

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E906998

ALLEN HARTE	CLAIMANT
CITY OF ROGERS	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 27, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by J. CHRIS BRADLEY, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 5, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 5, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. The prior opinion is res judicata and the law of this case.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical for the claimant's liver problems.

2. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured as a result of the continual work activity that he was doing as a police officer. He injured his back and had to take medication for his injury. The medication caused permanent liver damage.

In regard to the foregoing issues the respondents contend that they likely owe medical expenses but that information has been withheld by claimant's attorney. The respondents contend that they have not controverted this claim. See Ark. Code Ann. §11-9-715(a)(2)(B)(iii).

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a packet of documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

It has previously been found and is now res judicata that the claimant sustained a compensable injury to his low back while working for the respondent. The respondents were directed to pay for the claimant's reasonable and necessary medical treatment for his compensable low back injury.

The claimant testified that he is forty-seven years old and began working for the respondent in 1984 as a patrol officer. The claimant testified that he began to develop problems with his low back for which he sought treatment. The claimant testified that he

has been seen by Dr. Neaville who referred him to Dr. Knox and then he has seen Dr. Money. The claimant testified that these various physicians have prescribed medications for him, one of them being Vioxx and then he started taking Celebrex. The claimant testified that he would estimate that he took these two drugs maybe three years. The claimant testified that prior to 1999 he has never experienced any problems with his liver. The claimant agreed that in late 2001 it was found that his liver enzymes were elevated. The claimant explained that one of his doctors on a routine visit wanted to do some blood work. The claimant testified that he is still having problems with elevated liver enzymes and he has to be tested quarterly for this problem. The claimant testified that he has had two liver biopsies and has been referred to Dr. Stagg who has put him on a drug called Urso which it is his understanding is supposed to help with the liver enzymes. The claimant remembered that he has last had a biopsy in December 2006 and besides these tests he has a lot of other testing to rule out other causes of his liver problems.

The claimant testified that he has never had an alcohol problem and his drinking was limited to perhaps a beer after mowing the lawn on his day off or with a steak or pizza but no more than two. The claimant was asked if anything had changed in his daily habits prior to 1999 to right after 2001 when he was diagnosed with liver enzymes other than taking his prescribed medications and the claimant responded, "No, nothing changed."

On cross examination, the claimant agreed that he had a second back injury on August 12, 2002, which was a temporary aggravation of his prior problem. The claimant was asked if from March 12, 1999, through August 12, 2001, if he was taking Vioxx. The claimant responded that he started taking Vioxx and because it was not helping with his back pain that much he was switched over to Celebrex but cannot remember the date of this change. The claimant testified that all he can remember is that he just took his medication as prescribed which was twice daily. The claimant testified that he took his Celebrex once in the morning and once in the evening. The claimant testified that he stopped taking Celebrex in either 2001 or 2002 when his elevated liver enzymes were discovered. The claimant testified that he was not taking any other kind of anti-inflammatory other than Vioxx or Celebrex. The claimant agreed that during the period of time that he was taking his anti-inflammatory medications he was also drinking perhaps four beers a week. The claimant testified that that is just a guess that he really was never much of a drinker. The claimant agreed that prior to March 1999 he had never had his liver tested and would agree that there was no way to know if he had a problem with his liver prior to that date. The claimant also agreed that his doctor had blood work done as a part of a treatment regime with his anti-inflammatories. The claimant was asked if by his own personal knowledge, if the anti-inflammatory medication is the direct cause of his liver problems. The claimant responded, "I don't know."

The claimant testified that it was always possible that there might be some other basis for the damage to his liver.

The claimant agreed on redirect examination that he has had all the tests that his doctors think are necessary. The claimant testified that he did not take Celebrex or Vioxx prior to his back injury in 1999.

The medical records set forth that the claimant began being seen by Dr. Gary Neaville on March 16, 1999, with complaints of back pain for which he was prescribed medication. The claimant continued under Dr. Neaville's care up through April 16 where he was continued under conservative treatment of medication and physical therapy. On June 30, 1999, Dr. Neaville prescribed Vioxx as well as physical therapy for the claimant's complaints of low back pain. The medical records indicate that the claimant was evaluated by Dr. Luke Knox and was also seen by Dr. William Money and that he continued to be prescribed Vioxx and received some steroid injections for his compensable back injury. On February 1, 2002, Dr. Neaville writes that the claimant is seen for follow up of an abnormal liver enzyme test which is thought possibly to be due to non steroidal used to treat his back pain which is secondary to his workers' compensation. Dr. Neaville notes that non steroidal and Tylenol can cause problems and that the claimant is not taking any medication at this time. Dr. Neaville writes that the claimant is to return in two or three months to follow up his liver functions as recommended by Dr. McKnight. Dr. Neaville writes on July 15, 2002, that he has seen the claimant for his

abnormal liver functions. Dr. Neaville writes that the claimant's records indicate that in 1985 he was found to have moderately severe colitis, acute and chronic and this was also noted on Dr. McKnight's colonoscopy. Dr. Neaville notes that certainly it is possible that his liver functions are due to this abnormality. Additional tests were prescribed. Dr. William McKnight writes on August 1, 2002, that the claimant has elevations of alkaline phosphatase and gamma GT. Several tests were run to try to determine an origin of the claimant's elevated liver enzymes. Dr. McKnight writes that he has discussed the case with Dr. Neaville and they agree that the approach should be to repeat liver functions at about six month intervals but no further diagnostic studies. Dr. McKnight writes that the two doctors feel like the MRCP has adequately addressed the possibility of any biliary track disease and negative hepatitis screen with negative antimitochondrial antibody would be a reasonable endpoint regarding causes of chronic alkaline phosphatase elevations. In a letter dated August 19, 2005, Dr. Neaville writes that due to the claimant's degenerative disc disease aggravated by his work, the claimant was prescribed medications at first but due to abnormal liver enzymes while taking these medications, the medications were discontinued and the claimant now has problems with pain. Dr. Neaville writes on April 4, 2006, that he has seen the claimant in follow up for chronic back pain along with abnormal liver enzymes which was felt to be due to medication used to treat back pain when he was wearing a police holster. The claimant was seen by Dr.

Neaville on April 4, 2006, for follow up of back pain and abnormal transaminase. The doctor notes that the claimant was taking non steroidal and liver enzymes have been elevated since. The doctor notes that the procedures done the day before include alkaline phosphatase which is 221 which is about what it has been, GTT is 471, and he has had a prior liver biopsy. On September 19, 2006, Dr. Neaville writes that lab studies done on the claimant the day before show an increase of AST and ALT to two and a half time normal, alkaline phosphatase is two times normal noting that this is a fairly substantial change. Dr. Neaville writes to whom it may concern on September 19, 2006, that the claimant is being followed for abnormal liver enzymes for a period of years. The doctor writes that this was noticed after he was taking non steroidal for back pain due to an injury he had on the job. Dr. Neaville writes that due to a recent exacerbation of his liver function test he is being referred to a gastroenterologist. The claimant had a liver biopsy on December 11, 2006. After examination, the diagnosis from the biopsy was; bile duct centered liver damage with chronic inflammation in portal tracks, mild piecemeal necrosis, fibrous expansion of the portal tracks with concentric periductal fibrous (onion skinning), periportal and focal bridging fibrous (stage 3/4 of Ludwig). Information and samples were also sent to a diagnostic clinic in Memphis, Tennessee for evaluation and comment. Dr. Jackie M. Makapugay at the GI Pathology Partners in Memphis, Tennessee writes after reviewing the tests that the claimant has; bile duct centered liver injury, mason trichrome stain highlights

periportal and early bridging fibrous (stage 3/4 Ludwig), copper stain positive for periportal hepatocyt f copper.

After a complete review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his liver problems. The claimant's treating physicians have indicated in their various reports that the claimant's elevated liver enzymes are due to his medications prescribed for treatment of his compensable back injury. There is no indication that this claimant had any liver problems prior to 1999 and it was after taking Vioxx and Celebrex both non steroidal anti-inflammatories that the claimant developed liver problems. The claimant, therefore, is entitled to reasonable and necessary medical treatment for his ongoing liver problems.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The prior opinion is res judicata and the law of this case.
3. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his ongoing liver problems. See discussion above.
4. The respondents should pay for all reasonable and necessary medical treatment for this claimant's liver problems since they are found to be a compensable consequence of his compensable injury.
5. The respondents have controverted this claim for additional medical benefits.

6. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein. It is noted that this is a 1999 workers' compensation case, therefore the old attorney's fee schedule applies.

ORDER

The claimant has proven by a preponderance of the evidence that his liver problems are a compensable consequence to his treatment for his compensable injury.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable liver problems.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee 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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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE