

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509842

HEATH SPEARS	CLAIMANT
CITY OF VAN BUREN	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 25, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by CHRIS BRADLEY, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 10, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 8, 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 22, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on August 22, 2005.

4. Medical expenses have been paid to October 2005.

5. The claimant is entitled to a weekly compensation rate of \$356.00 for temporary total disability based on an average weekly wage of \$534.54.

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

1. Additional medical.

2. Temporary total disability from March 15, 2006, to April 24, 2006.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to reasonably necessary medical treatment because he has not recovered from the effect of the injury that he sustained to his back on or about August 22, 2005. The claimant contends that he has been diagnosed as having a herniated disc at L5-S1 and that he is entitled to permanent disability benefits in regard to that herniated disc regardless of whether he undergoes additional medical treatment. The claimant contends that his attorney is entitled to an appropriate attorney's fee regarding any disability benefits awarded in this case.

In regard to the foregoing issues the respondents contend that they have paid all benefits due under the compensation Act.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and non medical records marked Claimant's Exhibit No.

2. The respondents submitted medical records marked Respondents' Exhibit No. 1 and a sixteen duplex nail which is marked Respondents' Exhibit No. 2. All of these exhibits were admitted without objection.

DISCUSSION

The claimant testified and it has been stipulated by the parties that he sustained a compensable injury on August 22, 2005. The claimant testified that while working for the respondent he was in the process of moving a wood pile when a big rat ran up his arm causing him to fall backwards into a wheel barrow at which time he heard something pop and pull in his back. The claimant testified that he went to work the next day and worked one day but could not bend over and could not drive so he was taken by the respondent to the chiropractor, Dr. Elliott, at which time an MRI was performed. The claimant agreed that this MRI was done on August 25, 2005. The claimant testified that he has not had another MRI since this injury. The claimant testified that he returned to the doctor and she prescribed muscle relaxers and pain pills for him as well as took him off work for approximately four to five weeks. He claimant testified that he was released to return to work in the early part of October 2005 but when he was released he had not fully recovered or was not 100 percent. The claimant explained that he was still hurting and that his left leg was still numb and that he limped. The claimant testified that he was released to light duty for a couple of weeks and then returned to work at full duty. The claimant testified that his condition did not completely

resolve during this period of time or during the period of time he had returned to work. The claimant testified that he was still having numbness in his left leg and that his back had a burning feeling as well as he was still limping. The claimant testified that he next returned to the doctor in January because he was still hurting really bad and his condition was not improving. The claimant agreed that the pain and discomfort that he was feeling in January 2006 was the same and in the same area of his body as what he first experienced when he hurt himself in August 2005. The claimant was asked if there was any specific thing that caused his back to get worse or was it just general activities and the claimant responded, "Oh, it was general activities---the work." The claimant testified that when he saw the doctor in January 2006 she again gave him pain pills and muscle relaxers but these did not completely clear up his problem. The claimant testified that he continued to work for the respondent and was again seen by the doctor in February 2006. The claimant testified that the day before he saw the doctor in February he had been pulling eight penny nails out of a one by four board at his house and he had an exacerbation of his pain. The claimant testified that using his hammer to pull out the eight penny nail he did not think would cause any unusual stress on his back but it did. The claimant testified that after he was seen by the doctor in February, he continued to work for the respondent and then went to see Dr. Thompson, an orthopedic doctor. The claimant testified that he had been to the hospital because he was in so much pain and they had

recommended that he be seen by an orthopedic specialist. The claimant testified that when he was seen by Dr. Thompson, the doctor instructed him to go home and go to bed for two weeks. The claimant testified that the doctor did not examine him but prescribed pain pills and muscle relaxers and ask that he come back in two weeks. The claimant testified that he had taken his MRI films with him when he saw Dr. Thompson and that it was after review of these films that the doctor made these recommendations. The claimant testified that the MRI films which he took to Dr. Thompson were the same MRI films that were made of him of August 25, 2005. The claimant testified that the problems he was experiencing when he saw Dr. Thompson were the same as he had been experiencing since his injury of August 22, 2005. The claimant testified that he told Dr. Thompson that he had an increase in his pain after picking up some milk. The claimant explained that he had gotten up in the morning and was filling his son's jug with milk and had bent over to pick up a gallon of milk and his pain got worse. The claimant testified again that just general activities would occasionally cause his symptoms to flair up in his back and into his leg. The claimant testified that when he was seen by the doctor in February, her notation that he does physical therapy daily is correct because following his accident in August 2005 he was instructed to do back exercises before he went to work each day and he has continued to do these exercises. The claimant testified that he started these back exercises approximately two weeks after his August 2005 accident.

On cross examination, the claimant was shown a sixteen duplex nail and was asked if this nail was similar in size to the nail which he referred to as an eight-penny nail and the claimant agreed that it was very similar. This nail was then placed into evidence as Respondents' Exhibit No. 2. The claimant testified that following his accident on August 22, 2005, he was first seen by Dr. Elliott Hays, a chiropractor. The claimant testified that he had never been to a chiropractor and specifically never to Dr. Hays prior to this accident. The claimant testified that after being seen by the chiropractor he was then seen by Dr. Lewelling who prescribed pain pills and muscle relaxers for him. The claimant agreed that following the nail incident he saw Dr. Hays and a couple of days after that he was seen by Dr. Lewelling. The claimant agreed that after he was seen by Dr. Hays and Dr. Lewelling he has had to continue going to the doctor for treatment for his back. The claimant testified that he feels that he is still in need of medical treatment. The claimant disagreed that he did not take prescription medications for his back from October 2005 until January 30, 2006. The claimant testified that he would not disagree as to what the medical records set forth.

On redirect examination, the claimant agreed that on March 15, 2006, Dr. Thompson took him off work until April 24, 2006. The claimant was asked why he went to see Dr. Lewelling on March 30 after he had just been seen by Dr. Thompson on March 15. The claimant responded that Dr. Thompson had indicated that he could return to work in two weeks and he was still hurting so bad he went

back to see Dr. Lewelling. The claimant testified that he was taking over the counter pain medications such as Tylenol and Advil between October 2005 and January 2006 as well as doing his back exercises as prescribed by Dr. Lewelling. The claimant testified that when he was pulling the nail out of the board, he was bent over and primarily was using his arm as well as the hammer to pull the nail out and considers the fact that he was bent over to be the reason his pain was exacerbated. The claimant testified that the bending over to pull out the nail was no different from many of his other normal activities and routines.

On recross examination, the claimant testified that when he was bent over pulling out the nail he did have to work it some to get the nail out and he would agree that his back was involved since he was bending over and pulling out the nail.

The medical records set forth that the claimant was seen by Dr. Hays, a chiropractor on August 24, 2005, for complaints of low back pain and left leg pain. The intake form from the chiropractor indicates that the claimant began to have symptoms on Monday which according to a 2005 calendar would be August 22, 2005. The claimant indicates on his intake form that his symptoms began at work and has complaints of low back pain. Dr. Hays set up a treatment schedule for the claimant. The claimant underwent an MRI of his low back on August 25, 2005, at the direction of Dr. Hays. This MRI indicates that there is slight diminution in vertebral body signal on T1 weighted images probably due to some red marrow replacement as a variant. The test also shows that there is a

central and perhaps very slightly acentric to the left disc herniation at L5-S1 confined to the disc level and that there is bilateral facet hypertrophy especially at the L5-S1 level and also slightly more pronounced on the left at L5-S1 with a small synovial cyst suggested at this degenerated facet level on the left side at L5-S1 as well. The claimant was seen by Dr. Terri Lewelling on August 25, 2005, for his complaints of back and leg pain occurring four days ago while moving wood and a rat ran up his arm. The doctor's notes indicate that the claimant reports acute left leg numbness, tingling and left leg pain is down to the bottom of his foot with a burning pain in his back and knee. The claimant continued to be seen by Dr. Lewelling through October 4, 2005, for his low back and left leg problems. Dr. Lewelling writes on August 30, 2005, that the claimant should be off work from August 25, 2005, until seen again on September 8, 2005. Dr. Lewelling writes on September 15, 2005, that the claimant continues to be off work due to his neurological symptoms in his left leg with tingling and numbness. The doctor notes that the claimant's return to work disposition is still pending with ongoing physical therapy and medications. On September 22, 2005, Dr. Lewelling indicates that she has seen the claimant for his acute back injury with left leg pain. The doctor notes that the claimant can return to light duty for one week, to complete his medications and return to full duty work as indicated. Dr. Lewelling writes on October 4, 2005, that the claimant's back pain has decreased but he is to continue his home physical therapy and can return to full duty work. Dr.

Lewelling notes in her return to work slip that the claimant can return to physical work with no restrictions.

The claimant was seen by Dr. Hays on January 30, 2006, for complaints of back and left leg pain. Notes indicate that the symptoms reappeared or were exacerbated yesterday. The pain is described as sharp, throbbing and aching. The claimant indicates that he has pain with activity such as standing, walking or work. On February 2, 2006, Dr. Lewelling writes that the claimant had an acute back pain on January 29, 2006, while pulling a nail out of a board at home experiencing sharp pain down his back on the left then down left leg with numbness and tingling also that his left knee hurt. Dr. Lewelling writes that the claimant does physical therapy daily from his prior injury and claimant was prescribed medication. On March 15, 2006, Dr. Thompson writes that he has seen the claimant for his back problems. Dr. Thompson notes that the claimant reports that last Monday he was leaning over to pick up milk and experienced an increase in his pain in his back. The doctor writes that the claimant has pain in the left groin area and down his leg noting that the claimant's MRI clearly shows a significant herniated disc at L5-S1, more on the left of the mid line and in the mid line. Dr. Thompson recommended conservative treatment consisting of bed rest and medications. Dr. Thompson released the claimant from work, noting that he needs to be on bed rest for two weeks. Dr. Stephanie Frisbie writes on March 23, 2006, that she has seen the claimant for his complaints of back pain which shoot down his left leg. Dr. Frisbie notes that the

claimant was having problems with urinating but that has gotten better and he was having some constipation but is not having any loss of control of his bowels. After examination, Dr. Frisbie diagnosed the claimant with having low back pain with left radiculopathy and herniated disc. The doctor recommended pain management and prescribed medications. The claimant was then seen by Dr. Terry Lewelling on March 30, 2006, for his continuing complaints of back and leg pain. After examination, medications were prescribed and the claimant was taken off work for one week. The claimant was again seen by Dr. Lewelling on April 18, 2006, for his continued complaints of back and leg pain. Again medications were prescribed and a note was written, noting that the claimant was seen on April 6, 2006, and was released from work from March 30, 2006, until the week of April 16, 2006.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his admitted compensable injury. The record sets forth that following the claimant's injury he was treated conservatively but continued to have complaints of pain, burning and numbness as well as limping as a result of his compensable injury. The claimant did and was released to return to work but has testified that he has continued to have problems which have been exacerbated by his work and just general activities of living. The claimant's testimony and the medical records set forth that the claimant's complaints are very much or similar to those he initially had following his compensable

injury. I find, therefore, that he is entitled to medical treatment for his continuing compensable problems. The claimant has also proven by a preponderance of the evidence that he is entitled to temporary total disability from March 15, 2006, when he was taken off work by Dr. Thompson until he returned to work as noted in Dr. Terri Lewelling's office note of April 18, 2006, where it sets forth that the claimant went back to work on April 17, 2006. The medical records set forth that the claimant's various doctor's kept him off work between March 15, 2006, and April 16, 2006. Therefore, the respondents should pay temporary total disability to this claimant from March 15, 2006, to April 16, 2006.

FINDINGS & CONCLUSIONS

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

2. On August 22, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on August 22, 2005.

4. Medical expenses have been paid to October 2005.

5. The claimant is entitled to a weekly compensation rate of \$356.00 for temporary total disability based on an average weekly wage of \$534.54.

6. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injuries. See discussion above.

7. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from March 15, 2006, to April 16, 2006. See discussion above.

8. The respondents shall pay both for the reasonable and necessary medical care for this claimant's compensable injury as well as the ordered TTD.

9. The respondents have controverted this claimant's claim for additional benefits in its entirety.

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 he is entitled to additional medical treatment for his compensable injury. Therefore, the respondents should pay for all reasonable and necessary medical care for this claimant's compensable injuries.

The respondents should pay temporary total disability to this claimant from March 15, 2006, to April 16, 2006.

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