

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605356

JOHN R. PINE

CLAIMANT

**CITY OF LITTLE ROCK
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED JANUARY 24, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on November 7, 2006. A prehearing conference was held on August 29, 2006, and a prehearing order was filed the same date. 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 a March 17, 2006, specific incident.
2. The temporary total disability rate is based on an average weekly wage of \$441.

The claimant contends that he sustained a compensable shin, calf and back injury on March 17, 2006, and is entitled to medical benefits. The claimant also contends that he is entitled to temporary total disability benefits from April 1, 2006, to a date to be determined.

Respondents contend it paid some medical benefits for a shin and calf injury on March 17, 2006; however, the back injury is controverted. Any other benefits other than

what has been paid are controverted. Respondents contend the claimant continued working through June 2006 and was terminated. Respondents further contend the claimant was not totally incapacitated from working after his termination.

ISSUES TO BE LITIGATED

1. Compensability of a back injury.
2. Medical benefits.
3. Temporary total disability benefits.

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 a March 17, 2006, specific incident.
2. The temporary total disability rate is based on an average weekly wage of \$441.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable back strain on March 17, 2006.
4. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued from Concentra, Dr. William Joseph, and Dr. John Wilson through June 28, 2006.

5. The claimant is solely responsible for medical treatment after June 28, 2006.

6. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages after June 28, 2006.

DISCUSSION

The claimant, 45 years old, worked in construction for the respondent employer for about five years. The claimant's job involved maintaining facilities. According to the claimant, on March 17, 2006, he was repairing a waterfall on Spider Monkey Island and was up on a ladder. The base of the ladder kicked out and the claimant fell 10 to 15 feet. The claimant landed on his feet but hit his shin and calf on a ladder rung. The claimant testified that he reported the incident to Tony Dawson, a lead man, and filed an incident report. According to the claimant, he first went to the company doctor on April 5, 2006, and received treatment for his back and was released on April 13, 2006. According to the claimant, he was told by Sherry that his claim was being denied.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl.

2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the respondents have accepted the claimant's shin/calf injury but have controverted the back injury. The claimant received medical care for his compensable injury with Dr. William Warren from Concentra beginning April 5, 2006. The claimant was diagnosed with a sacroiliac strain and an abrasion of the lower leg and placed on restricted duty and given medication. The April 7, 2006, Concentra medical report indicates the claimant's x-rays revealed some degenerative changes. An April 11, 2006, CT of the lumbar spine showed no acute fractures. Each time the claimant sought medical treatment, he was experiencing back pain and all was attributed to the March 17, 2006, fall from the ladder. I find the claimant has proven by a preponderance of the evidence that he did sustain a compensable back injury along with his leg injury on March 17, 2006. All the medical treatment the claimant has received since the March 17, 2006, accident notes the claimant's fall at work and his diagnosis was lumbar strain. He has received conservative treatment with medication and physical therapy. Dr. John Wilson's June 14, 2006, report indicates the claimant does have mild muscle spasm and he also diagnosed the claimant with lumbosacral strain and advised the claimant to continue with the Williams exercises and his Robaxin for muscle spasms. Certainly, this finding satisfies the objective findings requirement of Ark. Code Ann. §11-9-102(4)(D). On June 28, 2006, Dr. John Wilson again saw the claimant and noted there were no muscle spasms nor an operative problem and

recommended the claimant return to work. No restrictions were identified at that time.

The claimant then returned to his family doctor, Dr. William Joseph, and wanted a referral for another opinion. Dr. Joseph's June 29, 2006, report indicates that he had nothing further to offer the claimant for treatment and noted no objective findings. Dr. Joseph did refer the claimant to Dr. Sprinkle. Dr. Sprinkle saw the claimant on July 5, 2006 and diagnosed him with lumbar degenerative disc disease and lumbar strain, and ordered a MRI of the lumbar spine and the hip. The lumbar spine MRI revealed some mild degenerative disc disease at L1-2 and was otherwise unremarkable. The pelvis MRI was normal. The last medical in evidence was a September 25, 2006, follow-up appointment with Dr. Sprinkle and this recommended the claimant continue with his medications and home exercise program.

Since I found the claimant's lumbar strain problems to have started with his March 17, 2006, fall from the ladder, I also find the respondents are responsible for reasonable and necessary medical care for the lumbar strain. The respondents paid medical benefits at Concentra, some radiology associates bills and some physical therapy; however, it was unclear when medical benefits ceased.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy.

Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

After considering the claimant's testimony and the medical evidence in the record, I find respondents are reasonable for the medical treatment the claimant has pursued with Concentra, Dr. William Joseph and Dr. John Wilson through June 28, 2006. The medical evidence supports the claimant's contention that medical care was warranted for his back following his March 17, 2006, fall. The medical evidence and the diagnostic tests indicate the claimant has degenerative disc disease and sustained a lumbar strain with the March 17, 2006, fall from the ladder. Physical therapy and medication were recommended and by June 28, 2006, Dr. Wilson and Dr. Joseph opined that the claimant's neurologic examination was normal and returned him to work. The claimant requested another opinion and a referral from Dr. Joseph and a referral was made to Dr. Sprinkle. I am unable to find that treatment after June 28, 2006, is reasonable and necessary for treatment of the claimant's lumbar sprain. I find any treatment for the claimant's back after June 28, 2006, is the sole responsibility of claimant.

The claimant next contends that he is entitled to temporary total disability benefits from April 1, 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 has failed to prove by a preponderance of the

evidence that he remained in his healing period and unable to earn wages after June 28, 2006. Respondents contend the claimant continued to work and received his last paycheck on June 30, 2006. The claimant was terminated on June 30, 2006, by his employer for not coming to work or bringing off-work slips. The medical evidence does not provide that the claimant remained in his healing period and was totally unable to work. The medical supports the claimant had a lumbar strain and was treated conservatively, but was never taken off work totally.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable back strain on March 17, 2006. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued from Concentra, Dr. William Joseph and Dr. John Wilson through June 28, 2006. The claimant is solely responsible for medical treatment after June 28, 2006. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages after June 28, 2006.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE