

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605954

LARRY HANDLEY	CLAIMANT
TODAY'S OFFICE NORTHWEST ARKANSAS	RESPONDENT
COMMERCE & INDUSTRY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 11, 2007

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

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 2, 2007, in Springdale, Arkansas. A pre-hearing order was entered in this case on October 25, 2006. 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. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. On July 3, 2002, the relationship of employee-employer-carrier-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$425.00 for total disability and \$319.00 for permanent partial disability.
3. On July 3, 2002, the claimant sustained a compensable injury to his cervical spine.

4. There is no dispute over the payment of medical expenses, incurred through April 18, 2006.

5. There is no dispute over the payment of temporary total disability benefits prior to April 4, 2006.

6. The respondents have accepted liability for and have paid permanent partial disability benefits for a permanent physical impairment of 9% to the body as a whole beginning on or about February 20, 2003.

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 medical services after April 18, 2006 and his entitlement to temporary total disability benefits from April 4, 2006 through a date yet to be determined.

2. Appropriate attorney's fees.

In regard to these issues, the claimant contends:

"The claimant contends that he suffered a compensable injury on July 3, 2002, or an aggravation thereafter for an injury to the cervical spine. The respondents are refusing continued reasonable and necessary medical treatment."

In regard to these issues, the respondents contend:

"Respondents contend that all appropriate benefits have been paid with regard to this matter. Medical documentation does not support an entitlement to additional benefits associated with the claimant's workers' compensation injury. It is believed the claimant suffered an independent intervening incident which produced new objective findings for which he is currently seeking medical treatment. As such, it is respondent's position they are no longer liable for benefits associated with the claimant's injury in light of these new findings."

## DISCUSSION

### I. ADDITIONAL MEDICAL SERVICES

\_\_\_\_\_The first issue to be addressed concerns the claimant's entitlement to additional medical services. In order to be entitled to the services he now seeks, the claimant must prove that such services represent "reasonably necessary medical services" as that term is used by the Act.

In order to meet this burden, the claimant must show that the medical services he now seeks were necessitated by or are connected with his compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The injury to the claimant's cervical spine, on July 3, 2002, has required substantial medical treatment over a rather lengthy period of time. As a result, the medical record is extensive. This record shows that the initial compensable injury produced a herniated cervical disc at C5-6 that resulted in nerve root impingement and neurological symptoms in the claimant's left upper extremity. This injury necessitated surgical intervention in the form of a discectomy and fusion at the C5-6 level. These procedures were performed by Dr. James B. Blankenship on August 8, 2002. The medical record further shows that this corrective surgery was not successful in alleviating the claimant's symptoms with his neck and left upper extremity. The claimant then continued under active medical treatment by Dr. Blankenship.

Despite his persistent symptoms, Dr. Blankenship initially discharged the claimant from his care on October 15, 2002. In his

report of that date, Dr. Blankenship opined that the claimant had reached "maximum medical improvement from the standpoint of his ruptured disc and the surgical portion of his treatment". It appears somewhat unusual for Dr. Blankenship to discharge the claimant and conclude he had reached maximum medical treatment from a cervical fusion with only two months following the surgery. It is commonly recognized that fusions generally take up to a year to solidify or stabilize. Regardless, in this same report, Dr. Blankenship acknowledged that the claimant has not reached maximum medical improvement "considering the muscular component to his neck pain". He recommended that the claimant receive further treatment from a rehab medicine specialist.

The claimant was then provided with various rehabilitation therapy and chronic pain treatment modalities by Dr. Marty Hurlbut of the White Pine Rehabilitation Center. Again, no substantial relief of the claimant's continued symptoms appears to have been provided by these treatment modalities. However, the claimant did return to lighter duty employment with the respondent on January 31, 2003, and continued to be regularly employed in such positions until April 6, 2006.

In 2003, the claimant was evaluated by three different neurosurgeons. He was first evaluated, at the respondents' request, by a Dr. Martin Greenberg. Although no specific reports or records of Dr. Greenberg have been introduced, the record does contain an October 29, 2003 radiology report of an MRI of the cervical spine that was performed at the request of Dr. Greenberg. This study was

interpreted as showing post-operative degenerative changes of the C6 vertebral body and the C5-6 area in general. However, at that time, the MRI showed no evidence of a disc herniation, spinal stenosis, or obstruction of the neural exit foramina.

The claimant was subsequently seen, again at the respondents' request, by Dr. Blankenship. In his report of December 16, 2003, Dr. Blankenship again expressed the opinion that further surgical intervention would not likely be of benefit.

The claimant was then evaluated, at the respondents' direction by Dr. Michael J. Standefer, also a neurosurgeon. At Dr. Standefer's request, a repeat MRI study, an EMG/NCV, and a myelogram with an accompanying enhanced CT scan was performed. The MRI, which was performed on July 22, 2004, was interpreted as showing operative changes at the C5-6 disc, which were in the form of mild broad-based disc protrusion that slightly indented the thecal sac, "adequate" neural foraminal openings, although the left neural foramina did not appear as open as the right. On September 17, 2004, the cervical myelogram and accompanying enhanced CT scan was performed. These studies were interpreted as showing minimal to mild compression on the anterior aspect of the thecal sac at the C5-6 level and post-operative changes at C5-6 vertebrae, in the form of broad based bony complex of the vertebral bodies. These defects caused mild flattening of the anterior aspect of the thecal sac with concomitant mild neural foraminal narrowing. However, after these tests, Dr. Standefer opined that further surgery would not have "a highly likelihood of benefit". Instead,

Dr. Standefer recommended treatment by a chronic pain management specialist.

As a result of Dr. Standefer's recommendation, the claimant came under the treatment of Dr. Bradley Short, a rehabilitation and physical medicine specialist. The claimant continued to be seen and treated by Dr. Short thereafter. On September 27, 2005, Dr. Short noted a further deterioration of the claimant's cervical condition. As a result, he recommended a repeat MRI study or CT scan of the cervical spine. The recommended repeat MRI of the claimant's cervical spine was performed on March 7, 2006. This test was interpreted as revealing a "straightening" or loss of the normal lordosis (curvature) of the claimant's cervical spine. This study also revealed further restriction or compression of the left aspect of the claimant's spinal cord at the C5-6 level. On April 4, 2006, Dr. Short recommended that the claimant cease working, until he could again be evaluated by a neurosurgeon for this increased spinal cord compression. As a result of Dr. Short's directive, the claimant's employment with the respondent was ended on April 6, 2006.

At this point, the respondents refused to provide the recommended neurosurgical evaluation. In fact, at this point, the respondents refused to provide the claimant with any further medical treatment whatsoever.

The claimant was subsequently forced to seek medical treatment through the free health clinic in Washington County. On November 21, 2006, he again underwent a cervical MRI. This study was

interpreted as showing post-operative changes with anterior fusion at C5-6. It was noted that there appeared to be a diffuse disc bulge and osteophyte complex at this level that was compressing the ventral thecal sac and was most pronounced in the left parasagittal region abutting the left lateral aspect of the cord with moderate left and mild right neural foraminal narrowing.

The claimant was last seen at the neurosurgery section of UAMS in Little Rock. However, the reports and records, which have been introduced from this facility, are sketchy to say the least. There are no reports or records setting out the results of any medical examination or evaluation or containing any recommendations in regard to further treatment.

After consideration of all the evidence presented, it is my opinion that the claimant's continuing difficulties with his cervical spine and left upper extremity are causally related to his compensable injury of July 3, 2002. All of the evidence presented, particularly the medical evidence, shows that the claimant has experienced continuous and consistent complaints with this same area of his cervical spine since the compensable injury. All of the medical evidence presented attributes the claimant's continuing difficulties to the physical damage at the C5-6 level of his cervical spine. This physical damage clearly had its inception in the compensable injury of July 3, 2002. Although there is no doubt from the various testing performed on the claimant that this damage has increased or evolved since the claimant's compensable injury and initial surgery, there is absolutely no evidence that this

progression or increase in the physical damage to the C5-6 area of the claimant's cervical spine is the result of any subsequent trauma or new injury. Instead, the evidence shows that this progression or increase in the physical damage to the C5-6 area of the claimant's cervical spine is merely a natural progressive change that was set in motion by the initial trauma of the compensable injury and resulting surgery. Thus, the respondents would be liable for all appropriate medical treatment necessitated by the claimant's continuing difficulties attributable to the damage to the C5-6 area of his cervical spine.

I further find that the medical services recommended to the claimant by Dr. Bradley Short, on April 4, 2006, have a reasonable expectation of accomplishing the purpose or goal for which they are intended. In light of the significant changes shown on the MRI study of March 7, 2006, a neurosurgical evaluation would be recognized as standard or common procedure by the general medical community to accurately ascertain the extent of the claimant's injury and to formulate an appropriate treatment program. Continued monitoring of the claimant's medication for his chronic pain complaints by Dr. Short would also be reasonable and medically appropriate.

Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of the neurosurgical evaluation recommended by Dr. Short and the continued follow up care by Dr. Short for the claimant's chronic pain complaints. This

liability would be subject to the medical fee schedule established by this Commission.

There remains the medical services obtained by the claimant through the free medical clinic and UAMS. These services were provided after the respondents refused to provide continuing care. Clearly, such medical services would not be "unauthorized" and the respondents have raised no such objection in regard to liability for these services.

Again, the greater weight of the evidence presented shows that the medical services obtained from the facilities by the claimant were necessitated by his complaints caused by the combination of the initial compensable injury, the surgery it required, and the subsequent natural progression or deterioration of this traumatized portion of the claimant's cervical spine. The evidence further shows that these services were medically appropriate for the claimant's continuing complaints. Although the repeat MRI scan and CT scan of November 11, 2006, would appear somewhat duplicative of the MRI performed on March 7, 2006, they were clearly determined to be necessary or medically appropriate by the claimant's treating physicians at the free clinic. As the respondents necessitated this change in the claimant's physicians (from Dr. Short to the physicians at the free clinic), I find that the respondents should be liable for any expense necessitated by this change. This would include any duplicative testing caused by this change.

Therefore, I find that the respondents are liable for the expenses incurred by the claimant as the result of medical services

provided him by and at the direction of the physicians at the free medical clinic and UAMS Neurosurgery Department, including the MRI study and CT scan that was performed on November 21, 2006. This liability is also subject to the medical fee schedule established by this Commission.

## II. ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS

The next issue concerns the claimant's entitlement to additional temporary total disability benefits from April 4, 2006 through a date yet to be determined. In order to be entitled to such benefits, the claimant must prove that he had continued within or had re-entered his healing period by April 4, 2006, and has remained within this healing period thereafter. He must further prove that during this same time he was also rendered totally disabled from performing all forms of regular gainful employment, as a result of the effects of his compensable injury.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period is that period necessary for the resolution or stabilization of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, at a level where nothing further in the way of time or medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

The medical record indicates that the claimant was initially released from neurosurgical treatment by Dr. Blankenship in

September of 2002, only two months following his discectomy and fusion. In his note of September 24, 2002, Dr. Blankenship stated that he has reviewed the claimant's most recent MRI and x-rays and that they show a "solid stabilization and fusion along with neural decompression and resection of the disc herniation". However, I find it extremely difficult to believe that the claimant's actual fusion had stabilized in two months, as this procedure generally requires up to a year. In his subsequent report of October 15, 2002, Dr. Blankenship went on to state that he did not feel that the claimant has reached maximum medical improvement in regard to the muscular component of his compensable neck injury and recommended further treatment by a rehabilitation medicine specialist.

In January of 2003, Dr. Hurlbut (the rehabilitation medicine specialist to whom the claimant had been referred) recommended a referral back to Dr. Blankenship for further evaluation. However, the respondents subsequently sent the claimant to Dr. Greenberg and Dr. Standefer (both neurosurgeons). Tests run at the request of these physicians were interpreted as revealing some stabilization of the physical damage to the C5-6 area of the claimant's cervical spine that had been caused by his compensable injury.

However, subsequent objective testing, beginning in 2004, were interpreted as showing a progressive deterioration or increase in damage to the injured C5-6 area of the claimant's cervical spine. An MRI, on July 22, 2004 and a cervical myelogram with enhanced post-myelogram CT scan, on September 17, 2004, began to show broad-

based protrusion of the C5-6 disc and post-operative changes of the C5-6 vertebra that took the form of a broad-based bony complex formation. Both of these defects were noted to now be compressing the thecal sac around the claimant's spinal cord and causing neural foraminal narrowing in the C5-6 area. Subsequent objective testing has revealed further progression of these changes and increased compression or restriction on the spinal cord and exiting nerve roots in the C5-6 area. It was this progressive change that caused Dr. Short, on April 4, 2006, to recommend another neurosurgical consultation to evaluate the possible necessity of surgical intervention to relieve this progressive neurological compression. He also felt that it was medically necessary to restrict the claimant from engaging in any regular gainful employment until this evaluation was performed.

After consideration of all the medical evidence presented, it is my opinion that the greater weight of the credible medical evidence shows that the actual physical damage caused by the claimant's compensable injury was no longer stable by April 4, 2006, but was in fact steadily progressing or increasing. The medical evidence further shows that additional medical services might once again offer a reasonable expectation of improvement or at least stop the progression. Therefore, I find that the claimant had re-entered his healing period by April 4, 2006. There is no medical evidence presented to show that this progressive increase in the damage to the C5-6 area of the claimant's cervical spine has since stabilized. Thus, I find that the claimant has proven that he

has continued to remain within this second healing period thereafter.

In regard to the matter of disability, the medical evidence shows that the claimant was expressly restricted from engaging in any regular gainful employment by Dr. Short, beginning April 4, 2006. Neither Dr. Short nor any other physician has removed this restriction. Dr. Short is a highly competent physician and his medical opinion that it would be contraindicated for the claimant to perform any type of employment until at least seen and evaluated by a neurosurgeon is entitled to substantial weight. This opinion would also appear to be reasonable in light of the claimant's ongoing objectively demonstrated neurological impingement. Clearly, such neurological impingement would place the claimant at substantial risk of devastating injury from even relatively minor trauma.

In summary, I find that the claimant has proven that he re-entered his healing period from the effects of his compensable cervical injury on April 4, 2006, and has continued to remain within this healing period thereafter. He has further proven that beginning on April 4, 2006, and continuing until some date yet to be determined, he has been rendered totally disabled from performing all forms of regular gainful employment as the result of the effects of his compensable injury. Thus, he has satisfied all of the statutory requirements for his entitlement to additional temporary total disability benefits, beginning on April 4, 2006, and continuing through a date yet to be determining.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On July 3, 2002, the relationship of employee-employer-carrier existed between the parties.

3. On July 3, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$425.00 for total disability and \$319.00 for permanent partial disability.

4. On July 3, 2002, the claimant sustained a compensable injury to his cervical spine, in the form of a herniated disc at C5-6.

5. There is absolutely no evidence of any independent intervening cause of the claimant's subsequent cervical difficulties that are sufficient to relieve the respondents herein from liability for benefits attributable to such difficulties.

6. There is no dispute over the payment of medical expenses incurred for the claimant's compensable cervical injury through April 18, 2006.

7. The medical services recommended to the claimant by Dr. Bradley Short, on April 4, 2006, the medical services provided to the claimant by and at the direction of the free medical clinic of Washington County, and by and at the direction of the physicians at the University of Arkansas School for Medical Services (neurosurgical section), and continued follow up services by Dr. Short all represent "reasonably necessary medical services" for the claimant's compensable injury, under Ark. Code Ann. §11-9-518.

Specifically, the greater weight of the evidence presented shows that these medical services were necessitated by or connected with the claimant's compensable injury, are medically appropriate, and have a reasonable expectation of accomplishing the purpose or goal for which they were intended. Pursuant to the provisions of Ark. Code Ann. §11-9-518, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

8. There is no dispute over the claimant's entitlement to temporary total disability benefits prior to April 4, 2006, and all such appropriate benefits accruing through that date have been paid.

9. The claimant was once again rendered temporarily totally disabled as a result of the effects of his compensable cervical injury beginning April 4, 2006, and continuing through a date yet to be determined. Specifically, the greater weight of the medical evidence establishes that the claimant had re-entered his healing period from the effects of his compensable cervical injury by April 4, 2006, and was also rendered totally disabled from performing all forms of regular gainful employment by this compensable injury beginning on that date and continuing through a date yet to be determined.

10. The respondents have controverted the claimant's entitlement to any medical services after April 18, 2006, and any temporary total disability benefits on and after April 4, 2006.

11. 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 beginning April 4, 2006, and continuing through a date yet to be determined.

The respondents will be liable for the expenses incurred by the claimant as the result of the neurosurgical evaluation recommended by Dr. Short, for the medical services provided by and at the direction of the physicians of the free medical clinic of Washington County, and for the medical services provided the claimant by and at the direction of the physicians at the neurosurgical department of the University of Arkansas School for Medical Sciences. The respondents shall also be liable for any additional reasonably necessary medical services provided to the claimant by and at the direction of Dr. Bradley Short.

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

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

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

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE