

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F602842 & F603468

HAROLD D. HANSFORD, EMPLOYEE	CLAIMANT
MAVERICK TRANSPORTATION, LLC, SELF-INSURED EMPLOYER	RESPONDENT
CMI BARRON RISK MANAGEMENT SERVICES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED OCTOBER 31, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

The respondents were represented by HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 15, 2007, in Little Rock, Arkansas. A Prehearing Order was entered in this case on January 6, 2007. 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 employee/employer relationship was effective February 13, 2006, and February 14, 2006, when the claimant sustained compensable injuries.
2. On February 13, 2006, the claimant sustained a compensable injury to his left knee.
3. On February 14, 2006, the claimant sustained compensable injuries to his right side, hip, and ribs.
4. The respondents previously accepted the claimant's injuries of February 13, 2006, and February 14, 2006, as compensable.
5. The claimant had a left knee medial meniscus tear, a rib injury, a contusion to his hip, a contusion to his hand, with subjective low back complaints.
6. The claimant was previously released from care on September 18, 2006, and assigned a 2% permanent partial disability rating to his left lower extremity for his knee.
7. The claimant's average weekly wage at the time of his injury was \$700.00 per week, equating to compensation rates of \$467.00 per week for temporary total disability and \$350.00 per week for permanent partial disability.

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

Claimant:

1. The claimant's right to additional temporary total disability benefits. (Reserved)
2. The claimant's right to additional medical treatment, controversion and attorney's fees.
3. Compensability of low back injury when the claimant fell on February 14, 2006.

Respondents:

1. Compensability of alleged low back injury.
2. What, if any, additional benefits to which the claimant is entitled.
3. If the claimant had a compensable low back injury, whether the claimant merely sustained a temporary aggravation of his pre-existing back condition for which he has resumed his baseline condition.
4. Whether further treatment for the claimant's back problems would be considered "reasonably necessary" in relation to the original incident and injury.

The record consists of the August 14, 2007, hearing transcript and the exhibits contained therein, except as specifically excluded from consideration below.

DISCUSSION

The claimant became employed by Maverick Transportation in early February of 2006 as a driver-trainee. The claimant was scheduled to ride with another driver for approximately six weeks.

On his first trip, the claimant sustained an admittedly compensable knee injury in Chicago on February 13, 2006, when he twisted his knee as he stepped off a trailer onto a catwalk. On February 14, 2006, the claimant and his driver-trainer were placing a tarp over a load in Joplin, Missouri, when the claimant's knee gave out as he stepped off the trailer. As a result of that fall, the claimant sustained admittedly compensable injuries to his right side, hip, and ribs.

When the drivers returned to Arkansas, Maverick Transportation sent the claimant to Concentra Medical Centers in North Little Rock for treatment on February 15, 2006. Dr. Michelle Ibsen dictated notes indicating that the claimant's chief complaint from the February 13, 2006, incident was his leg. Her notes indicate that the

claimant's chief complaint from the February 14, 2006, incident was his back, although her report for that injury indicates that the claimant felt that he had hurt his right hip, right side, right knee and lower back. Dr. Ibsen's reports indicate that x-rays of the hip, back, and ribs were each negative. Dr. Ibsen released the claimant to return to work immediately with restrictions, physical therapy for five days, and prescription medication. Dr. Ibsen proposed a follow-up evaluation in two days for the knee injury and in four days for the remaining injuries.

The parties stipulated that if Letha Haynes, the Vice President of Human Resources at Maverick Transportation, was called to testify, Ms. Haynes would testify that the claimant was sent to her office on February 15, 2006, after indicating to other personnel at Maverick that he did not want to do light duty and that he wanted to go home (i.e., to Kentucky). Ms. Haynes would testify that she told the claimant if he refused the light duty position, he would be terminated because Maverick Transportation had a light duty program in place to keep injured workers in a continuous work capacity. (T. 78-79)

The claimant testified that he did not discuss with Letha Haynes a light duty program at Maverick and that he

did not recall discussing with Letha Haynes that he was resigning his employment. (T. 32 - 33) The claimant testified that he did not discuss light duty with anyone in the office at Maverick and only discussed light duty with someone in the motel who was on light duty. (T. 31) The claimant testified that he did not know that he was no longer employed at Maverick until approximately one month after he got home when he called to find out why he had not gotten any insurance cards. (T. 22)

When the claimant returned to Kentucky, he briefly came under the care of physicians in Scott County and ultimately came under the care of Dr. Paul Naylor at Tennessee Orthopaedic Clinic who followed the claimant for knee and back complaints. On June 5, 2006, Dr. Naylor performed left knee surgery to correct a radial flap tear of the posterior horn of the medial meniscus. (C. Exh. 1 p. 40) On September 18, 2006, Dr. Naylor concluded that the claimant was at maximum medical improvement for his knee but that the claimant was not at maximum medical improvement for his back. Dr. Naylor indicated that the claimant needed to see a back surgeon to evaluate his back and recommended that the claimant see doctors at SPINEKnoxville to see if anything

more could be done for the claimant's back. (C. Exh. 1 p. 47)

According to Dr. Naylor's progress notes, Dr. Naylor had diagnosed the claimant with lumbar radiculopathy in addition to his knee injury on June 1, 2006, June 12, 2006, August 15, 2006, and on September 18, 2006. On October 4, 2006, the claimant was in fact seen by Dr. Jeffrey Uzzle at SPINEKnoxville and underwent EMG testing. Dr. Uzzle's impression was that the test revealed no evidence of lumbar radiculopathy or axonal injury changes affecting the left lower extremity. (C. Exh. 1 p. 49) Dr. Naylor's October 16, 2006, progress note indicated in part:

We sent him to SPINEKnoxville. They did EMG's/PNCV's of his lower extremity. There was no evidence of any lumbar radiculopathy. He comes back in today still complaining of pain in the left lower lumbar spine region that radiates from the buttocks to the leg. (C. Exh. 1 p. 52)

Dr. Naylor proposed one month of lumbar physical therapy, but he indicated on November 16, 2006, that physical therapy was never approved. At that time, Dr. Naylor indicated:

There is not much more I can offer him from an orthopaedic standpoint. He would best be seen by a spine doctor at this point. (C. Exh. 1 p. 55)

In the present claim, the claimant seeks a referral to a spine specialist at SPINEKnoxville as recommended by Dr.

Naylor. The respondents challenge whether the claimant sustained a back injury on February 14, 2006, as he contends and if so, whether the injury was temporary and has resolved. The respondents also contend that additional medical treatment for the claimant's back is not reasonably necessary in light of his earlier lumbar MRI read as a normal study, his EMG testing which did not reveal any indication of lumbar radiculopathy, and the physical therapy which he has already received for his back complaints.

In addition to his testimony and treatment records, the claimant also introduced into evidence information which Dr. Naylor provided to the claimant's attorney on or about February 12, 2007. In that document, Dr. Naylor indicated that the claimant was no longer within his healing period or under any work restrictions for his back. However, Dr. Naylor indicated that the claimant was still in need of additional medical treatment and suggested that the claimant see a back doctor. Dr. Naylor also indicated that he had found muscle spasms in regard to the claimant's back condition. (C. Exh. 1 p. 13)

Evidentiary Objections

On page 11 of the hearing transcript, the respondents' attorney objected on hearsay grounds to the claimant's

proffered testimony that (1) his driver-trainer asked the claimant whether his knee was bad enough to see a doctor, (2) his driver-trainer called in and was informed that he had to proceed to deliver the load, (3) the two traveled on to Missouri because the driver-trainer told the claimant that they had to deliver their load, and (4) the driver-trainer told the claimant to catch the tarp while tarping the truck in Joplin. The respondents have accepted admittedly compensable physical injuries that occurred in both Chicago and Joplin, so the course of events described by the claimant using some hearsay does not appear to be in dispute. The hearsay testimony in dispute will be accepted into the record to explain the claimant's state of mind as to why the claimant first saw a doctor on February 15, 2006, and not before.

On page 66 of the hearing transcript, the claimant's attorney objected to witness Lisa Kegley testifying about light duty discussions between the claimant and Maverick personnel unless Ms. Kegley had personal knowledge. The respondents' attorney acknowledged that Ms. Kegley's answer was based on conversations with her supervisor, Ms. Haymes, and later in the hearing, the parties stipulated to what Ms. Haymes' testimony would be if she was called to testify.

Under these circumstances, the objection to Ms. Kegley's hearsay testimony on a disputed issue of fact is sustained, and her answer at line 21 of page 66 of the hearing transcript will not be considered.

Compensable Back Injury

The Commission has the duty to weigh all of the evidence, including the medical evidence. Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W.2d 858 (1997). The Commission cannot arbitrarily disregard any evidence. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). However, the Commission has the authority to accept or reject medical evidence. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

To prove the occurrence of a compensable back 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).

In the present case, the parties have stipulated that the claimant sustained admittedly compensable injuries to other parts of his body in the fall from a trailer on February 14, 2006. There appears to be no dispute between the parties that the fall was a specific incident and that any injuries sustained as a result of that fall arose out of and in the course of the claimant's employment for Maverick Transportation.

I find that the claimant has also established by a preponderance of the evidence that he sustained an internal injury to his back in the fall on February 14, 2006, and that the injury was established by medical evidence supported by objective findings.

In finding that the claimant established the existence of a back injury, I am persuaded by the medical reports authored by Dr. Ibsen on February 15, 2006, which document low back complaints in addition to the admittedly compensable hip, side, rib, and knee injuries. Dr. Ibsen initially diagnosed a lumbar strain in addition to other physical injuries. (C. Exh. 1 p. 7) Ongoing low back

complaints are documented by medical providers thereafter on later dates including a physiotherapy lumbar evaluation performed on February 22, 2006, and on referral for a lumbar MRI performed on March 14, 2006. (C. Exh 1 p. 10, 15)

Although the claimant's lumbar x-rays, lumbar MRI, and EMG testing were all negative for bony abnormalities, disk abnormalities or radiculopathy, I find that Dr. Naylor's observations of muscle spasm in the claimant's back are adequate objective findings to support the existence of the lumbar strain injury diagnosed by Dr. Ibsen. See Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000); Continental Express, Inc. v. Freeman, 339 Ark. 142, 4 S.W.3d 124 (1999).

In reaching my conclusion that the claimant has therefore established all of the requirements necessary to establish that he sustained a lumbar strain injury, I recognize that Dr. Naylor's 2006 medical reports make no reference to muscle spasm, and Dr. Naylor's February 12, 2007, correspondence does not indicate when specifically that Dr. Naylor observed muscle spasm in the claimant's back in the course of treatment between April 10, 2006, and November 16, 2006. However, there is no evidence of any independent intervening incident or injury to the claimant's

back after February 14, 2006, and no medical reports between February 15, 2006, and November 16, 2006, indicate any physician or therapist during that period looked for and/or determined an absence of muscle spasms. Under these circumstances, I find that the claimant has established by a preponderance of the evidence in the record a causal connection between his back strain injury sustained on February 14, 2006, and the muscle spasms that Dr. Naylor has indicated that he observed on some unidentified date or dates thereafter in 2006 while treating the claimant.

Additional Treatment For Back At SPINEKnoxville

The claimant currently seeks additional treatment from a back specialist at SPINEKnoxville. Employers must 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). Whether a treating physician has placed an injured worker at maximum medical improvement is a proper consideration in determining whether additional treatment is reasonably necessary. Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W.2d 858 (1997).

The Full Commission has previously indicated that medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, Full Workers' Compensation Commission Opinion filed July 14, 1993 (E107391). An employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In the present case, I find that the claimant has failed to establish by a preponderance of the evidence that additional treatment at SPINEKnoxville is reasonably necessary to treat his compensable back injury. In this regard, the medical record establishes that the claimant has undergone x-rays, a lumbar MRI, a hip MRI, and EMG testing

to investigate his various back, hip, and leg complaints. The tests did not detect any abnormality in the claimant's back to account for his various reported symptoms. I note that Dr. Naylor diagnosed the claimant with a potentially serious back condition, chronic lumbar radiculopathy, in August and September of 2006, and following that diagnosis, the claimant was seen at SPINEKnoxville for diagnostic testing. Notably, after the EMG testing on October 4, 2006, revealed no evidence of lumbar radiculopathy, Dr. Naylor no longer included a diagnosis of lumbar radiculopathy in his October 16, 2006, progress note.

Moreover, the claimant has had the benefit of rest, at least some degree of physical therapy, and diagnostic testing for his complaints. Although the claimant's back complaints have not resolved and Dr. Naylor continues to recommend a referral to a back doctor at SPINEKnoxville (even after SPINEKnoxville's EMG study came back negative), Dr. Naylor at the same time has indicated that the claimant's healing period has ended and that the claimant has no work restrictions.

Notwithstanding Dr. Naylor's February 12, 2007, correspondence indicating that the claimant's healing period has ended and that he has no work restrictions, the claimant

testified in his deposition on July 18, 2007, that his back has gotten no better and that he is still incapable of prolonged sitting or standing. (R. Exh. 4 p. 41, 59).

However, in that same 2007 deposition the claimant testified that he has never had any prior injury or back problem before February of 2006 and has never had any type of numbness or tingling in his left upper thigh before his accident. (R. Exh. 4 p. 19, 21) The claimant testified several times in that same deposition that he has never had left knee problems before 2006. (T. 38, 39) In assessing the claimant's credibility, I find that the claimant's testimony of no prior back or knee problems is inconsistent with the claimant's 2003 medical treatment records.

In fact, the respondents' attorney found and introduced medical reports at the hearing indicating that the claimant reported to a physician on June 23, 2003, that he had been experiencing left upper leg numbness and tingling for five days, and the physician assessed parasthesis to the left leg. (R. Exh. 1 p. 1) A July 14, 2003, medical report contains a history of left knee pain and indicates that the claimant attempted an MRI of the left knee but was unable to complete the test due to claustrophobia. (R. Exh. 1 p. 2) A July 21, 2003, medical report indicates that the claimant

has an abnormal back and indicates that the patient's knee problems may well be secondary from his back. (R. Exh. 1 p. 3). An MRI of the claimant's left knee was performed on August 2, 2003, and indicated a tear of the posterior horn of the medial meniscus. (R. Exh. 1 p. 4)

After hearing the live testimony and observing the demeanor of the witnesses and after comparing the claimant's hearing and deposition testimony to his medical records, I conclude that the claimant was intentionally untruthful in both his answers to interrogatories and in his deposition when questioned about any prior back and/or knee conditions.

Based on the claimant's lack of credibility as a witness, his negative diagnostic test results, and Dr. Naylor's indication that the claimant's healing period has ended with no work restrictions, the claimant has failed to establish by preponderance of the credible evidence that an evaluation by a back specialist at SPINEKnoxville is reasonably necessary medical treatment for his compensable back strain injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee/employer relationship was effective February 13, 2006, and February 14, 2006, when the claimant sustained compensable injuries.

2. On February 13, 2006, the claimant sustained a compensable injury to his left knee.
3. On February 14, 2006, the claimant sustained compensable injuries to his right side, hip, and ribs.
4. The respondents previously accepted the claimant's injuries of February 13, 2006, and February 14, 2006, as compensable.
5. The claimant had a left knee medial meniscus tear, a rib injury, a contusion to his hip, a contusion to his hand, with subjective low back complaints.
6. The claimant was previously released from care on September 18, 2006, and assigned a 2% permanent partial disability rating to his left lower extremity for his knee.
7. The claimant has established by a preponderance of the evidence that he sustained a compensable lumbar back strain injury on February 14, 2006.
8. The claimant has failed to establish by a preponderance of the evidence that a referral to a back specialist at SPINEKnoxville is reasonably necessary for treatment of his compensable lumbar strain injury.

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ORDER

For the reasons discussed herein, the claimant's request that I order additional medical treatment at SPINEKnoxville as reasonably necessary for his compensable lumbar strain injury, must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge