

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F606900

**JIMMY JOE BROWN,
EMPLOYEE**

CLAIMANT

**MOUNT IDA
HOUSING AUTHORITY,
EMPLOYER**

RESPONDENT

**COLUMBIA NATIONAL
INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JUNE 21, 2007,

Pursuant to a hearing conducted June 20, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. M. Keith Wren, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Gail O. Matthews, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to consider the issue of compensability of the claimant's neck condition and his request for additional medical and indemnity benefits.

The claimant contended that on June 16, 2006, he sustained a compensable neck injury and should be awarded benefits, including temporary total disability benefits from that date until a date to be determined, as well as reasonably necessary medical and related expenses. An attorney's fee for controversion was also requested. Other possible issues were held in abeyance.

The respondents contended that the claimant did not sustain a compensable injury and, further, that his current problems are the result of pre-existing conditions and not the result of the June 16, 2006, incident at work.

The record, which included documentary evidence and the testimony of the claimant, was closed at the conclusion of the hearing consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employee-employer-insurance carrier relationship existed at all pertinent times; the claimant's average weekly wage on June 16, 2006, was \$128.80; the claimant filed a claim based upon an incident that occurred on June 16, 2006; the claimant has not worked since that date; and the claim has been controverted.
3. On June 16, 2006, the claimant sustained a compensable injury to his cervical spine, arising out of and in the course of his employment, for which he is entitled to benefits.
4. As the result of his compensable injury, the claimant has remained in a healing period and has been totally incapacitated to earn wages, so that he is entitled to temporary total disability benefits from that date until a date to be determined.
5. As the result of his compensable injury, the claimant has received reasonably necessary medical and related care, for which the respondents are responsible, and is entitled to such additional care as may be reasonably necessary in connection with his compensable injury.
6. The respondents are entitled to credit for indemnity and medical benefits previously paid.

7. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

Since February, 2006, Jimmy Joe Brown has been employed by the Mount Ida Housing Authority as a maintenance person, a position with a variety of duties, such as carpentry, painting, concrete work, and plumbing and electrical work.

On June 16, 2006, the claimant and his wife had assisted the director in transporting children to Lake Ouachita to swim and picnic. When the group returned, the claimant was unloading one of the vans when he reached in, ducked his head low, grabbed a cooler, and felt a lot of pain between his shoulder blades. He advised the director that he thought he had pulled a muscle, but did not seek medical care until the next day.

On that day, he was examined at St. Joseph's Mercy Health Center in Hot Springs and prescribed pain pills and muscle relaxants. He next sought the attention of his personal physician, Dr. Michael Verser, who requested an MRI of the claimant's thoracic spine. Dr. Verser eventually wanted to have the claimant seen by a Hot Springs neurosurgeon. The adjuster for the respondent carrier, instead, directed the claimant to Little Rock neurosurgeon Dr. Ronald Williams who examined the claimant and requested an MRI scan of his cervical spine. Dr. Williams then recommended additional treatment, including surgery, which was denied by the workers' compensation carrier, which terminated payment of both medical and indemnity benefits. The

claimant testified that he was having pain in his shoulders, elbows, wrists, and down his legs and into his feet at that time.

The claimant stated that his symptoms worsened over time and he began to have increasing difficulties, such as dropping things, losing bowel and bladder control, and erectile dysfunction. He sought additional care and, with the help of his wife, was seen at UAMS where cervical spine surgery was performed January 27, 2007. The claimant testified that he has not had much improvement following the surgery, but his physician advised him that relief from symptoms may be gradual.

The claimant, a credible witness, testified that he has suffered injuries in the past, including a motor vehicle accident in about 1985 and a second motor vehicle accident in approximately 2002. The first motor vehicle accident resulted in a low back injury which only required physical therapy. The second accident caused the claimant to suffer a compression fracture in the lower part of his thoracic spine. The claimant testified that he recovered from both accidents and that they have not prevented him from working and that neither involved an injury to his cervical spine. He also stated that there was no restriction imposed by his previous physicians concerning his work activity. There is nothing in the medical record to contradict the claimant's testimony in this regard and there is no basis to suspect that his cervical spine problems are the result of previous injuries.

The claimant's work history reveals that he has always done physically demanding labor, such as warehouse work and work as a traffic control flag man with construction crews. His testimony further shows that he is unable to return to work of that nature at this time and that he is largely self-educated after having graduated from the eighth grade.

The claimant's testimony has not been contradicted by other evidence of record and his medical care appears to have been appropriate. When an MRI scan was performed for Dr. Williams in August, 2006, Dr. Williams found that it showed a large combined osteophyte and disc herniation which produced severe spinal stenosis and cord compression for which he recommended surgery. By the time he was seen at UAMS in January, 2007, an MRI scan showed a large central disc protrusion at C6-7 and a central disc protrusion at C5-6, for which Dr. Marcus Ware performed an anterior discectomy and fusion on January 27, 2007. There is no evidence of an intervening injury. In short, it appears that the claimant suffered a compensable injury, has received appropriate medical care, and has been temporarily totally disabled from the date of injury until a date to be determined, for which he is entitled to benefits.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge