

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604891

ROGER MURRAY, EMPLOYEE	CLAIMANT
ROYCE CHAMBERS, EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 5, 2007

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

The claimant was represented by HONORABLE MICHAEL BOYD, Attorney at Law, Pine Bluff, Arkansas.

The respondents were represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 12, 2006 in Little Rock, Arkansas. A prehearing order was entered in this case on October 9, 2006. 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 in the prehearing order and are hereby accepted:

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

2. The employee/employer/carrier relationship existed at all relevant times, including April 28, 2006.
3. On April 28, 2006, the claimant sustained compensable injuries.
4. Respondents accepted the April 28, 2006 injuries as compensable and paid some benefits.
5. The claimant earned wages sufficient to entitle him to a compensation rate of \$417 for total disability benefits and \$312 for permanent partial disability benefits.

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

1. Whether the claimant is entitled to additional temporary total disability benefits after August 17, 2006.
2. Additional medical treatment after physical therapy ended in August of 2006.
3. Controversion and attorney's fees.

The record consists of the December 12, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant was employed by the respondent as a log truck driver when he sustained documented trauma to his back, ribs, and legs on April 28, 2006, as a log rolled down a stack and hit the claimant. The respondents paid for a course of medical treatment beginning at the Ouachita County Medical Center on April 28, 2006, and ending with physical therapy in August of 2006. During that period, the respondents also paid the claimant temporary total disability compensation until August 17, 2006.

During this period, the claimant underwent a number of diagnostic tests. These tests included x-rays of the left and right tibia and fibula on April 28, 2006, and x-rays of the left foot and ankle on April 28, 2006. These were all interpreted as normal studies. The claimant also received CT tests of the chest, abdomen, and pelvis on April 28, 2006. These studies did not identify any abnormalities associated with trauma. The claimant received x-rays of the lumbar spine on May 30, 2006. No abnormality was identified in the report. An upper GI test with barium performed on June 8, 2006 was classified as unremarkable. Colon testing with barium performed on June 13, 2006 was classified as a normal study.

Following these tests performed either on the date of the accident or later at the request of the claimant's treating physician, Dr. Thomas Lewellen, the respondents referred the claimant to Dr. Barry Baskin, a physical medicine and rehabilitation doctor, for a one time evaluation on June 28, 2006. Dr. Baskin proposed the claimant undergo two to three weeks of physical therapy to work on tightness in his hamstrings and stiffness in his low back. Dr. Baskin opined the claimant should be considered at maximum medical improvement and should be able to resume his work activities after three weeks of physical therapy.

A June 30, 2006 physical therapy evaluation identified three short term goals and two long term goals for physical therapy. On July 18, 2006, the claimant's physical therapist requested from Dr. Lewellen an extension of the claimant's physical therapy because the claimant had so far met only two short term goals. On July 31, the physical therapist requested a second extension, stating that the claimant had met four of five goals, but had not yet returned to work. The claimant last received physical therapy on August 7, 2006. On August 14, 2006, the physical therapist requested another physical therapy extension due to the claimant's "functional limitations in performing his

job duties." The claimant testified that the respondents denied him additional physical therapy.

On September 11, 2006, the claimant underwent an MRI of his cervical spine for left arm numbness. The report indicates a small right paracentral disk protrusion at C6-7 of indeterminate significance since the claimant's complaints were on the left side. Dr. Lewellen also referred the claimant to P.B. Simpson, a neurosurgeon. The claimant presented to Dr. Simpson on or about October 30, 2006. While there is no written report of any clinical evaluation that Dr. Simpson may have performed during that visit, the record does contain a diagnostic test order signed by Dr. Simpson requesting a lumbar MRI for back pain.

In the present case, the claimant seeks payment of his medical bills after physical therapy, and authorization for additional medical treatment at the direction and referral from Dr. Lewellen. In addition, the claimant seeks additional temporary total disability compensation when his disability benefits stopped in August of 2006.

1. Additional Medical Treatment

Employers must promptly 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).

In the present case, I find that the claimant has failed to establish by a preponderance of the credible evidence that the MRI to the cervical spine that he underwent on September 11, 2006 was reasonably necessary diagnostic treatment in connection with his April 28, 2006 accident and associated injuries. In this regard, I note that the first report of either neck pain complaints or left arm numbness in the medical record is in the physical therapy evaluation completed on June 30, 2006, over two months after the April 28, 2006 incident. As documented above, during that two month period, the claimant had undergone evaluations and testing in the emergency room, had been seen in Dr. Lewellen's office, and had been evaluated by Dr. Baskin with no mention of any left arm or neck

complaints. Notably, neither the claimant's testimony or the medical records identify any direct trauma to the neck or arm on April 28, 2006. In addition, I note that the claimant's complaints have changed from left arm numbness on June 30, 2006, to numbness of the left arm and hand on September 15, 2006, to neck pain with left and right arm numbness on October 24, 2006. No physician has offered any plausible explanation as to the etiology of these complaints, which were first documented two months after the log incident, and it would take impermissible speculation and conjecture on my part to conclude on this record that cervical MRI testing in September of 2006 was causally related to the trauma documented in April of 2006.

On the other hand, the claimant's low back complaints are abundantly documented beginning with the date of injury. I find Dr. Lewellen's conservative treatment in the record, and Dr. Lewellen's referral to Dr. P.B. Simpson, a neurosurgeon, for a low back evaluation reasonably necessary to evaluate the claimant's persistent low back complaints. In light of the claimant's persistent low back complaints from April 28, 2006, which he continued to voice after extended physical therapy and time off of work, and since the claimant has not previously undergone a lumbar MRI to

evaluate his low back injury, I likewise find the proposed lumbar MRI reasonably necessary medical treatment for the claimant's compensable injury.

2. Additional Temporary Total Disability

Temporary total disability for unscheduled injuries is that period within the healing period in which a claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present case, the claimant has failed to prove by a preponderance of the credible evidence that he has been incapacitated from working for any period between August 17, 2006 and December 12, 2006. In this regard, I note that the claimant was employed as a log truck driver before his injury. Dr. Baskin, who documented the claimant's occupation in his report, opined that the claimant should be able to return to work after three weeks of physical therapy. The physical therapist later concluded that the claimant achieved four of five goals (the only unachieved

goal identified from the original evaluation being the return to work).

In support of his claim for additional temporary disability, the claimant has proffered a document apparently signed by Dr. Lewellen on August 14, 2006 and signed by the claimant on November 9, 2006. I find this document entitled to no weight for two reasons. First, the prehearing order filed on October 9, 2006 indicates that exhibits must be exchanged at least seven days before the hearing, and that otherwise evidence will be excluded except on showing good cause. Here, the claimant had ample opportunity to contact Dr. Lewellen seeking a medical opinion on his alleged disability, or lack of disability, between August 17, 2007 and the date of the hearing, and the claimant has failed to establish good cause for exchanging in an untimely manner the document signed by Dr. Lewellen on August 14, 2006 and by the claimant on November 9, 2006.

Second, even if the document should be admitted into evidence, which I do not find, I note that all of the claimant's diagnostic tests were negative before August 14, 2006. To the extent that Dr. Lewellen may have felt on that date that the claimant was disabled from working, I accord greater weight to Dr. Baskin's prior opinion that the

claimant should be capable of returning to work with physical therapy, coupled with the therapist's conclusions that the therapy goals had been met except for the goal of specifically returning the claimant to work, than the weight I would accord Dr. Lewellen's proffered opinion on disability especially in the face of so many (all) negative diagnostic test results obtained through August 14, 2006.

The claimant has also attempted to prove his continuing disability with proffered testimony that Dr. Lewellen has never released the claimant back to work. I find this testimony to be self-serving hearsay, and accord it no weight. The claimant also testified that he did not feel capable of going back to his job at the time of the hearing because he takes pain medication and because he experiences a lot of back pain if he sits for very long periods of time. Again, I accord greater weight to Dr. Baskins' opinion on return to work and the results purportedly achieved by the therapist than the weight I accord the claimant's testimony of pain from sitting prohibiting him from returning to work driving, which, at the time of the hearing, he had apparently not yet tried to do.

In summary, because of the great weight I accord Dr. Baskins' opinion that the claimant should be able to return

to work with physical therapy, the therapist's documented achievement of four of five stated goals with the claimant during therapy, the negative results on the relevant diagnostic tests performed to date on the claimant, and the lack of any medical opinion properly offered into the record specifically addressing the period of alleged disability at issue in this claim, I find that the claimant has failed to establish by a preponderance of the credible evidence that he was incapacitated from earning for any period at issue between August 17, 2006 and December 12, 2006. The claimant is therefore not entitled to an award of temporary disability compensation during the period at issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including April 28, 2006.
3. On April 28, 2006, the claimant sustained compensable injuries.
4. Respondents accepted the April 28, 2006 injuries as compensable and paid some benefits.
5. The claimant earned wages sufficient to entitle

him to a compensation rate of \$417 for total disability benefits and \$312 for permanent partial disability benefits.

6. The claimant has failed to prove by a preponderance of the evidence that a cervical MRI performed on September 11, 2006 was reasonably necessary diagnostic treatment in connection with his April 28, 2006 accident and associated injuries.

7. Dr. Lewellen's conservative treatment at issue beginning in August of 2006 and Dr. Lewellen's referral to Dr. P. B. Simpson for a low back evaluation are reasonably necessary medical treatment to evaluate the claimant's persistent low back complaints since April 28, 2006.

8. The lumbar MRI which Dr. Simpson has proposed is reasonably necessary medical treatment for the claimant's persistent low back complaints since April 28, 2006.

9. The claimant has failed to establish by a preponderance of the credible evidence that he was incapacitated from working for any period between August 17, 2006 and December 12, 2006. The claimant is therefore not entitled to an award of temporary total disability compensation during the period at issue in this claim.

AWARD

The respondents are directed to pay medical benefits in accordance with the findings of fact set forth herein. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998); reversed on other grounds 336 Ark. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge