

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705585

SHAWN FRENCH	CLAIMANT
DISH NETWORK	RESPONDENT
INDEMNITY INSURANCE CO OF NORTH AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 1, 2007, in Springdale, Arkansas. A pre-hearing order was entered in this case on August 14, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, there was a change in regard to the stipulations and issues. The stipulation that there was no dispute over temporary total disability benefits which had accrued prior to July 1, 2007, was withdrawn. The issue was changed from the claimant's entitlement to temporary total disability benefits after July 1, 2007, to his entitlement to temporary total disability benefits for the period of April 13, 2007 through April 23, 2007. A copy of the pre-hearing order with these changes noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 9, 2007, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$320.00 for total disability and \$240.00 for permanent partial disability.
3. On March 9, 2007, the claimant sustained a compensable injury from an electrical shock.
4. There is no dispute over medical services.

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

1. The claimant's entitlement to additional temporary total disability benefits from April 13, 2007 through April 23, 2007.
2. Attorney's fees.

In regard to these issues, the claimant contends that he is entitled to additional temporary total disability benefits for the period of April 13, 2007 through April 23, 2007.

In regard to these issues, the respondents contend that the claimant is not entitled to benefits during this period.

DISCUSSION

_____The sole issue presented for resolution is the claimant's entitlement to additional temporary total disability benefits for the period of April 13, 2007 through April 23, 2007. The burden rests upon the claimant to prove his entitlement to these benefits.

In order to meet this burden, the claimant must prove that during this time he continued within his healing period from the effects of his admittedly compensable injury. He must further prove that he also was rendered totally disabled from regular gainful employment as a result of his admittedly compensable injury.

The claimant testified that, immediately following his admittedly compensable injury of March 9, 2007, he was treated at the emergency room of the North Arkansas Regional Medical Center in Harrison, Arkansas. At that time, he was admitted to the hospital for observation. The claimant's testimony in this regard is corroborated by the medical records from the North Arkansas Regional Medical Center. These records further show that the claimant was discharged on March 10, 2007.

The claimant stated that, following his release from the North Arkansas Regional Medical Center, he took his previously scheduled vacation. Following this vacation, he returned to his regular position with the respondents. However, he continued to experience various physical difficulties, which he attributed to the compensable injury. It was his testimony that he continued to complain of these difficulties to his supervisors and made requests for additional medical treatment. On April 10, 2007, he was sent by the respondents to the Arkansas Occupational Health Clinic in Lowell, Arkansas. There he was seen by Max Beasley, a nurse practitioner. Although Mr. Beasley released the claimant to return to work on April 11, 2007, he also referred him to Dr. David Moon, a neurologist. The claimant's testimony concerning his evaluation

and treatment by Mr. Beasley is corroborated by this gentleman's reports and records.

The claimant's testimony and the records of Dr. Moon show that the claimant was initially evaluated by Dr. Moon on April 13, 2007. Various tests were performed by Dr. Moon, on that date. These tests objectively demonstrated neurological abnormalities involving nerves in the claimant's right upper extremity. On April 13, 2007, Dr. Moon medically restricted the claimant from engaging in any employment positions that required lifting in excess of 20 pounds. There is no evidence that this medical restriction was modified or lifted until July 1, 2007. The reports and records of Dr. Moon further show that the claimant continued under his active medical treatment from April 13, 2007 through July 1, 2007.

The claimant testified that on or about April 13, 2007, he advised the respondents of the restrictions imposed by Dr. Moon. He further testified that on April 14, 2007, he faxed a copy of Dr. Moon's note of April 13, 2007 to the respondents. He stated that he was advised by the respondents that they would attempt to find a position for him that was within these restrictions. He testified that it was not until a week or so later that the respondents contacted him and actually offered him such a position. It was his testimony that he returned to this light duty employment the next day (April 24, 2007) and continued in this position until he was taken off work entirely by Dr. John Dougherty on May 21, 2007. He stated that the respondents voluntarily paid him temporary total

disability benefits for the period of May 23, 2007 through July 1, 2007.

The respondents called Mike Webster, as their witness. Mr. Webster was apparently the claimant's supervisor in April of 2007, but was no longer employed by the respondents at the time of the hearing. Mr. Webster testified that following his compensable injury, the claimant was allowed to take his scheduled vacation. He also stated that after this vacation, the claimant returned to his regular job for a period of time. He recalled that the claimant was then provided a limited or light duty position sometime after receipt of the restrictions imposed by Dr. Moon. Mr. Webster stated that this limited or light duty position was actually available on and before April 13, 2007. Mr. Webster "thinks" that the claimant returned to employment at limited or light duty the next regular work day after he received an email concerning the restrictions by Dr. Moon. However, he did not recall when he actually received this email.

Clearly, the respondents had available the claimant's payroll records. These records would conclusively show when the claimant returned to work, after April 13, 2007. The respondents should also have available the records showing when the restrictions from Dr. Moon were received and when the email was sent to Mr. Webster. However, none of these records have been tendered.

The duration of the healing period is a medical question that must be resolved on the basis of the greater weight of the credible medical evidence presented. The healing period continues until the

claimant has received the maximum benefit of time and medical treatment in resolving or at least stabilizing the actual physical damage caused by the compensable injury.

In the present case, the medical evidence clearly shows that the claimant continued under active medical treatment, which was intended to alleviate or at least reduce the physical damage from the compensable injury, during the period of April 23, 2007. Thus, the claimant has proven that he continued within his healing period and has satisfied the first requirement for his entitlement to the additional temporary total disability benefits during this time.

The medical evidence further shows that during the interval from April 13, 2007 through April 23, 2007, the claimant was medically restricted from performing any gainful employment that required lifting in excess of 20 pounds. When this restriction is coupled with his ongoing active medical treatment, the claimant would have no reasonable expectation of obtaining regular gainful employment in the open job market during the period of April 13, 2007 through April 23, 2007.

I find the testimony of the claimant, concerning the respondents' failure to provide him with limited or light duty employment during the period of April 13, 2007 through April 23, 2007, to be credible. This testimony is sufficient to prove that the claimant was not provided with limited or light duty employment by the respondents during this time.

Therefore, it is my opinion that the claimant has proven by the greater weight of the credible evidence that from April 13,

2007 through April 23, 2007, he was rendered totally disabled from regular gainful employment by the effects of his admitted compensable injury. This satisfies the second and final requirement for his entitlement to temporary total disability benefits during this period.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On March 9, 2007, the relationship of employee-employer - carrier existed between the parties.

3. On March 9, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$320.00 for total disability and \$240.00 for permanent partial disability.

4. On March 9, 2007, the claimant sustained a compensable injury from an electrical shock.

5. There is no dispute, at the present time, over the claimant's entitlement to reasonably necessary medical services at the respondents' expense.

6. Temporary total disability benefits were voluntarily paid to the claimant by the respondents for the period of May 23, 2007 through July 1, 2007.

7. The claimant has proven by the greater weight of the credible evidence that he was also rendered temporarily totally disabled by his admittedly compensable injury for the period of April 13, 2003 through April 23, 2007, and is entitled to additional temporary total disability benefits during this period.

Specifically, he has proven that during this interval he continued within his healing period from the effects of his admittedly compensable injury and was also rendered totally disabled from performing regular gainful employment by his admittedly compensable injury.

8. The respondents have controverted the claimant's entitlement to temporary total disability benefits during the period of April 13, 2007 through April 23, 2007.

9. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

ORDER

The respondents shall pay to the claimant additional temporary total disability benefits for the period of April 13, 2007 through April 23, 2007.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on these additional temporary total disability benefits. One-half of this attorney's fee is the obligation of the respondents in addition to these benefits. The remaining one-half this attorney's fee is to be withheld from these benefits.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE