

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605996

PAUL HUMPHREY

CLAIMANT

NEW AGE DISTRIBUTING, INC.

RESPONDENT EMPLOYER

TRUCK INSURANCE EXCHANGE

ORDER AND OPINION FILED SEPTEMBER 27, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE SARAH PRESSON, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claim came on for a hearing in Little Rock, Arkansas on August 22, 2007. A prehearing conference was held on May 15, 2007 and a prehearing order was filed on May 16, 2007. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an April 7, 2006, compensable injury.
2. The temporary total disability rate is \$320.

The claimant contends that he sustained a compensable neck and shoulder injury on April 7, 2006 and that has been accepted as compensable. The claimant further contends that his one-time change of physician, Dr. Harold Chakales, has opined that if the claimant has carpal tunnel surgery, his neck symptoms will subside.

The claimant is not contending that his carpal tunnel condition is compensable; however, he is asking that the carpal tunnel surgery be deemed to be reasonable and necessary because of the neck problems. The claimant contends he is entitled to additional medical benefits and temporary total disability benefits from the date that Dr. Chakales took him off work until a date to be determined. The claimant is also requesting attorney's fees.

Respondents contend the claimant sustained a compensable left shoulder injury and was able to return to work. The claimant saw Dr. Chakales some six months after the initial injury and Dr. Chakales diagnosed the claimant with severe carpal tunnel syndrome on both sides, right being greater than left. Respondents are controverting the carpal tunnel surgery but have not controverted additional medical for the claimant's shoulder or neck. Respondents have authorized epidural injections.

ISSUES TO BE LITIGATED

1. Additional medical for carpal tunnel surgery.
2. Temporary total disability benefits.
3. Attorney's fees.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an April 7, 2006, compensable injury.
2. The temporary total disability rate is \$320.
3. The claimant has failed to prove by a preponderance of the evidence that the carpal tunnel surgery is reasonable and necessary treatment for his compensable left shoulder and neck injury.
4. The claimant has failed to prove that he remained in his healing period and was totally unable to earn wages because of his compensable neck and shoulder injury from December 27, 2006, to a date to be determined.
5. The claim for benefits is respectfully denied and dismissed.

DISCUSSION

The claimant, 47 years old, worked for the respondent employer driving the forklift and stocking the shelves. The claimant sustained an admittedly compensable injury on April 7, 2006, when he tripped and fell over the pallet jack and trays fell on him. The claimant reported a neck and shoulder injury and was treated at Concentra for a time and was released to return to work. The claimant saw some general practitioners at Concentra and then he asked for a change of physician to Dr. Harold Chakales. According to the claimant, Dr. Chakales took him off work the first visit and the claimant notified his employer.

According to the claimant, he understands a procedure for his shoulder has been recommended and carpal tunnel surgery has been recommended. The claimant

testified that he has not previously had any wrist or hand problems; however, he has continued to have pain in his neck and shoulders and he testified that he has swelling in his neck and shoulders. The claimant does drive a van for his church about three times a week, taking kids to games or other places. He regularly drove the van for free before his injury but since he has no income, the church has been giving him food and helping him pay his bills.

Under cross examination, the claimant testified that after he left his employer in May 2006, he did not have any medical treatment until December 2006. He had no insurance and was not working.

Joe Pumphrey, driver supervisor for the respondent, testified that the claimant was a delivery person. Mr. Pumphrey confirmed that when the claimant returned to work following his compensable injury, he complained of pain.

ADJUDICATION

The claimant is requesting additional medical benefits associated with carpal tunnel surgery to be performed by Dr. Harold Chakales in order to relieve his neck problems. The claimant is not contending his carpal tunnel condition is work related, but is contending that this condition affects his neck pain. Respondents are controverting the carpal tunnel surgery but are not controverting other reasonable and necessary medical related to the claimant's neck or shoulder condition.

Ark. Code Ann. §11-9-508(a)(Supp. 2005) provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is

reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

In Dr. Chakales' February 14, 2007, letter, he states:

I would recommend carpal tunnel decompression. He is not working at the present time. I feel carpal tunnel decompression would help his condition and allow him to return to gainful employment. I have prescribed pain pills and muscle relaxers. I will see him again in 3 weeks. (Cl. Exh. No. 1, p. 28.)

On December 27, 2006, Dr. Chakales recommended performing the right carpal tunnel surgery and if the outcome was good, proceed with the left carpal tunnel surgery. The claimant's compensable injury is left shoulder pain as well as a cervical strain. I am not persuaded that Dr. Chakales's medical records correlate the carpal tunnel syndrome to the claimant's compensable left shoulder and cervical strain injury. The Nerve Conduction Studies performed on December 19, 2006, indicate that "No obvious cervical radiculopathy was seen though poor effort was noted on the left due to shoulder discomfort." (Cl. Exh. No. 1, p. 31.) Dr. Chakales has provided epidural injections for the claimant's neck pain that radiates into the shoulder. Respondents have accepted liability for the epidural injections. After carefully considering the medical evidence, I find the claimant has failed to prove by a preponderance of the evidence that the carpal tunnel surgery proposed by Dr. Chakales is reasonable and

necessary and related to the claimant's compensable left shoulder and neck injury.

The claimant next contends that he is entitled to temporary total disability benefits from December 27, 2006, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). In the present case, the claimant was released to return to work by Dr. William Warren on April 13, 2006, with some restrictions and then fully released on May 23, 2006. The claimant did return to work for a while but finally told his employer that he needed to see another doctor and did not return back to work. The claimant changed doctors to Dr. Harold Chakales and he was taken off work on December 27, 2006. Dr. Chakales' letter discusses the claimant's carpal tunnel condition and does make mention of the claimant's shoulder and neck problems, but definitely spends more time on the carpal tunnel condition. Dr. Chakales does indicate that the claimant is temporarily disabled but he does not indicate what condition is the disabling condition. Further, in Dr. Chakales' February 14, 2007, letter, he is recommending the carpal tunnel release and states that this decompression surgery will help the claimant's condition and will allow him to return to work. After considering all the medical evidence, I am unable to find that the claimant is totally unable to work because of his compensable injuries. I find the claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and totally unable to earn wages because of his compensable shoulder and neck injury from December 27, 2006, to a date to be determined.

ORDER

The claimant has failed to prove by a preponderance of the evidence that the carpal tunnel surgery is reasonable and necessary treatment for his compensable left shoulder and neck injury. The claimant has failed to prove that he remained in his healing period and was totally unable to earn wages because of his compensable neck and shoulder injury from December 27, 2006, to a date to be determined. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**