

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F004849

WILLIAM F. STEWART, EMPLOYEE	CLAIMANT
LARRY FOWLER TRUCKING, INC., EMPLOYER	RESPONDENT
RELIANCE NATIONAL INS. CO., CARRIER	RESPONDENT

OPINION FILED JULY 11, 2006

Hearing before Administrative Law Judge J. Mark White on June 13, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Jason Watson, Attorney at Law, Fayetteville, Ark.

Respondents represented by Ms. Melissa Ross, Attorney at Law, Little Rock, Ark.

STATEMENT OF THE CASE

On June 13, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on April 3, 2006, and a Prehearing Order was entered that same day. A copy of the April 3, 2006, 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 21, 2000; that on March

21, 2000, the claimant sustained a compensable injury to his back; that respondents accepted the March 21, 2000, injury as compensable and paid some benefits; and that the claimant earned an average weekly wage of \$456, entitling him to a compensation rate of \$304 for total disability benefits and \$228 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant is entitled to permanent partial disability benefits; whether the claimant has sustained wage loss in excess of his permanent anatomical impairment rating; whether the claimant is entitled to additional medical treatment; and controversion and attorney's fees.

The claimant contends that he is entitled to permanent partial disability benefits for the permanent impairment rating of 5-7% assigned by his authorized treating physician, Dr. Antoon; that he is entitled to wage-loss disability as a result of his compensable injury and is entitled to additional reasonable and related medical expenses; and that the claim for additional benefits has been controverted by the respondents and the claimant's attorney is entitled to a full controverted attorney's fee.

The respondents contend that all appropriate benefits have been paid with regard to this claim.

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

1. The 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 failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment.
4. The claimant has failed to prove by a preponderance of the evidence that he has sustained any permanent physical impairment as established by objective and measurable physical findings.
5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits.
6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to wage-loss disability benefits.
7. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant sustained a compensable injury to his back on March 21, 2000, when the truck he was driving jack-knifed and turned over on its side. The claimant was able to drive and return the truck that same day from Lufkin, Texas, back to Magnolia, Arkansas, though he testified he was in pain:

I wasn't feeling all that great because my left side was hurting and my back mostly was hurting, like in the middle of my shoulders and straight down my -- it went straight down my spine all the way to my hips. So I said I was going to make it as far as I can, and I stopped about four or five times, but I finally got to Magnolia and there's a little truck stop right across the street, and I tried to get me some rest. The next morning they called me and told me to come to the yard. So, I brought it on to the yard. I haven't worked since.

He first saw Dr. Patrick Antoon a few days later, on March 23. Dr. Antoon noted the presence of back spasms and gave his diagnosis as, "myofascial strain thoracic spine." When the claimant returned on April 4, Dr. Antoon noted lumbar spasms and revised his diagnosis to "lumbar strain." He recommended physical therapy. As of May 16 the claimant was still exhibiting back spasms, and Dr. Antoon recommended an MRI exam. Performed May 25, the MRI exam revealed bulging discs at L5-S1 and L3-4 with "no significant spinal stenosis." On June 2, Dr. Antoon released the claimant to return to light-duty work.

On June 5, Dr Antoon noted in his report, "No (+) MRI findings." He recommended a CT/myelogram and a neuro-surgical consult, and on June 13 he recommended an orthopedic consult. It is not clear whether these recommendations were ever fulfilled, and no CT or myelogram report is contained within the record.

By June 27, Dr. Antoon was advising the claimant "to get another job or return to work" after a functional capacity evaluation (FCE) could be performed. The FCE was given on July 21, 2000. The evaluating physician noted symptom magnification and opined the claimant was capable of returning to "sedentary, light, medium, and he [sic] even heavy work." The physician also opined the claimant was capable of returning to his job as a truck driver.

Dr. Antoon saw the claimant again on August 10 and recommended a program of work hardening. The claimant testified he went to one appointment and that after he missed the next appointment, the respondents controverted further therapy. On August 31, Dr. Antoon indicated his plan to refer the claimant to a physician in Shreveport. After this note, the next recorded treatment is dated June 13, 2001, a visit to the VA hospital for a "Compensation and Pension Evaluation."

In the nearly five years since that August 31, 2000, note from Dr. Antoon, the claimant has sought treatment for his back only sporadically. The record notes only four instances of treatment since 2000, all at the VA hospital.

II. Adjudication

A. Additional Medical Treatment

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).

It appears unlikely that the claimant ever received the neurosurgical consult or CT/myelogram recommended by Dr. Antoon. More than five years have passed since those recommendations were made, and I can find no recent recommendations for additional treatment in the record. It appears the claimant's condition has long been stable, and the record offers little evidence to show that further treatment could potentially improve his condition. I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment.

B. Permanent Partial Disability Benefits

Permanent impairment is "any permanent functional or anatomical loss remaining after the healing period has been reached." *Johnson v. General Dynamics*,

46 Ark. App. 188, 878 S.W.2d 411 (1994), *citing Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Id.* Any determination of permanent physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B). Benefits for permanent impairment may be awarded only upon a showing that the compensable injury was the major cause of the impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a).

On June 26, 2005, Dr. Antoon assigned the claimant a permanent anatomical impairment rating of 5% to 7%. A review of Table 75 of the *AMA Guides* suggests Dr. Antoon assigned this rating for the degenerative changes noted on the claimant's MRI exams – Table 75 would allow a 5% rating for “none to minimal” degenerative changes, and 7% for “moderate to severe” degenerative changes. Yet Dr. Antoon in a prior treatment note had opined the MRI exams revealed no positive findings. The relevant question is whether the degenerative changes noted on the MRI exam, for which Dr. Antoon assigned the impairment rating, are causally related to the claimant's symptoms, and whether these changes are causally related to his compensable injury. The record before me is insufficient to answer these questions. Dr. Antoon's notation of June 5, “No (+) MRI findings” suggests there is no causal

relationship between the degenerative changes noted on MRI and the claimant's compensable injury or even his symptoms.

Aside from the MRI exam results, there are no other objective findings to support the assigning of an anatomical impairment rating. I recognize Dr. Antoon's initial observation of muscle spasms, but the Full Commission has previously held that an initial observation of spasms is insufficient to support a finding of permanent physical impairment. *See, e.g., Twight v. Mena Medical Center*, A.W.C.C. F102474 (Aug. 13, 2003). I find that the claimant has failed to prove by a preponderance of the evidence that he has sustained any permanent physical impairment established by objective and measurable physical findings. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits.

The claimant also seeks an award of wage-loss disability benefits. To prove entitlement to wage-loss disability benefits, a claimant must first prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of the compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). Even if the claimant were to do so, given the opinions of his doctors and the results of his functional capacity evaluation, I am not persuaded that the claimant has sustained any wage loss as a result of his compensable injury.

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to wage-loss disability benefits.

CONCLUSION

The claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent disability benefits for his compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge