

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F410457

TIMOTHY F. WILLIAMS, EMPLOYEE

CLAIMANT

**HUTCHISON TRUCKING, INC., EMPLOYER
AMERICAN HOME ASSURANCE/
AIG CLAIM SERVICES, CARRIER/TPA**

RESPONDENT #1

SECOND INJURY FUND

RESPONDENT #2

OPINION FILED DECEMBER 20, 2006

A hearing in this case was conducted on September 7, 2006, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Harrison, Boone County, Arkansas.

Claimant was represented by Steven McNeely, Attorney at Law, Little Rock, Arkansas.

Respondent #1 was represented by Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

Respondent #2 was represented by Terry Pence, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on July 31, 2006. A Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to five stipulations; these are listed in the Prehearing Order and were confirmed at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on September 1, 2004 and at all other relevant times.

2. Claimant sustained a compensable injury to his low back and cervical spine on September 1, 2004.

3. Claimant's healing period ended on January 31, 2005.

4. Claimant's temporary total disability rate is \$322.00; his permanent partial disability rate is \$242.00.

5. Respondent #1 accepted a 2% permanent partial impairment rating assigned on March 15, 2005.

_____At the September 7, 2006 hearing, the parties discussed the issue set forth in the Prehearing Order. Claimant confirmed that the only issue to be litigated and resolved is limited to the following:

1. Whether Claimant is entitled to medical benefits.

DISCUSSION

Claimant was involved in a motor vehicle accident in 2001. He testified that he was treated by Dr. Stevan Van Ore and released. He denied receiving any treatments from 2001 until his compensable injury in September of 2004. In this regard, Claimant's testimony is contradicted by the medical records contained in Respondent's Exhibit #1. These records report complaints of neck and back pain beginning in August of 2001. An MRI of Claimant's cervical spine dated November 9, 2001 revealed degenerative disc disease at C4 through C7, but no herniated nucleus pulposus or extruded disc fragment. In a letter dated December 28, 2001, Dr. Kelly Danks recorded Claimant's complaints of neck pain, right shoulder pain, and right arm pain; he assessed Claimant with cervical spondylosis and extension/flexion type injuries and remarked that surgery was an option. Claimant continued to present for complaints of back pain in early 2002.

On September 1, 2004, Claimant was injured in an accident involving the 18-wheeler tractor and trailer that he was driving for the Respondent employer.

I had dropped a trailer ... I disconnected and picked up another trailer and I had checked the truck over, the brakes, and I started out. I was driving from Berryville going to Russellville, and I was -- it was still dark. It was only in the morning, right about five o'clock, and I was driving. When I was driving there was a curve up ahead.... I made the curve and when I come on around to the curve to the right there was another curve immediately, but my headlights didn't show any signs that a second curve was right immediately, and I was going down the hill. There the second curve curved to the left and when I applied the brakes they didn't hold. I made the curve, but the truck rolled over immediately after the second curve and I was rushed to the hospital by ambulance.

Claimant experience pain in his chest, neck, and back. He began a course of medical treatment to address these issues.

An emergency room record dated September 1, 2004 records Claimant's history of an 18-wheeler rollover. A study of that date revealed a normal left shoulder and no acute abnormality in Claimant's cervical spine. An emergency room record dated September 2, 2004 contains the following notation: "Pt became very defensive while I was questioning him[.] His 1st statement was 'I ain't no drug seeker[.]'"

Claimant subsequently received conservative treatment from Dr. Van Ore and Dr. Cyril Raben. An MRI dated October 13, 2004 revealed "[d]iffuse osteoarthritis and multiple level degenerative disc disease" in Claimant's cervical spine; these conditions were also present in his lumbar spine. In his cervical spine, there were indications for a combination of bulging discs and osteophytes; however, no large, bulky, or focal disc herniations were identified. In the lumbar spine, no HNP was identified but spinal stenosis was suggested, most pronounced at L4-5. Claimant was treated with medication and physical therapy through January of 2005. A physical therapy progress/treatment note dated January 14, 2005 reports that Claimant's progress towards his established goals was excellent, and that his response to the physical therapy intervention was also excellent.

Claimant presented to Dr. Raben for a follow up visit on January 31, 2005. Claimant rated his pain at a 5 or 6 out of 10. Upon examination, the doctor wrote:

Exam today on Tim is essentially unchanged; i.e., he still has sequelae associated with a cervical disc herniation as well as his lumbar spine. To date I see nothing changed with him.

Dr. Raben suggested that Claimant find employment at the light or sedentary duty level; he did not believe that Claimant would ever return to truck driving or working with heavy equipment. Although he advised Claimant to proceed without surgical intervention, he left open the treatment possibilities of epidural steroid injections, aggressive physical therapy, or, ultimately, surgical intervention.

Claimant underwent a functional capacity evaluation on February 8, 2005. He exhibited the ability to perform sedentary work on a full time basis, but he also exhibited self-limiting behavior. Specifically, Claimant hesitated to undertake or repeat certain lifting and refused to attempt overhead reaching. The examiner noted:

Patient exhibited self-limiting behavior with testing components by performing activity one time, then declining to continue to participate stating "that would make my back hurt." He exhibited no significant change in Heart Rate with testing components, stated no change in pain rating prior to or after testing.

