

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510273

MICHAEL R. FLOW, CLAIMANT	CLAIMANT
B & B OIL TOOLS, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED MAY 18, 2007

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 20, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by HON. JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on February 20, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing telephone conference was conducted on November 8, 2006, and a Prehearing Order was filed on November 9, 2006. Subject to any modification, at the full hearing, the parties agreed the Prehearing Order would be admitted into the record as Commission Exhibit "1". The Prehearing Order originally set a full hearing date for February 6, 2007; however, at respondents' request, the hearing was rescheduled to February 20, 2007.

At the full hearing, the parties stipulated to the following:

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

- 2) The employer/employee/carrier relationship existed at all relevant times, including September 9, 2005.
- 3) The claimant's compensation rates are \$403.00 per week for temporary total disability, and \$302.00 per week for permanent partial disability.
- 4) That on September 9, 2005, claimant sustained compensable injuries to his neck, back, and spine.

By agreement of the parties, the following issues were presented for determination:

- 1) Whether claimant is entitled to additional TTD benefits from February 17, 2006, to a date yet to be determined.
- 2) Whether claimant is entitled to additional medical treatment, and whether the respondents are responsible for previously incurred medical bills contained in the record.
- 3) Whether claimant has reached maximum medical improvement and, if so, on what date.

Claimant contended, in summary, that he sustained compensable injuries to his neck, back and spine on September 9, 2005, and has not yet reached maximum medical improvement. Claimant contends that all of his treatment has been from authorized treating physicians, or referrals from his authorized treating physicians, and thus respondents are responsible for the payment of all such treatment. Claimant contends he is within his healing period and entitled to TTD benefits from February 17, 2006, to a date yet to be determined.

Claimant contends that respondents have controverted all additional benefits and an attorneys fee

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is due and owing. Claimant further contended that any falls he has sustained since his compensable injuries are simply compensable consequences of his original injury.

Respondents contended, in summary, that appropriate benefits have been paid and are continuing to be paid with regard to this matter. That claimant was released to return to work on December 29, 2005, and that medical documentation subsequent to that time does not support an entitlement to additional indemnity benefits. Respondents contended that some medical benefits are continuing to be paid, but that some of the claimant's treatment may be due to a fall that is unrelated to his work-related injuries. Respondents contended treatment from Drs. Antoon, Gonzales, Hart, and Vora would be unreasonable, unnecessary and unrelated to the claimant's compensable injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of 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 A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence entitlement to TTD benefits from February 17, 2006, to a date yet to be determined.

Therefore, claimant's request for additional TTD benefits is denied.

- 4) The medical treatment contained in the record was reasonably necessary and related to the claimant's compensable injuries and , therefore, the responsibility of the respondents.
- 5) All additional treatment after 2/20/07, including, but not limited to, the testing now recommended by Dr. Vora, is not reasonably necessary or related to the claimant's compensable injuries and, therefore, not the respondents' responsibility.
- 6) Claimant reached MMI on 11/5/05, subsequent treatment between 11/5/05 and 2/20/07 was reasonable pain management.

DISCUSSION

A. HISTORY

The claimant, age 39, began working for the respondent/employer in 2002, and worked as test truck supervisor. The claimant described his job duties as follows:

- A. I was a test truck supervisor. We tested pipe, two and three-eighths, two and seven-eighths pipe that is ... the rods run up and down in on rigs like oil wells. And what that means is there's a tool that is, it's about ninety-foot long, and it goes down inside the pipe. You pressure it up with a valve and a pump from the truck, it pressures the pipe up, and you test it . . . it's got a gauge on it, and you test it anywhere from two thousand to eight thousand pounds, and it'll hold or it'll bust. That's how they test and get the good and the bad pipe, get the bad pipe out of the hole. It's what the job consists of. (Sic)

(T. pg. 16, lines 13-24)

The claimant described his work-related accident on September 9, 2005, as follows:

A. I pulled up on location on 9/9/05. It was actually my second job of the day. I'd already done one job. I pulled up on this location at about dinner time. It was a little bit before dinner, and I was sitting there, and they were still pulling pipe out of the hole, the rig was. So with the truck . . . The way my truck's set up, I can rig up on either side of the rig to test the pipe. Well, usually when you get there, you ask the operator, you know, where he wants you where you're out of this way, so I went up to where he was operating from and asked him, you know, which side of the rig he wanted me to spot up on, and he told me what side. Well, as I was coming down, my foot hit the top step, I slipped, and I hit about the third step from the bottom and went on down to the ground.

Q. Okay. Okay. When you went down to the ground, what portions of your body did you hit or strike?

A. The middle of my back, from, say, right under my chest to probably right below my belt line, kind of on the left side, but it was the left side that hurt the most.

Q. Okay. Did you hit your head?

A. No. (Sic) (T. pg. 17, lines 1-21)

The claimant testified that after his fall he was hurting, but finished the job and then

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went back to the shop where his boss's son, Robbie Allen, was located. The claimant testified that he explained to Robbie what had happened and told Robbie he was going to the emergency room. (T.pg. 19, lines 20-23) The claimant testified that he went to the emergency room, was treated, and then followed up with Dr. Antoon. The claimant also treated with Dr. Massanelli, who referred the claimant for a functional capacity evaluation. During and after the treatment with Dr. Massanelli, the claimant continued to treat with Dr. Antoon. The claimant also treated with Dr. Calhoun, who recommended spinal injections, which the claimant received from Dr. Burnett. The claimant testified he got no relief from the spinal injections. During and after the treatments from Drs. Calhoun and Burnett, the claimant continued to treat with Dr. Antoon.

Dr. Antoon then referred the claimant to Dr. Thomas Hart. The records reflect that Dr. Hart conducted provocative discography on the claimant April 12, 2006, and ultimately concluded he could not do anything further for the claimant. (RX-1, pgs. 13-16) Dr. Hart then referred the claimant to Dr. Vora, who recommended, among other things, an MRI of the cervical spine and nerve conduction studies. Respondents have controverted the additional tests recommended by Dr. Vora.

The claimant testified he then went to see Dr. Gonzalas as Dr. Antoon discontinued the practice of medicine. The claimant testified Dr. Gonzales prescribes him medication for pain and muscle relaxant. The claimant testified his condition has progressively gotten worse since his stipulated compensable injuries.

- A. Numbness in both legs, my arms go to sleep, my back is numb from my belt line up to my chest on the . . . Well, it started out it was the left side but now

it's numb all the way across, and it's just dull numbness. My left leg, I have . . . It just hurts. I mean, I have to . . . I limp around. Now, I have had . . . my right hip has started hurting me some. No, I don't know why or what, but it's mainly numbness and just hurts all the time. I hardly ever get any sleep. I mean, it just hurts all the time. (T. pg. 33, lns. 1-10)

The claimant is requesting the additional testing now recommended by Dr. Vora, that all treatment he has received to date be the respondents' responsibility, additional TTD benefits, and attorney's fees.

B. Additional Temporary Total Disability

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *K ll Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W. 3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. *Id.* The healing period is statutorily defined as that period for healing of an injury resulting from an accident. *Dallas County Hospital v. Daniels*, 74 Ark. App. 177, S.W. 3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable, and if nothing in the way of treatment will improve that condition, the healing period has ended. *Crabtree, supra*. The question of when the healing period has ended is a factual determination for the Commission.

The healing period is defined as that period for healing of the injury that continues

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until the employee is as far restored as the permanent character of the injury will permit.

Arkansas Highway & Transportation Department v. McWilliams, 41 Ark. App. 1, 846 S. W. 2d 670 (1993). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The persistence of pain may not in and of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Id.*; *Mad Burcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S. W. 2d 582 (1982). Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *McWilliams, supra*; *J. A. Riggs Tractor v. Etzkorn*, 30 Ark. App. 200, 785 S.W. 2d 51 (1990). The determination of when the healing period ends is a factual determination to be made by the Commission. *McWilliams; Parker; supra*. In *Pallazollo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W. 2d 938 (1994), the Court of Appeals stated that in order to be entitled to temporary total disability compensation for an unscheduled injury, a claimant must prove that he remained within his healing period and that he suffered a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breashears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

A review of the evidence shows that the claimant has not suffered a total incapacity to earn any meaningful wages after February 17, 2006. A functional capacity evaluation was completed on November 22, 2005, which gave some restrictions; but ultimately concluded with the recommendation of "Return to work with the following restrictions." (CI X-1, pg. 12) Drs. Calhoun and Massanelli said basically the same in their 2/15/06, (Rx-1, pg. 12), and 11/10/05, (RX-1, pg. 9), reports, respectively. Dr. Has always maintained in his reports that the

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claimant could return to work under the FCE restrictions. It must also be noted that the bulk of the medical reports simply call the claimant's condition a "lumbar sprain."

Subsequent to the functional capacity evaluation and Dr. Calhoun's 2/15/06 report stating the claimant could return to work with restrictions, no medical reports contained in the record indicate the claimant should be taken off work completely. Drs. Calhoun and Hart both indicated they didn't feel they had anything further in the way of treatment to offer the claimant. Dr. Massanelli, as early as November 10, 2005, stated:

"At this point, with the mechanism of injury that he has presented with, I think he should have reached maximum medical improvement. Since the therapy really has not cured him, I do not see the need to pursue any additional physical therapy. I would anticipate with this injury that he should be able to go back to work full-duty." (RX-1, pg. 9)

Dr. Massanelli then referred the claimant for the FCE. Dr. Vora recommends more testing; however, even Dr. Vora's reports do not contradict the FCE, Drs. Calhoun and Massanelli with regard to the claimant's work status.

Based on the credible evidence, I find the claimant has failed to prove entitlement to TTD benefits for the requested period and, as such, the request is denied.

C. ADDITIONAL MEDICAL AND MMI

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*. 61 Ark. App. 17, 963 S.W. 2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W. 2d 790 (1997);

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Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W. 3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, Ark. App. 200, 649 S.W. 2d 845 (1983).

When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, the Commission must analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, AWCC #D511255, Full Workers' Compensation Commission Opinion filed December 13, 1989. Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

It must be restated that the respondents stipulated to claimant sustaining compensable back, neck, and spine injuries. It must also be pointed out that the respondents withdrew the arguments of authorized medical treatment with regard to all the doctors seen by the claimant. (T. pg. 10, lines 8-12)

It is uncontroverted that all of the doctors seen by the claimant were authorized treating physicians, and the only question becomes whether the treatment contained in the record has been reasonably necessary and related to the claimant's compensable injuries. I have reviewed the medical records contained in the record, and I find all treatment contained in the record has been reasonably necessary and related to the claimant's stipulated compensable injuries. Therefore, I find the treatment contained in the record herein, through the date of the 2/20/07 full hearing, to be the respondents' responsibility.

However, I do not find Dr. Vora's additional recommendations to be reasonably

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necessary. I base my decision on a number of factors. First, the claimant, by his own testimony, has stated that he does not have any neck pain or neck problems at this time.

Q. Okay. So you're stating at this point that you don't have any type of neck pain or neck problems?

A. Not at this time. (T. pg. 53, lines 11-13)

Further, as stated above, multiple doctors have found the claimant at MMI as evidenced by their reports contained in the record. Additionally, it must be noted, that no acute findings are present on the MRI, which basically found only degenerative problems with the claimant's back.

It is true that the parties have stipulated to a compensable neck injury, and an MRI of the neck would seem logical. However, it is not reasonable to have an MRI if the claimant says he is not having neck pain or any neck problems. Also, Dr. Vora is recommending a brain scan, which I find is unrelated to the claimant's compensable injuries. Dr. Vora assessed the claimant with multiple other problems , including hypertension, anxiety, depression, insomnia, headaches, etc.

When looking at the list of recommendations from Dr. Vora for further treatment/testing, I cannot find that they are reasonably necessary and/or related to the claimant's compensable injuries of 9/9/05. I therefore agree with Dr. Massanelli that the claimant reached MMI 11/10/05 and that the subsequent treatment contained in the record was a reasonable attempt at pain management. I find that future pain management should not be awarded as Dr. Hart, a pain management physician, in his 4/12/06 report indicated he was releasing the claimant.

(CI X-1, pg. 51-54)

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ORDER

Respondents are directed and ordered to pay for all treatment contained in the record through 2/20/07. In all other respects, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge