

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509220

JOHN PETEN, EMPLOYEE

CLAIMANT

BALDWIN & SHELL CONSTRUCTION CO., EMPLOYER

RESPONDENT

BITUMINOUS CASUALTY, CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 13, 2006

Hearing before Administrative Law Judge J. Mark White on September 12, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Randy Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 12, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on August 2, 2006, and a Prehearing Order was entered that same day. A copy of the August 2, 2006, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including August 25, 2005, at which time the claimant suffered a compensable injury in the form of at least heat exhaustion; that the respondents accepted the claim and paid benefits; and that the claimant earned an average weekly wage of \$597.

The issues to be presented for determination were defined as follows: whether strokes the claimant suffered subsequent to his August 2005 compensable injury were a compensable consequence of the compensable injury; whether the claimant is entitled to temporary total disability benefits; and whether the claimant is entitled to medical treatment.

The claimant contends that in August 2005 and March 2006, he suffered strokes which were compensable consequences of his August 25, 2005 heat stroke which has been accepted as compensable by respondents and benefits paid; that he is entitled to temporary total disability benefits from March 22, 2006 through April 17, 2006; and that he is entitled to additional medical treatment.

The respondents contend that the strokes suffered by the claimant are not compensable consequences of his August 25, 2005 heat exhaustion injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that his March 2006 stroke was a compensable consequence of his August 2005 compensable injury.
4. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

On August 25, 2005, the claimant sustained a compensable injury in the form of heat exhaustion while working for the respondent-employer. The respondents

accepted this injury as compensable and paid benefits. The claimant testified that he experienced a number of symptoms in the August 2005 episode, including profuse sweating, dizziness, vertigo, cramping on the right side, and numbness on the right side. Contemporaneous medical records document all of these symptoms at that time, except for the right-side numbness.

The claimant was hospitalized for a time and then released with a diagnosis of heat exhaustion, though he contends that he actually sustained a heat stroke, rather than mere heat exhaustion. In any event, the claimant testified that over the following months, he had recurring episodes of the symptoms outlined above. In March 2006 the claimant sustained a vascular stroke or transient ischemic attack (TIA). The claimant testified that the symptoms of this event were similar to the symptoms he experienced in the August 2005 heat exhaustion episode.

The claimant alleges that his cerebrovascular accident of March 2006 was a compensable consequence of his heat exhaustion injury of August 2005. If an injury is compensable, then every natural consequence of that injury is also compensable, including injuries from medical treatment. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a).

What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

Dr. Henry Simmons testified on behalf of the respondents. In summary, he testified there was no relation between the claimant's heat exhaustion of August 2005 and the cerebrovascular accident of March 2006. Aside from Dr. Simmons testimony, there is no medical evidence contained within the record establishing any causal link between the claimant's heat exhaustion of August 2005 and his cerebrovascular accident of March 2006. I find that the claimant has failed to prove by a preponderance of the evidence that his March 2006 stroke was a compensable consequence of his August 2005 compensable injury. Because I so find, the remaining issues are moot and need not be addressed.

Admissibility of Evidence

The claimant attempted to introduce into evidence a letter from his physician, Dr. Derek Lewis, stating:

[I]n March of 2006, Mr. Peten had suffered a reoccurrence of the first heat stroke. It is my professional medical opinion that these conditions are the same illness; therefore both strokes were related by heat exhaustion due to working conditions in extreme hot weather.

The respondents objected to introduction of this report on the grounds they had not been provided a copy of it before the hearing. The claimant testified that he

spoke with a secretary in the office of the respondents' counsel, who informed him they already had Dr. Lewis' records and did not need a copy of this document.

To be introduced into evidence, medical reports must be exchanged by the parties at least seven (7) days prior to the hearing. Ark. Code Ann. § 11-9-705 (c)(2). The claimant was instructed by this judge in the telephone prehearing conference that he was required to furnish the respondents' counsel with copies of any medical records he sought to introduce. The Prehearing Order likewise required the claimant to furnish medical records at least seven days prior to the hearing.

The claimant was explicitly ordered by the Commission on multiple occasions to copy his medical records and provide them to the respondents' counsel. The claimant chose to rely on a statement by an attorney's staff member rather than obey the explicit directive of the Commission. I cannot find this choice to be reasonable, and therefore I do not find good cause to excuse the claimant's failure to furnish Dr. Lewis' report to the respondents.

Even if I were to admit the report into evidence, I would still make the same findings above, for I find the opinion of Dr. Simmons to be entitled to more weight than that of Dr. Lewis. Moreover, Dr. Lewis' letter asserts that the claimant sustained a heat stroke in March 2006, while the hospital records clearly establish that the claimant sustained a vascular stroke or TIA. As Dr. Simmons testified, a

vascular stroke and heat stroke are two separate, unrelated conditions. Because Dr. Lewis was mistaken as to the true nature of the claimant's March 2006 episode, I cannot find his opinion to be credible.

AWARD

The claimant has failed to prove by a preponderance of the evidence that his March 2006 stroke was a compensable consequence of his August 2005 compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge