

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508347

JESSIE E. PIGGEE, EMPLOYEE	CLAIMANT
McGEORGE CONTRACTING CO., EMPLOYER	RESPONDENT
AMERICAN CASUALTY COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 18, 2006

Hearing before Administrative Law Judge J. Mark White on January 31, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Andy Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Frank Newell, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 31, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on November 28, 2005, and a Prehearing Order was entered that same day. A copy of the November 28, 2005, 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 March 17, 2005; that the claimant earned wages sufficient to entitle him to the maximum compensation rate; and that respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to temporary total disability benefits; whether the claimant is entitled to medical treatment; and attorney's fees. At the hearing, the parties agreed to add the issue of notice.

The claimant contends that he was injured on or about March 17, 2005 while tightening a lug nut at work; that he ultimately underwent a cervical fusion; that he has been off work since August 10, 2005, and is entitled to temporary total disability benefits from August 10, 2005 through a date yet to be determined; that he is entitled to ongoing medical expenses from Dr. Schlesinger; and a controverted attorney's fee. At the hearing, the claimant acknowledged his entitlement to temporary disability benefits ended as of November 1, 2005.

Respondents contend that claimant did not sustain a compensable injury while working for respondent-employer; that respondent-carrier has no liability for benefits; and that they are not liable for any benefits given prior to when the claimant gave notice of his 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 proven by a preponderance of the evidence that he sustained an injury to his cervical spine on March 17, 2005, arising out of and in the course of his employment; that his injury was caused by a specific incident and identifiable by time and place of occurrence; that his injury caused internal physical harm to the body requiring medical services; and that the existence and extent of his injury is established by medical evidence supported by objective findings.
4. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine.

5. The claimant has proven by a preponderance of the evidence that the medical treatment he has received to date in connection with his compensable injury has been reasonably necessary.
6. The claimant has proven by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from August 11, 2005, through October 31, 2005.
7. The claimant has therefore proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 11, 2005, through October 31, 2005.
8. The respondents have failed to prove by a preponderance of the evidence that sufficient notice was not given.

DISCUSSION

I. History

The claimant has worked for the respondent-employer for more than twenty-one years. In March 2005, he was employed by the respondent-employer as a mechanic help. He testified that he sustained an injury in mid-March 2005 while attempting to tighten a lug nut on a truck tire. He testified that while he was tightening the nut with a breakover bar, he felt a “shocking pain” that “went all

through my body," specifically "down my spine, my legs and arms." He testified that he sat down for a minute until the pain resolved and then resumed working. At the time of the alleged accident he was working with Bruce Cox; Cox testified and largely corroborated the claimant's testimony, although Cox testified they were loosening the lug nuts at the time, rather than tightening them.

Cox and the claimant changed the truck tires and then returned to the shop. At that time, the claimant testified, he reported the injury to his foreman, Larry Ragsdale. Ragsdale testified he did not remember the claimant reporting an injury, but Cox testified that he overheard the claimant do so. Two other co-workers, Bobby Powell and Eddie Lewis, were present at the hearing and prepared to testify; rather than call them, the parties simply stipulated that Powell and Lewis would have testified that they too overheard the claimant report an injury to Ragsdale that day.

The claimant testified that two to three weeks later, he began to limp and experience problems in his hip and legs. He testified that his left leg was "dragging." Shortly thereafter, he testified, he developed leg numbness. He finally sought medical treatment on April 17 at the Baptist Hospital emergency room. The treatment records quote the claimant as saying "when he got in the shower this morning he noticed that the right leg had decreased sensation. He states the water just felt warmer on the left leg. He states that he has no known injury." He was

referred to Dr. Solomon Mogbo, whom he saw on April 19. Dr. Mogbo ordered a venous doppler scan of the right leg, and then a lumbar MRI scan, but neither test revealed any abnormality. Dr. Mogbo then referred the claimant to Dr. Lon Burba.

Dr. Burba first saw the claimant June 14. He recorded the history as follows:

This is a 41-year-old male who has a dull numbness in the right leg up to his hips and across the low back. If he walks on his right leg a lot, he has burning. He also has low-back pain which started off and on, but now is constant. The patient does have trouble with walking. His left leg is weak. He drags his left leg.

Dr. Burba gave his impression as “spastic quadparesis” and ordered a brain MRI. It too revealed nothing abnormal.

On July 1, the claimant went to the emergency room complaining of arm shaking. When asked if he had injured himself, he told the emergency room staff that he had fallen on his right side while washing his truck “a couple of months ago.” In his testimony the claimant acknowledged falling, but he testified that the fall happened in June.

At some point thereafter Dr. Burba ordered a cervical MRI, performed July 18, which revealed severe degenerative disc disease at C3-4 and C4-5, along with a small disc extrusion at C5-6. Dr. Burba referred the claimant to a neurosurgeon, Dr. Scott Schlesinger.

Dr. Schlesinger first saw the claimant on August 3. The claimant filled out a

patient questionnaire that day which denied that his injury was work related. Dr. Schlesinger recorded his history as follows:

Mr. Piggee is a 41-year-old male who presents with a chief complaint of weakness and numbness in his right lower extremity. On further questioning, he has had difficulty with walking with both legs giving him a problem. He also notes some clumsiness of his left hand. He does admit to Valsalva and coughing and sneezing related electric shock sensations. He says all this has gone on for about four months. He is getting progressively worse. The symptoms are a 6 on a scale of 1 to 10.

Dr. Schlesinger diagnosed cervical spondylotic myelopathy, tracing the symptoms to the stenosis at C3-4 and C4-5. He recommended surgery, an anterior cervical decompression and fusion at C3-4 and C4-5. After reviewing a second cervical MRI scan, Dr. Schlesinger also recommended "a near complete or complete corpectomy at C4." He performed surgery on August 11. The claimant stopped work as of the day of his surgery, and he testified he remained off of work until his release on October 31.

As of September 12, Dr. Schlesinger reported the claimant was doing "very well from his surgery." Dr. Schlesinger also offered an opinion as to causation:

Of historical note, Mr. Piggee says that now that he understood the symptoms, that the symptoms began after an injury at work in mid March of 2005. The problems with his legs and hands and the shocking pain up and down his spine really began suddenly with an

injury at work.

Certainly the radiologic findings were a combination of longstanding OPLL and disc herniation and the work injury could have brought about the onset of his symptoms. The historical information is based upon the patient's history at this time. He really was not aware of what the symptoms were of his spinal stenosis until he visited with me and brings this to my attention at this time.

Based upon the patient's new information of when the symptoms really started, upon his understanding of the symptoms themselves, I would state with a reasonable degree of medical certainty that the work injury he reports in mid March 2005 did cause the need for surgical intervention.

Prior to the hearing the parties deposed Dr. Schlesinger. The doctor was not surprised that the claimant's neck pain promptly resolved after the accident, nor that his later symptoms were limited to his hips and legs:

Cervical myelopathy or cervical, and in laymen's terms for this answer, damage to the cervical spinal cord can manifest itself in lower extremity problems as the predominant manifestation without any neck pain at all.

And so if his going to the emergency room because his leg was numb and difficulty walking or getting around with it may have been construed to be a lower back problem when, in fact, it was really a problem from the neck, it's often missed by untrained neurological doctor – I mean doctors not trained in neurological expertise.

So the answer to your question is even Mr. Piggee, I don't think, understood that his lower extremity dysfunction had anything to do with his neck.

Okay? And it was really after I explained to him that his problem with his leg was coming from his neck that I think he tried to put together the pieces, well, this really all started with this injury.

So to answer your question is – the best I can, if the chief complaint after the injury at work in March of '05 was his leg was numb and weak and dysfunctioning, then – and it wasn't that way before the March accident, then it would certainly seem to me that it is related to the injury at work.

If his chief complaint or the problems weren't related to leg numbness and weakness and it was more just his low back hurt him, then – and he didn't have any numbness or dysfunction of the leg, then I would say, well, then that would be harder to link to the injury in March.

Dr. Schlesinger later testified:

The symptoms and findings of cervical cord dysfunction can be easily confused. I don't know – it's hard to answer that question because I don't know what was in his mind. ... But the bottom line is that, you know, he may not have known he had an injury to his cervical spine when his symptoms were in his leg.

II. Adjudication

A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that

the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The central question herein is one of causation. It is plain from the record that the claimant sustained some sort of injury on March 17, 2005. The disappearance of any neck symptoms does raise some doubt as to causation, but the deposition testimony of Dr. Schlesinger makes it crystal clear that the claimant's testimony and history is entirely consistent with an injury to the cervical spine. The claimant did admit to falling on his right side in a separate incident, but by every account in the record this fall happened after May 1, while the claimant began exhibiting leg symptoms in April. I find it more likely than not that the claimant injured his cervical spine in an incident on March 17, 2005, as he described, and that the March 17 incident is at least an aggravating cause of his disability and need for treatment.

Therefore, given the medical records and the testimony of the witnesses herein, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury to his cervical spine arising out of and in the course of his employment; that his injury was caused by a specific incident and identifiable by time and place of occurrence; that his injury caused internal physical harm to the body requiring medical services; and that the existence and extent of his injury is established by medical evidence supported by objective findings. The claimant has proven every element of a compensable injury; I therefore find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine.

B. Benefits

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).

There is no medical evidence in the record contradicting or questioning the treatment recommendations made by the claimant's physicians. I therefore find that

the claimant has proven by a preponderance of the evidence that the medical treatment he has received to date in connection with his compensable injury has been reasonably necessary.

An employee who suffers a compensable uncheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Dr. Schlesinger testified that the claimant remained in his healing period and totally incapacitated from earning wages from the date of his surgery, August 11, 2005, through October 31, 2005. I find that the claimant has proven by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from August 11, 2005, through October 31, 2005. I therefore conclude that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 11, 2005, through October 31, 2005.

C. Notice

At the hearing, the parties agreed to add the issue of notice. Employees are required to promptly notify their employers of any injury, and employers are ordinarily not responsible for payment of indemnity or medical benefits accrued prior to the employee's report of injury. Ark. Code Ann. § 11-9-701 (a)(1). It is statutorily presumed that sufficient notice was given. Ark. Code Ann. § 11-9-707 (2). It is thus the respondents' burden to overcome the prima facie presumption by a preponderance of the evidence. *Cf. Country Pride v. Holly*, 3 Ark. App. 216, 624 S.W.2d 443 (1981) (application of different prima facie presumption in workers' compensation context).

Failure to notify the employer can be excused if the employer had knowledge of the injury, if the employee had no knowledge the injury arose out of and in the course of his employment, or if the employee had some other satisfactory reason for not giving notice. Ark. Code Ann. § 11-9-701 (b)(1). If an employee's failure to give notice is properly excused, the employer is liable for all benefits owed, regardless of whether they were accrued before or after the notice is given. *Weyerhaeuser Company v. Johnson*, 48 Ark. App. 100, 891 S.W.2d 64 (1995).

The testimony of the claimant and three other witnesses establishes that the claimant reported his injury to his supervisor the day it happened. The supervisor

denied remembering any such notice, but he acknowledged he might have forgotten about it. Given this testimony, I find that the respondents have failed to prove by a preponderance of the evidence that sufficient notice was not given.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on March 17, 2005; that he is entitled to reasonably necessary medical treatment; and that he is entitled to temporary total disability benefits from August 11, 2005, through October 31, 2005. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Andy Caldwell, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge