

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510244

LARRY VETRANO, EMPLOYEE	CLAIMANT
INTERSTATE BATTERY SYSTEM, EMPLOYER	RESPONDENT
CONTINENTAL WESTERN INS. CO., CARRIER	RESPONDENT

OPINION FILED JUNE 22, 2006

Hearing before Administrative Law Judge J. Mark White on April 6, 2006, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Ronald Burnett, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 6, 2006, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on December 19, 2005, and a Prehearing Order was entered that same day. A copy of the December 19, 2005, 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 May 13, 2005; that on May 13, 2005, the claimant sustained a compensable injury to his low back; that respondents accepted the May 13, 2005 injury as compensable and paid benefits; and that the claimant earned an average weekly wage of \$461.54, entitling him to a compensation rate of \$308 for total disability benefits.

The parties agreed that the issues to be presented were unpaid medical bills, and controversion and attorney's fees. The parties agreed to waive the issue of permanent partial disability benefits, as the respondents stipulated they would accept an anatomical impairment rating of 10% to the body as a whole and pay benefits in accordance therewith.

The claimant contends that respondents should pay all reasonable and necessary medical expenses incurred as a result of this compensable injury.

Respondents contend that the claimant sustained a compensable injury for which appropriate benefits have been paid; that as far as permanent disability, respondents were unaware as of the prehearing conference of any permanent impairment rating that had been assigned at that point; and that respondents have not controverted any permanent disability benefits owed the claimant.

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

1. The Arkansas 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 proven by a preponderance of the evidence that all treatment provided by Collom & Carney Clinic, as reflected on the bills submitted herein and dated 8/19/2005 and 9/23/2005, was reasonably necessary in connection with the compensable injury, except for the lab and blood work performed July 26, 2005.
4. The claimant has proven by a preponderance of the evidence that the evaluation and treatment provided by Dr. Roshan Sharma on December 7, 2005, was reasonably necessary in connection with the compensable injury.
5. The claimant has proven by a preponderance of the evidence that the

respondents have controverted the claimant's entitlement to permanent partial disability benefits, and that the claimant is entitled to attorney's fees on all permanent partial disability benefits paid to and owed the claimant.

DISCUSSION

I. History

The claimant sustained a compensable injury to his low back on May 13, 2005. The respondents accepted the injury as compensable and paid benefits, including surgery at L5-S1 by Dr. Lee Buono on August 6, 2005. The claimant saw Dr. Roshan Sharma on December 7, 2005, for the assigning of a permanent anatomical impairment rating. Citing Table 75 of the 4th Edition of the *AMA Guides*, Dr. Sharma assigned a rating of 10% to the body as a whole. The claimant's attorney furnished this rating to the Commission and to the respondents by letter dated January 9, 2006. The respondents agreed the day of the hearing to accept and pay the impairment rating. The claimant now seeks attorney's fees on the impairment rating, as well as payment of two unpaid bills: a bill from Collom & Carney Clinic in the amount of \$1,939.42, and a bill from Dr. Sharma for the impairment rating evaluation in the amount of \$450.

II. Adjudication

A. Unpaid Bills

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).

The claimant seeks payment of two bills. The first is from Collom & Carney Clinic in the amount of \$1,939.42, for services rendered between June 20, 2005, and August 6, 2005. The claimant was hospitalized for his low back surgery on August 6, 2005, leading me to find that the services provided on that date were reasonably necessary in connection with the compensable injury. Treatment notes from the remaining dates of service are in the record, and they make clear that all of the remaining treatment, with the exception of lab and blood work performed July 26, 2005, was reasonably necessary in connection with the compensable injury.

I find that the claimant has proven by a preponderance of the evidence that all treatment provided by Collom & Carney Clinic as reflected on the bills submitted herein, dated 8/19/2005 and 9/23/2005, was reasonably necessary in connection with the compensable injury, except for the lab and blood work performed July 26, 2005.

The respondents are liable for payment of these bills, subject to the limitations of the Commission's Rule 30.

The other unpaid bill is for the evaluation performed by Dr. Sharma on December 7, 2005, for the purpose of assigning a permanent anatomical impairment rating. The evaluation was for the compensable low back injury, and the respondents have accepted the impairment rating. I find that the claimant has proven by a preponderance of the evidence that the evaluation and treatment provided by Dr. Roshan Sharma on December 7, 2005, was reasonably necessary in connection with the compensable injury. I note that the parties have not raised the issue of whether Dr. Sharma was an authorized physician, though it is not clear from the record whether he was. Therefore, I make no findings as to authorization.

B. Controversion

Attorney's fees may be awarded "on the amount of compensation for indemnity benefits controverted and awarded." ARK. CODE ANN. § 11-9-715(a)(2)(B)(ii). The object of the attorney's fee statute is to place the burden and expense of litigation upon the party which made it necessary. *Cleek v. Great S. Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998). Whether or not a claim has been controverted is a question of fact. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645

(1998).

Dr. Sharma assigned the anatomical impairment rating on December 7, 2005, and the parties agree the claimant furnished the rating to the respondents on January 9, 2006. The parties further agree the respondents finally accepted the rating as of the date of the hearing, April 6, 2006 – some four months after they were first provided the rating.

The evidence herein is similar to that of *Wal-Mart Stores v. Brown*, 73 Ark. App. 174, 40 S.W.3d 835 (2001). There, the Court of Appeals found that an award of attorney's fees was appropriate where the respondents initially controverted indemnity benefits, forcing the claimant to retain counsel in order to present and protect her claim for benefits, even though respondents later voluntarily agreed to pay the controverted benefits one month before a full hearing was to have been held. *Id.* I cannot find that the present matter is substantially different.

I find that the claimant has proven by a preponderance of the evidence that the respondents have controverted the claimant's entitlement to permanent partial disability benefits, and that the claimant is entitled to attorney's fees on all permanent partial disability benefits paid to and owed the claimant.

AWARD

The claimant has proven by a preponderance of the evidence that the respondents are liable for certain medical bills from Collom & Carney Clinic and Dr. Roshan Sharma; that the respondents have controverted the claimant's entitlement to permanent partial disability benefits; and that the claimant is entitled to attorney's fees on all permanent partial disability benefits paid to and owed the claimant. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Ronald Burnett, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge