

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506141

RICHARD W. ROWLAND

CLAIMANT

**JIM JAMISON, INC.
(UNINSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED AUGUST 3, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE PAUL E. HERROD, Attorney at Law, North Little Rock, Arkansas.

Respondent unrepresented and did not appear.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on June 21, 2006. A prehearing order was filed on May 30, 2006 and a copy was introduced into evidence as Commission Exhibit No. 1 without objection.

The respondent, Jim Jamison, Inc., was uninsured and did not respond to the Prehearing Questionnaire. Respondent was placed on notice February 27, 2006, that additional time was allowed until March 10, 2006, for a filing, otherwise, it would be precluded from offering evidence to establish a defense to the claim. Respondent did not make a filing. On April 3, 2006, an Order was filed precluding respondent from offering any defenses at the hearing.

Respondent did not appear at the hearing and the regular mail notice of the hearing was returned, marked "Deceased." The certified mail notice was also returned. The claimant verified that the owner of the business, Jim Jamison, is now deceased

and his children began running the business after his death; however, the business is no longer in operation.

The claimant contends he sustained a compensable injury on March 18, 2005, and is entitled to medical benefits, temporary total disability benefits from March 18, 2005, to a date to be determined and attorney's fees.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There were no stipulations.
2. The claimant has proven by a preponderance of the evidence that he sustained a compensable back injury and hernia on March 18, 2005.

3. The claimant has failed to prove by a preponderance of the evidence that his depression and anxiety attacks are compensable or are compensable consequences of the compensable injuries.

4. Respondent is liable for reasonable and necessary medical benefits for the back and hernia through September 8, 2005.

5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was unable to earn wages from April 15, 2005 through September 8, 2005.

6. The claimant's temporary total disability rate is based on an average weekly wage of \$375.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 55 years old, worked for the respondent in pest control for a year and a half. According to the claimant, he was lifting a motor and reels from a truck when he felt a pop in his back and pulled a hernia in his navel. The claimant testified that he reported his injury to his supervisor, Tommy Newton. The claimant testified that his supervisor, Tommy Newton, told him to go to the hospital for his back. The claimant also introduced statements from the office secretary and others stating he had reported the incident.

The claimant testified that in addition to his back and hernia problems that were injured on his job, he also has been diagnosed with bladder cancer and he takes heart medication and these two conditions are unrelated to his work injury. The claimant also described panic attacks and depression which he feels are related to his work injury.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has proven by a preponderance of the evidence that he sustained a compensable back injury on March 18, 2005. The claimant presented a credible account of lifting heavy machinery from his truck and he felt a pop in his back and had pain and the pain persisted. The claimant testified about going to the doctor on Wyldewood where he was given some steroid shots in his back. There was no supporting medical report for that visit. The claimant then started going to UAMS and began treatment there with his first emergency room visit on May 31,

2005. Again, there was no supporting medical report provided in evidence, although that visit is mentioned in Dr. Patrick Kortebein's July 1, 2005, report. The date of the first medical report in evidence is July 1, 2005 and this report documented the claimant's history of lifting the heavy equipment, which precipitated his symptoms of low back pain and an umbilical hernia. Dr. Kortebein's records indicate the claimant was prescribed Flexeril and Naprosyn and was given Percocet and a steroid injection on May 31, 2005. On July 1, 2005, Dr. Kortebein diagnosed the claimant with a strain or sprain and referred the claimant for 3-4 weeks of physical therapy, ordered a lumbar x-ray and advised the claimant to take over-the-counter Aleve. I find there was substantial evidence presented that the claimant's injury was established by medical evidence supported by "objective findings," as required by Ark. Code Ann. §11-9-102(4)(D). He was prescribed Flexeril and Naprosyn to help deal with the pain and problems associated with his back condition. See, *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000) and *Fred's, Inc. v. Jefferson*, ____ Ark. ____, ____ S.W.3d ____ (3/31/05).

Respondent is responsible for the reasonable and necessary medical treatment the claimant has pursued for his back injury at least through September 8, 2005. The September 8, 2005, visit was the last documented treatment specifically for the claimant's back problems. See, Ark. Code Ann. §11-9-508.

The claimant also contends that he sustained a compensable hernia on March 18, 2005, when he was lifting the heavy machinery. In order to meet his burden of proof, the claimant must satisfy the elements as set out in Ark. Code Ann. §11-9-523:

- (1) That the occurrence of the hernia immediately followed as the result of sudden effort, severe strain, or the application of force directly to the abdominal wall;
- (2) That there was severe pain in the hemial region;
- (3) That the pain caused the employee to cease work immediately;
- (4) That notice of the occurrence was given to the employer within forty-eight (48) hours thereafter; and
- (5) That the physical distress following the occurrence of the hernia was such as to require the attendance of a licensed physician within seventy-two (72) hours after the occurrence.

In the present case, the claimant substantially met the requirements of Ark. Code Ann. §11-9-523. The claimant described the lifting incident that was a severe strain to his abdominal wall with severe pain, causing him to cease work, and he reported this injury to his supervisor and it required medical attention within 72 hours. While the medical records do not document the claimant was treated by a doctor within the 72 hours, the claimant presented credible testimony that he needed to see a doctor immediately. See, *Cagle Fabricating & Steel, Inc. v. Patterson*, 309 Ark. 365, 80 S.W.2d 857 (1992). The July 1, 2005, medical report from Dr. Kortebein also mentions the umbilical hernia that was diagnosed on May 31, 2005 and advised that further follow-up care and management were needed for that. On July 18, 2005, an umbilical hernia repair was performed at UAMS.

The claimant has failed to prove by a preponderance of the evidence that his depression and panic attacks are a compensable consequence to his compensable injuries. The issue of whether treatment is reasonable and necessary is a question of fact for the Commission. *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333

(2001). However, when the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury, and the basic test is whether there is a causal connection between the injury and the consequences of such. *Id.*

A non work-related independent intervening cause does not require negligence or recklessness, but if the claimant is engaged in unreasonable conduct, the result may be an independent intervening cause. *Davis v. Old Dominion Freight Line, Inc.*, 341 Ark. 751, 20 S.W.3d 326 (2000); See, Ark. Code Ann. §11-9-102(4)(F)(iii) (Supp. 1999).

The medical evidence that was introduced simply does not present a causal connection for the depression and panic attacks to the compensable back injury and hernia. Certainly there is mention in the medical that the claimant states he is depressed and has panic attacks; however, the claimant also testified to having bladder cancer and heart problems. I was not persuaded that there was a causal connection between the compensable injuries and the depression and panic attacks. The medical evidence noted that panic attacks run in the claimant's family.

The claimant's temporary total disability rate is based on an average weekly wage of \$375. The claimant testified his two weeks gross wages were \$750.

The claimant contends he is entitled to temporary total disability benefits from March 18, 2005, to a date to be determined. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in her healing period, she is entitled to temporary total disability. *Id.* The healing period is defined as that

period for healing of an injury resulting from an accident. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Crabtree, supra*. The question of when the healing period has ended is a factual determination for the Commission.

In the present case, the claimant has proven by a preponderance of the evidence that he remained in his healing period from April 15, 2005 (when he last worked) until September 8, 2005 (last medical report for back and hernia). The claimant presented information that he continued to work for a time after his injury but finally was unable to continue and he was seeking medical treatment which included the physical therapy, medication and finally the hernia surgery. The August 19, 2005, medical report from UAMS indicates the hernia is healing properly. The claimant followed up again on September 8, 2005, with a number of ailments, to include the back pain and the hernia follow-up. It appears from the medical evidence that the only medication he was taking for either the back or hernia was the Ibuprofen 600 mg. The medical reports in evidence after September 8, 2005, appeared to be treatment for the claimant's anxiety condition. While the claimant may have problems preventing him from working, the medical evidence only provided support for the claimant remaining off work through September 8, 2005 for the back and hernia conditions. Therefore, I find the claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to work from April 15, 2005 through September 8, 2005.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable back injury and hernia on March 18, 2005. The claimant has failed to prove by a preponderance of the evidence that his depression and anxiety attacks are compensable or are compensable consequences of the compensable injuries.

Respondent is liable for reasonable and necessary medical benefits for the back and hernia through September 8, 2005. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was unable to earn wages from April 15, 2005 through September 8, 2005. The claimant's temporary total disability rate is based on an average weekly wage of \$375.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

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.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**