

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402205 & F502968

RICKY BILLINGSLEY, EMPLOYEE	CLAIMANT
HILLCREST CARE & REHAB, LLC, SELF-INSURED EMPLOYER	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JANUARY 29, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

The respondent was represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 2, 2006 in Texarkana, Arkansas. A prehearing order was entered in this case on August 28, 2006. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including February 6, 2004 and July 30, 2004.
3. On February 6, 2004 the claimant sustained a compensable injury to his lumbar spine.
4. The respondents accepted the February 6, 2004 lumbar injury as compensable and paid benefits.
5. The claimant was granted a change of physician by the Commission to Dr. Harold Chakales on February 1, 2005 for the February 6, 2004 injury.
6. The claimant's average weekly wage on February 6, 2004 was \$432.46 entitling him to compensation rates of \$288 for temporary total disability and \$216 for permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited at the hearing to the following:

1. Whether the claimant sustained a compensable injury to his upper back or neck.

2. Whether the claimant is entitled to additional temporary disability benefits and medical treatment.
3. Controversion and attorney's fees.
4. The claimant's average weekly wage on July 30, 2004 if the claimant is found to have sustained a compensable injury on that date.

The record consists of the November 2, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Did The Claimant Sustain A Compensable Cervical Spine Injury Or A Compensable Thoracic Spine Injury On February 6, 2004 Or On July 30, 2004?

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place

of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant contends that he sustained an injury to his cervical spine and his thoracic spine as a result of either an incident on February 6, 2004 moving a steam table at work, or as a result of picking up an air conditioner at work on July 30, 2004. The parties have stipulated to the occurrence of a lumbar injury on February 6, 2004. However, the respondents deny that the claimant has sustained a compensable cervical or thoracic injury. Specifically, the respondents contend that the claimant's claims for a cervical and/or a thoracic injury are not supported by objective medical findings.

In this regard, following the incident on February 6, 2004, the claimant came under the care of Dr. Bruce Smith, an orthopedist, for his low back complaints, which will be addressed below. However, Dr. Smith's April 19, 2004 office note also contains a history that the claimant was now complaining of posterior thoracic pain. As a result, Dr. Smith ordered a thoracic MRI performed on April 21, 2004, which Dr. Smith interpreted on April 27, 2004 as negative.

Following the July 30, 2004 incident at work, the claimant underwent testing for possible cardiac-related problems, as well as another thoracic MRI and a cervical MRI, both of which Dr. Lawrence Bigongiari read as normal. When Dr. Smith saw the claimant in follow up on September 13, 2004, the claimant complained of numbness of the fourth and fifth fingers of his left hand. As a result, Dr. Smith order another cervical MRI and EMG and nerve conduction studies of both arms. Dr. Smith interpreted the cervical MRI as basically unremarkable and the electrodiagnostic studies as all unremarkable.

In light of the negative test results interpreted by Dr. Smith, I find that the claimant has failed to support the existence of an alleged cervical injury or the existence of an alleged thoracic injury with objective medical findings. The claimant has therefore failed to establish that he sustained a compensable cervical injury or a compensable thoracic injury.

2. Has The Claimant Established That He Is Entitled To A Period Of Temporary Partial Disability Between February 6, 2004 and February 11, 2005?

An injured employee is entitled to temporary partial disability compensation during the period that he is within his healing period and suffers a partial decrease in his

capacity to earn the wages that he was receiving at the time of the injury. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant did not submit records indicating which days that he specifically missed work for his lower back between February 6, 2004 and his last day of work on February 11, 2005. The claimant has offered his weekly pay records before and after February 6, 2004, and requested payment of temporary partial disability for the difference in his average pay before and after his date of injury.

However, I find that an award of temporary partial disability on this record would require me to engage in impermissible speculation and conjecture. In this regard, I note that although the claimant considered himself salaried before February 6, 2004, he acknowledged that he was only paid for the time that he actually worked as a salaried employee even before February 6, 2004. In addition, his pay records both before and after February 6, 2004 fluctuated from pay period to pay period. Further, the claimant also acknowledged that he has missed work for headaches, and as discussed above, I do not find that the claimant has

sustained a compensable cervical injury or a compensable thoracic injury as he contends. On this record the claimant has failed to establish what portion, if any, of his decreased pay after February 6, 2004 is attributable to his admittedly compensable lumbar injury and what portion is attributable to other causes. The claimant has therefore failed to establish that he is entitled to any period of temporary partial disability compensation between February 6, 2004 and February 11, 2005.

3. Is The Claimant Entitled To Benefits For Temporary Total Disability After February 1, 2005 Or To Additional Medical Testing To The Lumbar Spine Proposed By Dr. Chakales?

Temporary total disability for unscheduled injuries is that period within the healing period in which a claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In addition, employers must promptly provide medical services which are reasonably necessary for treatment of

compensable injuries. Ark. Code Ann. § 11-9-508(a). Injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

In the present case, I find that the preponderance of the evidence indicates that the healing period for the claimant's admittedly compensable lumbar injury ended before February 11, 2005, when the claimant stopped work. I therefore find that the claimant is not entitled to any temporary disability compensation at issue beginning on that date. I also find that the claimant has failed to establish by a preponderance of the evidence that the additional diagnostic testing proposed by Dr. Chakales beginning in February of 2005 is causally related to the claimant's compensable lumbar injury. I therefore find that the claimant's request for additional diagnostic testing must be denied.

In this regard, I note that after the original February 6, 2004 incident, the claimant underwent a lumbar MRI on February 11, 2004, and a lumbar myelogram on March 1, 2004. Dr. Smith indicated on February 23, 2004, that he would treat the claimant for an L1-2 disc bulge diagnosed on the MRI. However, Dr. Smith performed the March 1, 2004 myelogram when the claimant reported continuing back pain and pain and radicular symptoms in his legs. Dr. Smith interpreted the myelogram as "basically unremarkable".

On March 31, 2004, Dr. Smith wrote:

Ricky Billingsley returns in follow-up with the lumbar sprain and is doing much better today. His neurologic is intact. His myelogram was unremarkable and I think at this point [sic] is recovered from the lumbar injury. He did have a central disc bulge at L1-L2, but this is not consistent with his symptoms at all and I think it was just a physiologic lesion unrelated to his lumbar sprain, which was much lower. He is released at this time to resume regular activities without restriction.

Based on Dr. Smith's conclusions, which I find credible, I find that a preponderance of the evidence establishes that the claimant recovered from his work related February 6, 2004 lumbar sprain injury on or before March 31, 2004.

In reaching this conclusion, I recognize that the claimant underwent electrodiagnostic testing on February 24,

2005, approximately eleven months after Dr. Smith determined that the claimant recovered from his lumbar sprain, and I note that the February 24, 2005 testing indicated that the claimant had "probable moderate chronic left L5 radiculopathy" and "possible mild right chronic right S1 radiculopathy." Nevertheless, for the following reasons, I find that the claimant has failed to establish by a preponderance of the evidence that these electrodiagnostic abnormalities in February of 2005 are causally related to his lumbar sprain from a year earlier.

First, I note that the electrodiagnostic abnormalities found in February of 2005 were not recorded until almost one year after Dr. Smith indicated on March 31, 2004, that the claimant had recovered from his lumbar strain injury. Between March 31, 2004 and September 29, 2004, Dr. Smith saw the claimant for various complaints possibly related to the cervical, thoracic or lumbar spine. However, Dr. Smith did not on any occasion ever again make any reference to any ongoing radicular symptoms in the claimant's leg after finding that the claimant had recovered from his lumbar injury in March of 2004.

In addition, both the claimant's work history and Dr. Young's February 21, 2005 office note indicate to me that

the claimant's health became precipitously worse in February of 2005. While the handwritten history in Dr. Young's February 21, 2005 note indicates that the claimant complained of his left hurting with an onset the previous February, that history also indicates that the problem became worse the night before (noc) from the left hip to the left ankle. This history appears consistent with the claimant's recollection that he used a walker and a wheelchair beginning on approximately February 11, 2005, when he last worked. (T. 71)

In summary, Dr. Smith's conclusion that the claimant recovered from his February 2004 injury in March of 2004, the lack of any mention of ongoing radicular symptoms in the claimant's legs in Dr. Smith's reports after March of 2004, the claimant's continued work in maintenance between March of 2004 and February of 2005, and his worsening symptoms in February of 2005 all persuade me that he recovered from his February 2004 low back sprain injury in March of 2004, and that his 2005 radicular symptoms are not causally related to his admittedly compensable February 2004 low back injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The employee/employer/carrier relationship existed at all relevant times, including February 6, 2004 and July 30, 2004.

3. On February 6, 2004 the claimant sustained a compensable injury to his lumbar spine.

4. The respondents accepted the February 6, 2004 lumbar injury as compensable and paid benefits.

5. The claimant was granted a change of physician by the Commission to Dr. Harold Chakales on February 1, 2005 for the February 6, 2004 injury.

6. The claimant's average weekly wage on February 6, 2004 was \$432.46 entitling him to compensation rates of \$288 for temporary total disability and \$216 for permanent partial disability.

7. The claimant has failed to establish by a preponderance of the evidence that he sustained a compensable cervical injury or a compensable thoracic spine injury on either February 6, 2004 or on July 30, 2004. Specifically, the claimant has failed to establish the occurrence of a cervical spine injury or a thoracic spine injury with medical evidence supported by objective findings.

8. The claimant has failed to establish by a

preponderance of the credible evidence that he is entitled to a period of temporary partial disability between February 6, 2004 and February 11, 2005.

9. The claimant has failed to establish by a preponderance of the credible evidence that he is entitled to any period of temporary total disability after February 1, 2005.

10. The claimant has failed to establish by a preponderance of the credible evidence that the additional diagnostic testing proposed by Dr. Chakales is causally related to the claimant's compensable lumbar strain injury.

ORDER

For the reasons discussed herein, this claim for additional benefits must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge