

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409098

LESLIE ROLLINS,  
EMPLOYEE

CLAIMANT

JEFFREY TRUCKING,  
EMPLOYER

RESPONDENT

COREGIS,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED JANUARY 23, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Searcy, White County, Arkansas.

The claimant was represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on October 25, 2005 in Searcy, Arkansas. A prehearing order was entered in this case on September 9, 2005. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the prehearing order or during the hearing and are hereby accepted:

1. The employer-employee-carrier relationship existed on June 20, 2004 and at all pertinent times hereto.
2. Initial medical benefits were paid, and the claim has now been controverted in its entirety.
3. The claimant's average weekly wage on June 20, 2004 was \$600.00 per week.
4. The seven month period without seeking medical attention referred to by Dr. Scott Schlesinger in his May 25, 2005 letter, is a seven month period beginning in June or July of 2004. (T. 39).

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following during the course of the hearing:

1. Compensability (C5-6 neck problems).
2. Temporary total disability.
3. Medical and related expenses.
4. Controverted attorney's fees.

The record consists of the October 25, 2005 hearing transcript and the exhibits contained therein. In addition, I have blue-backed to designate as part of the record medical reports from Dr. Scott Schlesinger dated October 17, 2005, October 25, 2005, September 21, 2005, and October 10,

2005 and the post-hearing letter brief filed by the respondents on January 6, 2006. In addition, the record includes the post-hearing deposition transcript for the deposition of Liz Cooper on December 19, 2005.

### **DISCUSSION**

#### **1. Evidentiary Objections**

On page 75 of the hearing transcript, Mr. Frye asked Mr. Rollins whether or not Mr. Rollins is planning on taking any legal action against Dr. Chan because of Dr. Chan's surgery. Mr. Rollins responded "possibly". Mr. Davis objected to the relevance of this question and answer. I find that this question and answer bear sufficient relevance to the issue of reasonable necessity of the surgery performed by Dr. Chan so that this question and answer shall be accepted into the hearing record.

#### **2. Compensability (C5-6 neck problems)**

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or

death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant seeks an award of benefits for neck problems for which he underwent surgery in February of 2005. The claimant contends that he sustained a compensable neck injury in a motor vehicle accident on June 20, 2004 when the eighteen-wheeler that he was operating struck a car. However, my review of the evidence discussed below indicates that there are no objective findings of any type of cervical or neck injury in the medical record prior to an MRI performed on January 17, 2005, over six months after the motor vehicle accident at issue. In addition, my review of the evidence indicates that Mr. Rollins' diagnosis after the accident was low back injury, not a neck injury, and the first diagnosis in the medical reports of a neck injury did not occur until December of 2004, some six months after the accident. I find that the claimant has failed to establish by a preponderance of the evidence that his neck

problems diagnosed in December of 2004 are causally related to the June 20, 2004 motor vehicle accident.

In reaching this conclusion, I am aware of the history which Dr. Chan recorded from the claimant on December 8, 2004 which states that Mr. Rollins was experiencing neck pain radiating to his left arm since approximately one to two weeks after the accident on June 20, 2004. In addition, the claimant testified that he complained of both low back and neck pain when he presented to the emergency room in Henrietta, Oklahoma on June 20, 2004, and that he voiced the same complaints when he was seen at the White County Hospital six days later. At one point, the claimant testified that he was experiencing shooting pain from his neck down to his leg on the left side starting on June 20, 2004. (T. 60). At another point in his testimony, however, the claimant testified that he did not recall telling Dr. Chan that he experienced radiating pain into his left extremity beginning two weeks after the motor vehicle accident. (T. 70). The claimant testified that over the course of time between September and December of 2004, he was hurting, but he had to have a job. The claimant testified that in January his symptoms got to the point that he just couldn't handle it anymore. (T. 46).

Matthew Haut testified that he was a team driver assigned to a truck with Mr. Rollins between September of 2004 until January of 2005, and that their employer was George Henderson. (T. 85-86). Mr. Haut testified that he had only worked for the respondent in this case, Jeffery Trucking, on a couple of temporary runs in December of 2002 and April of 2003. (T. 86). Under these circumstances, I find that Mr. Haut is a credible witness who has no financial interest in the outcome of this claim.

Mr. Haut testified that Mr. Haut and Mr. Rollins on a couple of occasions would break down lunch meat (i.e. re-stack 12 pound boxes of lunch meat) in addition to driving the truck, and that Mr. Rollins did not appear to have any health problems except that Mr. Rollins would sometimes complain that his neck bothered him when he came out of the sleeper. (T. 86-87). Mr. Haut testified that Mr. Haut's neck would also bother him on occasion when he would get out of the truck's sleeper. (T. 87). Mr. Haut testified that Mr. Rollins never complained to Mr. Haut about arm pain or leg pain. However, Mr. Haut testified that there was a change in Mr. Rollins' physical condition right after he saw a physician in December of 2004. Mr. Haut testified that Mr. Rollins at that time developed a twitch to the left.

(T. 89). Mr. Haut's testimony does not support Mr. Rollins' contention that he experienced neck pain, and other neck-related symptoms before December of 2004.

Mr. Rollins testified in part on rebuttal that Mr. Rollins began to experience a twitch or jerking sensation to the right, not the left, and that the jerking sensation began in August, not in December. (T. 97).

For my part, I note that there is no history of any twitching or jerking documented in the medical record prior to February 25, 2005 (after the surgery at issue), when Mr. Rollins presented to the emergency room with a new symptom of twitching of his neck after neck surgery. (C. 1 p. 11). There is no history contained in any of the contemporaneous medical reports prior to December of 2004 to corroborate Mr. Rollins' testimony on page 60 that he experienced shooting pain from his neck down to his leg on the left side which started on June 20, 2004, or to corroborate his testimony that he told the doctors in the emergency room that he was having arm and leg pain. There is likewise no diagnosis of a neck injury in any of the contemporaneous medical reports prior to December of 2004.

In this regard, the emergency room reports from Henrietta, Oklahoma from June 20, 2004 indicate that the

motor vehicle accident occurred at approximately 2:00 a.m., and that Mr. Rollins presented approximately seven hours later as a walk-in patient at approximately 9:05 a.m. While one portion of the records do make reference to the neck, the back, and the chest, and although Mr. Rollins did undergo x-rays of the neck and the low back, I note that Mr. Rollins was ultimately diagnosed only with a lumbosacral strain, provided Motrin, and released less than two hours later at approximately 10:50 a.m. In one section of the Henrietta medical reports, the neck was circled as "normal". In the section of the report referring to musculo-skeletal pain, the chest wall and back were circled, but not the neck. (C. 2 p. 1-4).

Likewise, the emergency room report from White County Hospital dated June 26, 2004 makes some confusing reference to Mr. Rollins either currently or previously complaining of neck pain, low back pain and chest wall pain. However, in the "review of symptoms" section of the report, the doctor specifically reported "no neck pain". Under the physical examination of the report, the doctor reported Mr. Rollins' neck as "supple". (C. 2 p. 9).

Dr. Webster's June 30, 2004 examination and report likewise indicated that Mr. Rollins' neck was "supple", and

specifically referenced mild muscle spasm and pain with palpation of the lower back. I note that Dr. Webster's notation of a supple neck on June 30, 2004 is consistent with the report of the White County emergency room on June 26, 2004, and Dr. Webster's ultimate diagnosis of a lumbar sprain is consistent with the diagnosis contained in the reports of the Henrietta emergency room. I note that Dr. Webster indicated that Mr. Rollins was to return on an as needed basis, or in two weeks. The medical record indicates that Mr. Rollins never returned to Dr. Webster for prescribed follow-up care.

Although Mr. Rollins did not return to Dr. Webster, I note that Mr. Rollins did present to the White River Rural Health Center on July 7, 2004, August 4, 2004, August 25, 2004, September 24, 2004, October 5, 2004, October 18, 2004, October 29, 2004, and December 2, 2004. In addition, Mr. Rollins consulted Attorney Gary Davis in September of 2004 and filed a request for a change of physician from Dr. Webster on September 9, 2004. Notably, none of the reports from the White River Rural Health Center make any reference to Mr. Rollins' neck, a twitch, or any pain shooting from his neck down his arm. In fact, the December 2, 2004 report from White River Rural Health indicates no complaints, and

states that Mr. Rollins just needed his medications refilled. (R1 64)

Mr. Rollins testified that he sought a change of physician away from Dr. Webster in September because (1) Dr. Webster was not thorough, and when Mr. Rollins told Dr. Webster about his neck pain, Dr. Webster would not perform any x-rays, treatment, or anything, and because (2) Dr. Webster was located in Batesville, and Mr. Rollins preferred a physician closer to home. (T. 80). Mr. Rollins testified that the doctor's report at White County was wrong when it said no weakness or numbness and Mr. Rollins testified that he actually told Dr. Killough his complaint on July 7, 2004, but Dr. Killough did not write them down. Mr. Rollins testified that he did not ask Dr. Killough to treat him for his neck in October of 2004 because Dr. Killough would have taken Mr. Rollins off of work status, and Mr. Rollins needed to work. (T. 61-69).

Contrary to Mr. Rollins' critique of Dr. Webster's treatment, Dr. Webster indicated in a May 19, 2005 letter to the respondents' attorney that at the time of Mr. Rollins' examination on June 30, 2004, Mr. Rollins' chief and only complaint was low back pain, that Mr. Rollins' neck was supple and non-tender, and that if Mr. Rollins had had any

complaints or physical findings consistent with a disc herniation, Dr. Webster would not have released Mr. Rollins to return to regular duty work at that time. (R. 103).

In considering Mr. Rollins' testimony that he sought a change of physician away from Dr. Webster because Dr. Webster did not provide him appropriate treatment for his neck, and that he thereafter did not report any neck problems to Dr. Killough in October of 2004 because Dr. Killough would have take Mr. Rollins off work, I note with interest that Mr. Davis' September 9, 2004 letter to the Clerk of the Arkansas Workers' Compensation Commission makes reference to Mr. Davis' representation of Mr. Rollins in connection with injuries sustained to the back, and makes no reference to any alleged injury to the neck. (Comm. Ex. 2) Likewise, to the extent that Mr. Rollins now suggests that he hid neck problems from Dr. Killough in October of 2004, I note that in September of 2004 Mr. Rollins was actually seeking a change of physician for his work related injury to Dr. Larry Killough, from whom he now asserts he intentionally hid the nature and extent of his alleged work related neck symptoms shortly thereafter in October of 2004 while his change of physician request was being processed.

In summary, the medical reports discussed herein from the emergency room in Henrietta, from the White County Medical Center, from Dr. Russell Webster, and from the White River Rural Health Center, none of which diagnosed any neck injury between June 20, 2004 and December 2, 2004, and Mr. Haut's testimony also discussed herein, all persuade me as a preponderance of the evidence that Mr. Rollins did not sustain a cervical disc injury on June 20, 2004. Therefore, I find that the cervical disc problems identified at the C5-6 level of Mr. Rollins' cervical spine by MRI in January of 2005, and by surgical observation in February of 2005, at issue in this claim are not causally related to the motor vehicle accident that occurred on June 20, 2004.

Since Mr. Rollins currently seeks benefits only related to an alleged work related neck injury, and since I find that the claimant has failed to establish that he sustained a compensable neck injury, I find that the remaining issues regarding appropriate benefits associated with Mr. Rollins' neck problems are moot.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer-employee-carrier relationship existed June 20, 2004 and at all pertinent times hereto.

2. Initial medical benefits were paid, and the claim has now been controverted in its entirety.

3. The claimant's average weekly wage on June 20, 2004 was \$600.00 per week.

4. The claimant has failed to establish by a preponderance of the credible evidence that he sustained a neck injury on June 20, 2004.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

---

MARK CHURCHWELL  
Administrative Law Judge