....

Patient exhibited suspicion of therapist motives with all activities. He gave short, vague answers with intake interview questions, declined to have driver's license copied, and was reluctant to sign any document and was suspicious of amount of weight removed from boxes and looked in boxes to make sure all weight had been removed. Patient stated at 11:30 am: "You know that I record everything that happens to me."

Claimant returned to Dr. Raben on February 14, 2005. He complained of pain, rating it at a 6 or 7 out of 10. The doctor would only release Claimant to a light or sedentary type job; even if an FCE recommended otherwise, the doctor stated: "I think that within a reasonable degree of medical certainty if he performs at a higher standard than

this that he will have less use of his back long term.” In a letter to Dr. Van Ore of that same date, Dr. Raben noted that he had released Claimant “back to a light, sedentary type job” and that he was referring Claimant to Dr. Van Ore for continued conservative treatment since Claimant was not interested in surgical intervention.

In a letter dated March 15, 2005, Dr. Raben opined that Claimant reached maximum medical intervention as of January 31, 2005, with regard to conservative care. He suggested that Claimant continue with pain management. As to the possibility of future surgery, the doctor wrote: “I can also see in the future for him a two-level fusion for his cervical spine. After further work up including discography for the lumbar spine, future intervention may include a one or two-level 360° fusion here, as well.” Dr. Raben then assigned Claimant a 2% permanent impairment rating.

Claimant continued his physical therapy. On March 7, 2005 he reported “making progress”; on March 21, 2005 he reported “some decrease in his pain.” Claimant again reported a decrease in pain on March 28, 2005; his therapist opined: “I think Mr. Williams will be able to manage on his own and we’ll discontinue therapy.” On April 4, 2005 Claimant reported “that he’s very comfortable much of the time, reporting a pain on the pain scale at a 0.... He says at times it may be up to a 1 or 2, a ‘noticeable discomfort.’”

Respondents’ Exhibit #3 is a disk containing video evidence from a surveillance of Claimant’s residence undertaken over two days in April of 2005. The written report of this surveillance is contained in Respondent’s Exhibit #2; a comparison of the written report with the video evidence demonstrates that the written report accurately summarizes the video evidence. At no point in the video evidence does Claimant appear to be in any distress. Page 2 of the written report states:

On the final day of our investigation, the claimant was present upon our arrival and was observed outside in the morning and intermittent video was obtained throughout the day as he walked in and out of view and performed various tasks on his property. He was observed performing maintenance on an electrical box, climbing a ladder, performing maintenance on vehicles, moving large objects, and washing a vehicle. While in view, the claimant appeared to ambulate normally and did not utilize any visible braces or supports. Based on our observations, the claimant does not appear to be working; however, he is active both at his home and away.

Specifically, the video evidence from April 9, 2005 depicts Claimant “standing, walking, bending at the waist, carrying a large step ladder, climbing a ladder while carrying pieces of wood, bending to the ground and resting on his knees, lying on the ground, swinging a hammer, pushing and pulling an air compressor, kicking pieces of wood, stretching, as well as entering, exiting and operating a vehicle.” Claimant raised the hood of a van above his head to inspect the engine compartment; he later used a brush on a pole to wash the van.

Claimant returned to the emergency room on July 10, 2005; this was his first visit to the emergency room since the time of his compensable injury. A medical record dated July 10, 2005 makes reference to Claimant’s compensable injury and then notes: “Pt states that he has not had much pain until today when he was getting out of a car and onset of pain in mid to lower back and down left leg.” However, on the second page of this same record, one finds the notation: “Patient states unknown cause.” On the third page of this record, yet another history is given.

This is not a job related problem. Injury can be coded as occurring in home environs.... Pt had a rollover MVA 1 year ago with a back injury that he has recovered from[.] [T]oday he was going up a short flight of stairs when he noticed pain in the mid and low back radiating into the left buttock.... Presenting problem started minutes ago.

A study taken this same date notes degenerative disc disease and the absence of any acute abnormality in Claimant’s lumbar and thoracic spines.

Claimant signed a form AR-C on July 15, 2005; it states in part: "Back-injured/roll over." At the hearing, Claimant testified that his July 2005 emergency room visit and treatment were for the "same" condition, not a new injury. A physical therapy initial evaluation/examination dated August 8, 2005 records Claimant's report that "his pain has been worsened lately after he quit therapy previously." On June 13, 2006, Dr. Van Ore checked "Yes" to the following statement: "Within a reasonable degree of medical certainty, the Major Cause (51% or more) of Timothy Williams[] treatment, including Physical Therapy is his work related injuries sustained on 9/1/2004."

On May 4, 2006, Claimant underwent an evaluation by Dr. Gary Moffitt, undertaken at the request of the Respondent carrier. After recording Claimant's history, performing an examination, reviewing Claimant's studies, and reviewing a surveillance report from April of 2005, Dr. Moffitt wrote:

To summarize, diagnoses for Mr. Williams include osteoarthritis and degenerative disc disease of the cervical and lumbar spine. He also has cervical stenosis of the lumbar spine that is possibly both congenital and acquired. There is no evidence of any herniated disc or pinched nerves.

In your letter dated March 7, 2006, you asked four specific questions. I would like to address those in their order at this time.

You wanted to know whether the problems found on the diagnostic studies are due to an acute injury suffered on 09-01-04 or unrelated degenerative and osteoarthritic changes. My answer is that they appear to be unrelated degenerative and osteoarthritic changes.

Whether the incident reflected in the narratives from 07-10-05 when he injured himself getting out [of] a car walking up stairs would be causally related to the accident occurring on 09-01-04 or unrelated and due to degenerative and osteoarthritic changes. In my opinion, they are most likely unrelated and due to degenerative and osteoarthritic changes.

Whether the claimant is unable to return to his job as a truck driver and, if not, whether the difficulties that prevent his returning to that line of work are

due to the work related accident of 09-01-04 or due to degenerative and osteoarthritic problems. In my opinion, based on the report from the private investigator and on Mr. Williams' history, I feel that there is no reason why he should not be able to return to duties of an over-the-road driver.

Whether the possibility of a fusion surgery being needed would be related to the incident on September 2004 or due to degenerative disc disease and osteoarthritic problem. My opinion is that if he were to need surgery on his cervical or lumbar spine, it would most likely [be] due to degenerative disc disease and osteoarthritis of the spine.

An employer shall 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). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Workers' Compensation Commission Opinion filed February 14, 2003 (E906565) (citations omitted). The employee need not establish that the compensable injury is the major cause for the need for medical treatment; rather, it is sufficient if the compensable injury is a factor in the resulting need for medical treatment. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004); Ballance v. K.C. Contracting, Full Workers' Compensation Commission Opinion filed August 30, 2004 (F204392).

The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, 90 Ark. App. 248, ___ S.W.3d ___ (2005). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies

an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

I find that Claimant is not a credible witness. A review of the transcript confirms an impression formed at the hearing: Claimant's testimony is vague, evasive, and not entirely supported by the medical records. Others noted Claimant's evasiveness and lack of cooperation. An examiner remarked on a medical record dated September 2, 2004 that Claimant "became very defensive while I was questioning him." The examiner administering Claimant's functional capacity evaluation noted that he "exhibited suspicion" and "gave short, vague answers with intake interview questions [and] declined to have driver's license copied." Based on the foregoing, Claimant's testimony is not credible.

I further find that Claimant did not sustain his burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with his compensable injury. Specifically, I find that his compensable injury is not a factor in his current need for medical treatment. The evidence demonstrates that Claimant's medical condition resolved by April of 2005. A January 14, 2005 physical therapy note records that Claimant's response to physical therapy was "excellent." He was declared at MMI, with regard to conservative treatment, on January 31, 2005. On April 4, 2005 Claimant reported that he was "very comfortable much of the time [with] pain on the pain scale at a 0." At worst he experienced "noticeable discomfort." As evidenced by the written report and video evidence from the surveillance of Claimant's residence in April of 2005, Claimant displayed no apparent distress in the course of engaging in extensive and varied physical activity. Then, apparently some incident not related to work occurred on July 10, 2005 that caused Claimant to return to the emergency room for treatment.

The record compels the conclusion that Claimant's current need for treatment is not related to his September 1, 2004 injury, but instead stems from his July 10, 2005 incident. I acknowledge Dr. Van Ore's June 13, 2006 statement. However, I do not find it persuasive in the face of Dr. Moffitt's statement, the physical therapy notes quoted, the gap in treatment between April and July of 2005, the results of the April 2005 surveillance, and statements contained in the July 10, 2005 medical record. Further medical treatment is not reasonably necessary in connection with Claimant's compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on September 1, 2004 and at all other relevant times.
3. Claimant sustained a compensable injury to his low back and cervical spine on September 1, 2004.
4. Claimant's healing period ended on January 31, 2005.
5. Claimant's temporary total disability rate is \$322.00; his permanent partial disability rate is \$242.00.
6. Respondent #1 accepted a 2% permanent partial impairment rating assigned on March 15, 2005.
- _____7. Claimant was not a credible witness. Claimant's hearing testimony is vague, evasive, and not entirely supported by the medical records. Other records in evidence demonstrate Claimant's evasiveness and lack of cooperation.
8. Claimant did not sustain his burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with his

compensable injury. Because his condition resulting from his September 1, 2004 compensable injury resolved by April of 2005, well in advance of his July 10, 2005 emergency room visit, his compensable injury is not a factor in his current need for medical treatment. He had responded well to physical therapy; he reported on April 4, 2005 that he was “very comfortable much of the time”; and a surveillance of Claimant’s residence in April of 2005 depicts Claimant engaging in extensive and varied physical activity without any apparent distress. Claimant only required medical treatment after some incident not related to his work occurred on July 10, 2005.

ORDER

Claimant failed to sustain his burden of proving that he is entitled to medical treatment. Therefore, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml