

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412598

MATTHEW SHREVE	CLAIMANT
ARVEST BANK GROUP	RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 23, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 27, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 14, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 15, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his mid back on August 15, 2004.

4. The claimant is entitled to a weekly compensation rate of \$447.00 for temporary total disability and \$335.00 for permanent partial disability.

5. Medical expenses have been paid to October 25, 2005.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional temporary total disability from January 2, 2006, to February 1, 2006.

2. Additional medical specifically the injections which have been recommended by Dr. Cannon.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that the employee/employer relationship existed on or about August 15, 2004. On that date, claimant sustained a compensable injury to his mid back. That claimant was treated by Max Beasley, ANP in Lowell, Arkansas. That he has also been treated with the approval of the workers' comp carrier by Dr. Davis, Dr. Danks and Dr. Cannon. That Dr. Cannon took the claimant off work to help improve his condition for a period of three months and, therefore, the claimant is entitled to temporary total disability benefits.

In regard to the foregoing issues the respondents contend that all appropriate benefits have been and are being paid associated with the claimant's compensable lower back injury. Respondents contend that while Dr. Cannon might have taken the claimant off work, Dr. Cannon is treating the claimant for multiple conditions. Respondents contend that the claimant is not in a healing period

due to his compensable injury. As such, they are denying that claimant is entitled to temporary total disability benefits.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1, non medical documentation marked Respondents' Exhibit No. 2 and the deposition of Dr. David Cannon marked Respondents' Exhibit No. 3. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he was thirty-five years old, went as far as the eleventh grade and has received his GED. The claimant testified that he also has vocational training in computer information systems for which he received a diploma. The claimant testified that this certificate allows him to repair personal computers.

The claimant agreed that on August 15, 2004, while working for the respondent, he injured his mid back which was accepted by the respondents and he was sent for medical treatment. The claimant agreed that he was sent to the Lowell Medical Clinic by the respondents. The claimant testified that he went through physical therapy and then was referred to a neurologist, Dr. David Davis, who then referred him to Dr. Kelly Danks. The claimant testified that he underwent an MRI. Dr. Danks, after examination and review of the claimant's MRI, recommended that he undergo steroid

injections. The claimant testified that Dr. Danks referred him to Dr. Cannon for pain management. The claimant testified that the respondents finally authorized him to undergo one of the recommended injections. The claimant testified that it was his understanding that he was to receive a minimum of three injections. The claimant testified that the first injection gave him some bit of relief in that his back and stomach muscles quit spasming as much. The claimant testified that when he made an appointment with Dr. Cannon for his second injection, the respondents refused to authorize this additional treatment. The claimant testified that when he saw Dr. Cannon in October, Dr. Cannon increased his pain medication because his pain has become more severe. The claimant testified that he has been seeing Dr. Cannon for additional medical problems not related to his compensable injury. The claimant testified that his stronger medication is for his compensable mid back injury but that this medication also helps out with his neck problems. The claimant testified that he has been paying for this medication. The claimant testified that when he saw Dr. Cannon in October 2005 the symptoms were so severe and he was in such pain, the doctor recommended that he take off for three months.

The claimant testified that the respondents initially paid him temporary total disability up through January 2, 2006. The claimant testified that he would like to go forward with his series of injections by Dr. Cannon.

The claimant testified that he currently is working for AFLAC and has been in this position for approximately three months. The

claimant agreed that Dr. Cannon released him to return to work in February 2006. The claimant testified that Dr. Cannon has referred him to Dr. Al Gordon.

On cross examination, the claimant testified that he had a work related right knee injury in the late eighties for which he has undergone at least two surgeries. The claimant testified that in 1994 he injured his neck and shoulder while unloading a tractor trailer. The claimant testified that he has had surgeries on his neck and shoulder as a result of this injury. The claimant testified that he has been seeing Dr. Cannon since September 1995 for pain management of his neck and shoulder. The claimant agreed that he was involved in a motor vehicle accident which involved an injury to his lower back sometime in 2003. The claimant testified that the respondent terminated him in January 2005 for misuse of the internet. The claimant agreed that after he was terminated, he filed for unemployment in February 2005. The claimant testified that he agreed that he was seen by Dr. Cannon on January 24, 2006, but does not remember the doctor talking to him about work restrictions. The claimant agreed that he has been working full time for the past three months, although there have been times when he was unable to go to work because of his physical problems.

Dr. Cannon, in his deposition, testified that he has been treating the claimant since September 1995 for a left arm and shoulder injury. Dr. Cannon testified that he has administered injections and managed the claimant's medication for his shoulder and neck problems as initially recommended by Dr. Blankenship. The

doctor testified that he has done some injections such as trigger point injections into the claimant's neck area and some spinal injections but mainly his treatment has been medication management. Dr. Cannon testified that on November 9, 1999, the claimant fell from a ladder injuring his mid and lower back for which he received treatment but agreed that this treatment was really no different than what the claimant had previously been receiving. Dr. Cannon testified that he has continued to treat the claimant for his chronic pain syndrome due to the claimant's failure to respond to surgery or other therapy. Dr. Cannon agreed that the first time he saw the claimant after his mid back injury while working for the respondent was on August 17, 2004. Dr. Cannon agreed that there is nothing on his initial notes that indicates any complaints about the claimant's back or mid back. Dr. Cannon testified that it was not until December 14, 2004, that it is noted that he treated the claimant for his neck and back. Dr. Cannon testified that on December 14 he increased the claimant's Hydrocodone to a double strength dose as well as prescribed Skelaxin. The doctor remembers that he also injected the claimant's butt muscle with anti-inflammatory steroid. Dr. Cannon explained that the butt muscle is used because it has few nerve endings and will distribute the medication throughout a patient's body. Dr. Cannon stated that by June 2005 he increased the claimant's pain medication to a stronger opioid. Dr. Cannon testified that when he increased the claimant's medication the claimant was complaining of more pain in his neck with spasms and pain in his shoulder. Dr. Cannon testified that he

took the claimant off work on October 25 due to his neck, shoulder and back problems. Dr. Cannon testified that they had scheduled a second or third epidural steroid injection subsequent to October 25 but that the respondents would not authorize this treatment. Dr. Cannon testified that the claimant was taking his prescribed medications during this period of time. Dr. Cannon testified that he has not authored a release from work note for the claimant subsequent to February 1, 2006. Dr. Cannon agreed that between October 2005 and February 1, 2006, he saw no reason why the claimant could not do manager type duties. Dr. Cannon was asked if he thought the claimant could do a job where the most he would have to lift would be twenty-five pounds and Dr. Cannon responded, "That sounds plausible."

The medical records set forth that the claimant was seen on August 18, 2004, by Max Beasley, AMP, for complaints of mid and low back pain. The claimant was diagnosed with mid back strain, prescribed medications and given a work restriction of no lifting more than ten pounds as well as to avoid bending, twisting and to be allowed to change positions as needed. The claimant underwent an MRI of his mid back on August 30, 2004, which revealed a small right para central disc herniation at the T8-9 level, Schmorl's nod at the superior inplate of T12 and disc dissociation at all thoracic levels. Nurse Beasley writes on September 8, 2004, that the claimant reports that he is no better and in fact is worse in so far as he is having constant thoracic pain. Nurse Beasley notes the claimant's MRI reveals a herniation at T8-R9 which touches the

thoracic cord but does not produce a mass effect in the thoracic cord. The claimant's other findings were noted as well as the claimant's visit to Dr. Gordon when he received an injection of Dexamethasone on August 30, 2004. Upon examination, Nurse Beasley notes that the claimant has no spasm or tightness and recommended physical therapy, medications and to follow his present restrictions. Nurse Beasley referred the claimant to Dr. David Davis, a neurologist, on September 22, 2004, as a result of his failure to improve after a series of physical therapy sessions. Dr. David Davis writes on September 28, 2004, that he has seen the claimant for his complaints of low back pain. Dr. Davis notes that the claimant's MRI does show a disc herniation at T8-9 which may slightly impinge on the right ventral thoracic spinal cord. Dr. Davis recommended gravity traction and prescribed medications. Dr. Kelly Danks saw the claimant on referral from Dr. Davis on October 26, 2004. Dr. Danks notes that the claimant has a history of chronic neck pain following an anterior cervical fusion. Dr. Danks notes that the claimant injured his mid thoracic area on August 15, 2004. After examination, Dr. Danks diagnoses the claimant with having thoracic pain secondary to disc disease. Dr. Danks recommended epidural steroid injections and notes that no surgery is indicated. The medical records set forth that the claimant continued to receive attention and treatment for his mid back problems throughout 2004. On June 21, 2005, Dr. Danks, in response to the claimant's attorney's letter dated May 16, 2005, indicates that the claimant has been referred to Dr. Cannon for epidural

steroid injections as a result of his work related injury of August 15, 2004. Dr. Cannon administered an epidural steroid injection to the claimant on September 1, 2005. On September 26, 2005, Dr. Cannon recommended that the claimant should restrict his lifting to twenty pounds or less, no crawling, walking long distances or overhead lifting. Dr. Cannon recommended no repetitive bending, twisting or lifting or where it would require him to climb a ladder or work at heights above four to five feet. Dr. Cannon then lists the claimant's various diagnosis as: post laminectomy syndrome-cervical, cervicalgia, bilateral shoulder pain, herniated nucleus pulposus at T8-T9, intervertebral disc disorder-thoracic and thoracic radiculopathy. Dr. Cannon writes that these instructions and findings are based upon a reasonable degree of medical certainty. On October 25, 2005, Dr. Cannon writes that the claimant should be off work until February 1, 2006. In response to the claimant's attorney's letter dated January 23, 2006, Dr. Cannon indicated that the claimant was taken off work as a result of his work related injury of August 15, 2004, in order to help with his pain management. Dr. Cannon writes on January 24, 2006, that he has seen the claimant that day for his mid thoracic spine pain secondary to his herniated nucleus pulposus neck pain with previous neck surgery and thoracic back pain. Dr. Cannon notes that he had taken the claimant off work for three months to allow him time to heal and hopefully help with his pain management. Dr. Cannon again notes that he wrote this release from work on October 25, 2005, for the claimant to remain off work until February 1, 2006. Dr. Cannon

notes that the claimant has undergone two epidural injections, one on July 7, 2005, and then on September 1, 2005, and that these injections decreased his back pain. Dr. Cannon writes that he has scheduled the claimant for an injection later this week but the respondents refused to authorize this treatment. Dr. Cannon recommended that the claimant have a repeat MRI, resume physical therapy, continue his medications and to undergo injection pain management. Dr. Cannon writes that he has changed the claimant's medication to a longer acting opioid methadone and refilled his Tramadol. Dr. Cannon recommended that the claimant limit his bending, twisting and lifting.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to the recommended medical treatment from Dr. Cannon in the form of the steroid injections. Dr. Cannon has consistently recommended this form of treatment and the doctor's notes indicate that the claimant has received some degree of relief as a result of this treatment. Dr. Danks, in his letter to Dr. Davis dated October 26, 2004, clearly sets forth that he thinks the claimant would best be served by epidural steroid injections and in his response to the claimant's attorney's letter dated May 16, 2005, indicates that he has referred the claimant to Dr. Cannon for epidural steroid injections as a result of his work related injury of August 15, 2004. Therefore, I find that the injections recommended by Dr. Cannon are both reasonable and necessary medical treatment for this claimant's compensable mid back injury. I

further find that the claimant is entitled to temporary total disability from January 2, 2006, to February 1, 2006. Dr. Cannon has removed the claimant from work as a result of his compensable injury to the February 1, 2006, date and has consistently stated that this recommendation was made in order to hopefully enhance his improvement and alleviate his mid back problems. Therefore, the respondents should pay temporary total disability to this claimant from January 2, 2006, to February 1, 2006.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 15, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his mid back on August 15, 2004.

4. The claimant is entitled to a weekly compensation rate of \$447.00 for temporary total disability and \$335.00 for permanent partial disability.

5. Medical expenses have been paid to October 25, 2005.

6. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment as recommended by Dr. Cannon in the form of injections. See discussion above.

7. The respondents should pay for the recommended injections for this claimant's mid back compensable injury.

8. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from January 2,

2006, to February 1, 2006, as noted in the release from Dr. Cannon. Also see discussion above.

9. The respondents have controverted this claimant's entitlement to the recommended injections by Dr. Cannon as well as temporary total disability from January 2, 2006, to February 1, 2006.

10. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

#### ORDER

The claimant has proven by a preponderance of the evidence that the injections as recommended by Dr. Cannon are both reasonable and necessary. Therefore, the respondents should pay for these recommended injections.

The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from January 2, 2006, to February 1, 2006. Therefore, the respondents should pay the temporary total disability for this period of time.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

---

ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE