

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504733

DAVID PYLE, EMPLOYEE	CLAIMANT
WOODFIELD, INC. SELF-INSURED, EMPLOYER	RESPONDENT
RETENTION MANAGEMENT SERVICES, INC., TPA	RESPONDENT

**OPINION FILED MAY 17, 2007**

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 20, 2007, at Hope, Hempstead County, Arkansas.

Claimant represented by HON. GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by HON. JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on February 20, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing telephone conference was conducted on December 20, 2006, and a Prehearing Order was filed on December 21, 2006. Subject to any modifications made to it at the full hearing, the parties agreed the Prehearing Order would be admitted into the record as Commission Exhibit "1". The Prehearing Order originally set a full hearing date for February 6, 2007; however, at respondents' request, the hearing was rescheduled to February 20, 2007, to allow more discovery time.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including May 4, 2005.
- 3) The claimant's compensation rates are \$466.00 per week for temporary total disability, and \$350.00 per week for permanent partial disability.
- 4) Claimant sustained compensable injuries to his low back and left knee on May 4, 2005.
- 5) As a result of his compensable injuries claimant was assigned a five percent (5%) whole body impairment rating which was accepted and paid by the respondent/carrier.
- 6) All issues not addressed herein are reserved.

By agreement of the parties, the following issues were presented for determination:

- 1) Whether the claimant is entitled to TTD benefits from August 8, 2006, to a date yet to be determined, plus attorney's fees.
- 2) Whether claimant is entitled to additional treatment/testing as recommended by Dr. Lipke.

Claimant contended, in summary, that due to his compensable injuries he is entitled to additional TTD from August 8, 2006, to a date to be determined; and attorney fees. Claimant also contended that the additional medical treatment recommended by Dr. Lipke is reasonable, necessary and related to his compensable injuries and respondents should be ordered to pay for the same.

Respondents contended, in summary, that all appropriate benefits have been paid with regard to this claim, and that additional medical treatment is not reasonable or necessary, and therefore not respondents' responsibility. Further, respondents contended the medical documentation does not support entitlement to additional temporary or permanent disability benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence a total incapacity to earn wages after August 8, 2006, due to his compensable injuries. Therefore, claimant's requested period of TTD is denied.
- 4) Claimant has proven by a preponderance of the credible evidence that the additional testing now recommended by Dr. Lipke ( myelogram/CT scan) is reasonably necessary and related to the claimant's stipulated compensable injuries of May 4, 2005; and, therefore, the responsibility of the respondents.

**DISCUSSION**

**A. HISTORY**

The claimant, David Pyle, worked as a truck driver for Woodfield, Inc., pulling a flatbed trailer. On May 4, 2005, while working for Woodfield, Inc., the claimant sustained compensable injuries to his back and left knee. The claimant testified as follows regarding how he got hurt:

A. I was in Wright City, Oklahoma, loading a load of lumber. I believe it was two by tens, and I got them loaded and pulled out to cover it with a tarp, was rolling the tarps out, and it was sprinkling rain, and I slipped on the corner of the tarp on lumber and fell, hit the trailer and the ground.

Q. Were you standing up on the load at the time?

A. Yes.

Q. As you fell, did you hit the trailer first?

A. Yes, sir.

Q. And then did you fall to the ground?

A. Yes, sir.

Q. Was it raining at the time?

A. Yes, sir. ( T. pgs. 18 & 19 - lines 15-25 & 1-3)

After the accident, the claimant testified he experienced low back and left knee pain, but continued to work. The claimant testified his symptoms became more

severe, and ultimately the claimant went to the company doctor, Dr. Daniels, on May 9, 2005. Dr. Daniels prescribed the claimant a pain pill and then referred him to Dr. Lipke.

The claimant then treated with Dr. Lipke for several months. During his treatment with Dr. Lipke, the claimant was prescribed medications, physical therapy, MRIs of back and knee, and epidural steroid injections. The records show that while claimant was initially treating with Dr. Lipke (May 10, 2005 through December 6, 2005), Dr. Lipke was keeping the claimant off work.

On December 6, 2005, Dr. Lipke released the claimant to return to other employment on January 1, 2006, and assigned claimant a five percent (5%) whole body impairment. (CI X-1, pg. 179) Dr. Lipke conditioned his release upon the claimant getting control of his seizure disorder. Claimant testified that his seizure problems pre-dated his May 4, 2005, compensable injuries. The claimant testified he never returned to any type of work after being released by Dr. Lipke.

Approximately eight months after his 1/1/06 release, on August 8, 2006, the claimant returned to Dr. Lipke with continued problems. At that time Dr. Lipke's impression was "work related back injury with persistent sciatica." (CI X-1, pg. 196) Dr. Fred Murphy was treating the claimant for conditions unrelated to the claimant's compensable injuries, (i.e. diabetes, hepatitis C, etc.). In a report from Dr. Murphy dated January 26, 2007, Dr. Murphy states that the claimant is under his care for multiple problems, including back pain and knee; and that due to his multiple problems, he is precluded from working. (CI X-1, pg. 199) Claimant testified that he felt he could not

work due to his compensable injuries of May 4, 2005.

**B. Additional Temporary Total Disability**

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *K ll Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W. 3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. *Id.* The healing period is statutorily defined as that period for healing of an injury resulting from an accident. *Dallas County Hospital v. Daniels*, 74 Ark. App. 177, S.W. 3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable, and if nothing in the way of treatment will improve that condition, the healing period has ended. *Crabtree, supra.* The question of when the healing period has ended is a factual determination for the Commission.

The healing period is defined as that period for healing of the injury that continues until the employee is as far restored as the permanent character of the injury will permit. *Arkansas Highway & Transportation Department v. McWilliams*, 41 Ark. App. 1, 846 S. W. 2d 670 (1993). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The persistence of pain may not in and of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Id.*; *Mad Burcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S. W. 2d 582 (1982).

Pyle/F504733

Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *McWilliams, supra; J. A. Riggs Tractor v. Etzkorn*, 30 Ark. App. 200, 785 S.W. 2d 51 (1990). The determination of when the healing period ends is a factual determination to be made by the Commission. *McWilliams; Parker; supra*. In *Pallazollo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W. 2d 938 (1994), the Court of Appeals stated that in order to be entitled to temporary total disability compensation for an unscheduled injury, a claimant must prove that he remained within his healing period and that he suffered a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breashears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

A review of the evidence shows that the claimant failed to prove by a preponderance of the evidence that this a total incapacity to earn wages after August 8, 2006 is related to his compensable injuries.

Dr. Lipke released the claimant to other employment in December of 2005, if he could get his seizure disorder under control. By the claimant's own admission, he stopped having seizure problems when he discontinued taking the prescription medication known as Wellbutrin. Further, the claimant testified he stopped taking Wellbutrin after he went to the emergency room following some seizures. The medical records indicate the emergency room visit was on 12/2/05, and that Dr. Darmon Edwards instructed the claimant to not take any more of the Wellbutrin. (RX-1, pg. 60). Based on the medical records, claimant's testimony and Dr. Lipke's reports, the claimant could have returned to some type of employment after 1/1/06, because the seizures had stopped. However, the

claimant testified that "other" medical conditions prevented him from working between 1/1/06 and 8/8/06. The claimant would have this Administrative Law Judge believe that for nearly eight months after his release from Dr. Lipke "other" (not his back or knee) (see transcript pg. 30, lns 21-25 & pg. 31, ln 1), medical conditions prevented the claimant from working, but miraculously as of 8/8/06 the only conditions which prohibit the claimant from working are those related to his compensable injuries. The evidence does not support the claimant's contentions.

Q. When you went back to see Dr. Lipke in August of '06, was there anything as far as your depression, your diabetes, these seizure incidents or your hepatitis that was preventing you or affecting your ability to work and hold a job at that time in August of '06?

A. No, sir. (T. pg. 37, lns. 9-14)

It must be noted the claimant has a number of medical conditions he admits are not related to his compensable injuries. For instance, the claimant has Hepatitis C, Depression, Diabetes, Cirrhosis, and is currently on a waiting list for a liver transplant. According to the claimant, these other non-related conditions kept him from working after Dr. Lipke's release and continued until 8/8/06, when, as of that date, he could not work only because of his compensable injuries.

Dr. Murphy recommends claimant be off work, but even his report stated he is treating the claimant for multiple conditions besides the claimant's back and knee. There must be some connection between the compensable injury and the claimant's incapacity to

earn wages. Here, I find the credible evidence shows claimant has failed to meet his burden of proof in order to receive TTD benefits.

When addressing solely the claimant's compensable injuries, I find the claimant cannot prove by a preponderance of the evidence that he is totally incapacitated to earn wages due to his compensable injuries at this time. Therefore claimant's requested temporary total disability is denied. In making this determination I do not disregard Dr. Lipke's statement of off-work contained at CI X-1, pg. 200, but do note that said statement is in contradiction to his 8/8/06 work status report at CI X-1, pg. 197, and is in contradiction to his sworn deposition testimony. (RX 3, pg. 11, lns. 18-21).

### **C. ADDITIONAL MEDICAL**

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 17, 963 S.W. 2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W. 2d 790 (1997); *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W. 3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, Ark. App. 200, 649 S.W. 2d 845 (1983).

When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, the Commission must analyze both the proposed

Pyle/F504733

procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, AWCC #D511255, Full Workers' Compensation Commission Opinion filed December 13, 1989. Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

I find that Dr. Lipke's opinions regarding the claimant's compensable injuries should be given considerable weight. It is clear that in Dr. Lipke's reports and his own sworn testimony he feels that a myelogram and CT scan of the claimant's back is reasonable, necessary and related to the claimant's May 4, 2005 compensable injuries. (See CI X-1, pg. 198)

A. But he still has a lot of symptoms, and everything we've tried has failed, and it may be that there's nothing that we can do surgically to relieve his symptoms. It may be something he has to live with until he improves, or if he doesn't improve, just continue to live with it.

Q. And at this point, based upon your long treatment with him, do you believe that the myelogram, CT scan is reasonable and necessary in an effort to try and delineate that?

A. I think so. I mean, if that doesn't show a problem that we can help him with surgically, then we'll know we've gone as far as we reasonably should go, and shouldn't try

anything else. (RX-3, pg. 19, lns 14-25)

In fact, Dr. Lipke has possibly recommended a myelogram and CT scan as early as August of 2005, but it was never done.

Q. In the - - looking back to your medical records and progress notes, there appears to be throughout the records, mention of the sciatica, and you've told us about what that is, and in your progress note of August the 16th of '05, I notice at that time that you considered ordering a myelogram, but you didn't order it, but you indicated that if he continued to have problems, that he might need to have th(e) myelogram and CT scan to better delineate if his problems persisted. Would that be accurate?

A. Yes. (RX-3, pg. 14, lns. 6-9)

Not only did Dr. Lipke opine that a myelogram and CT scan was reasonably necessary and related in Mr. Pyle's case; Dr. Lipke testified it would be considered normal treatment for all patients with Mr. Pyle's symptoms.

Q. When you follow patients of this nature, is there generally, I guess, a mode of progression of treatment and/or testing when you have someone that's complaining of the sciatic leg pain, and conservative measures have failed? Is a myelogram, CT scan kind of a next step in that progression?

Pyle/F504733

A. Yes. You know, when somebody has continued problems and you've already done the MRI of the back, the next thing really to investigate it would be the myelogram with CT, associated CT scan.

Based on the credible evidence before the Commission, I find the recommendation from Dr. Lipke for a myelogram and CT scan to be reasonable, necessary and related to the claimant's stipulated compensable injuries; and, therefore the financial responsibility of the respondents.

**AWARD**

Respondents are directed and ordered to pay for the additional medical treatment from Dr. Lipke, including but not limited to, the myelogram and CT Scan now recommended.

IT IS SO ORDERED.

---

S. DALE DOUTHIT  
Administrative Law Judge

rb