visits totaling \$50.00 each from Dr. Coker for visits of October 6, 2004, April 14, 2005, June 7, 2005, and March 2, 2006. I find that respondent is liable for payment of these visits with Dr. Coker, claimant's primary treating physician.

Respondent is not liable for a penalty on any unpaid medical expenses. The penalty allowed by A.C.A. §11-9-802 does not apply to medical bills. *Smith Store v. Kirker*, 6 Ark. App. 222, 639 S.W. 2d 751 (1982).

INTEREST.

The prior administrative law judge opinion dated February 10, 2004 awarded claimant interest from that date at the maximum legal rate until paid. To the extent that respondent did not previously pay claimant interest on all benefits due and owing under

the prior award, I note that respondent is liable for payment of said interest from February 10, 2004 until said interest is paid.

PENALTY.

A.C.A. §11-9-802(c) provides that any installments payable under the terms of an award not paid within fifteen days after it becomes due results in a 20 percent penalty unless that order is appealed. In this particular case, a final decision on the claimant's prior claim was reached by the Arkansas Court of Appeals on April 6, 2005. The documentary evidence contains a letter from claimant's prior attorney, Jason Watson, dated May 2, 2005 and addressed to respondent's attorney setting out various amounts owed to claimant under the prior award. The documentary evidence also contains a letter dated June 1, 2005 from Attorney Watson to the Commission requesting a hearing based upon the fact that no benefits had been paid from the prior award despite the Court of Appeals' opinion dated April 6, 2005. Claimant testified at the hearing that he received a check for compensation benefits from the prior opinion on June 13, 2005 with a check dated June 6, 2005. I find that the benefits paid to claimant from the prior award were paid more than 15 days after they became due. In fact, benefits were not paid to claimant until approximately sixty days after the Court of Appeals' opinion. Clearly, these benefits were paid more than 15 days after they became due; therefore, respondent is liable for payment of a 20 percent penalty on all indemnity benefits due to claimant as a result of the prior award. As previously noted, the 20 percent penalty does not apply to any unpaid medical benefits.

AWARD

The parties have agreed that claimant may return to Dr. Hennigan for an additional evaluation. Claimant has met his burden of proving by a preponderance of the evidence that respondent is liable for payment of unpaid mileage of 2,040 miles. Respondent is

not liable for a penalty for non-payment of this mileage, but claimant is entitled to interest on payment of this mileage from the date of this opinion until paid. Claimant has also met his burden of proving by a preponderance of the evidence that respondent is liable for unpaid medical benefits to HealthSouth and to Dr. Coker. These providers are to be paid pursuant to Rule 30 of the Commission. Respondent is liable for payment of interest on the unpaid medical benefits from HealthSouth from the date of the prior opinion of February 10, 2004 and continuing until paid. Respondent is also liable for payment of interest on Dr. Coker's medical treatment from the date of this opinion until paid. Respondent is not liable for any penalty on any unpaid medical benefits.

To the extent respondent did not previously pay claimant interest on all benefits awarded at the time of the prior opinion on February 10, 2004, respondent is liable for payment of said interest from that date until paid. Finally, respondent is liable for payment of a 20 percent penalty on all previous indemnity benefits awarded to the claimant.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE