

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100985

JOHNNY ROGERS	CLAIMANT
CHRISMAN READY MIX, INC.	RESPONDENT
ST. PAUL TRAVELERS INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 13, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondent represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 26, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 4, 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. On October 5, 2000, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on November 5, 2000.

4. Medical expenses have been paid to date.

5. The claimant is entitled to the maximum compensation rate for 2000.

6. Respondents No. 2 have accepted and are paying a 14 percent whole body impairment.

7. The claimant's healing period ended on July 1, 2004.

8. Prior opinion dated November 2005 is res judicata and the law of this case.

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

1. Whether the statute of limitations bars this claim.

2. Additional medical treatment since May 28, 2004.

In regard to the foregoing issues the claimant contends that he is in need of additional medical treatment for his compensable injury.

In regard to the foregoing issues the respondents contend that medical treatment subsequent to May 28, 2004, is not necessary or reasonable. Also this claim is barred by the statute of limitations.

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

DISCUSSION

The claimant sustained a compensable injury to his back and was treated by Dr. Capocelli. The claimant agreed that Dr. Capocelli did surgery on his back and has continued to treat him for his compensable injury to the present time. The claimant agreed that on November 30, 2005, there was an opinion handed down which awarded him wage loss. The claimant testified that this wage loss was paid in one lump sum payment after the opinion was handed down. The claimant testified that he saw Dr. Capocelli on August 10, 2006, and that on August 18, 2006, Dr. Capocelli had him undergo an MRI and CT scan. The claimant testified that he was seen by Dr. Capocelli in May 2007 and the doctor prescribed him medications.

The claimant testified that he was rated by Dr. Capocelli and released on July 1, 2004. The claimant testified that he asked Dr. Capocelli not to give him permanent restrictions because he would not be able to find employment if he had permanent restrictions. The claimant testified that since his release his legs have continued to hurt and his lower back hurts everyday. The claimant testified that when his discomfort gets to a level he will return to the doctor to see what is going on. The claimant agreed that his discomfort is experienced everyday and that it was due to his increased pain level that he returned to see Dr. Capocelli in August 2006 and then in May 2007.

On cross examination, the claimant agreed that he has actually had two surgeries on his back, the first being performed by Dr.

Blankenship and the second by Dr. Capocelli. The claimant agreed that he was having low back pain and left leg pain as a result of his original injury. The claimant agreed that he was paid a 14 percent whole body impairment rating after his second surgery and that after his wage loss hearing he was paid an additional 7 percent wage loss in a lump sum payment. The claimant testified that the industrial maintenance course which he was taking he completed but he has not taken the licencing part because he got a job doing exactly what he was going to school to do. The claimant testified that between May 2004 and August 2006 he was seen by his local doctor because he did not know that he could go back to see Dr. Capocelli. The claimant testified that his local doctor prescribed Hydrocodone for him. The claimant testified that he began having pain in his right leg and right hip along with his left hip problems and that was the reason he returned to see Dr. Capocelli. The claimant testified that because he has screws in his back he was afraid that something had gone wrong. The claimant testified that his right leg had bothered him before and was numb since his surgery. The claimant testified that the numbness will at times begin to tingle and then it will go back to being numb again. The claimant testified that he was working for a company called wesco maintaining compressors when he began to experience increased right and left hip pain. The claimant testified that there was no specific event that happened in 2006 which caused his pain level to increase. The claimant testified that his back hurts all the time and he just figured that the pain had moved down into

his right leg. The claimant testified that he understood that when Dr. Capocelli rated him he was not going to be 100 percent and he was going to continue to have pain and aching. The claimant testified that Dr. Capocelli had instructed him to come back to see him if his pain got worse. The claimant testified that when he was seen by Dr. Capocelli in May 2007 no return appointment was made but the doctor indicated that he would like to see him one more time. The claimant testified that the doctor indicated that he definitely had something wrong in his back that could be fixed but the doctor was afraid that an additional surgery might cripple him. The claimant agreed that the only treatment that Dr. Capocelli has provided for him has been prescriptions. The claimant agreed that from February 2005 up until August 2006 he had been working full time and has continued to work full time to date. The claimant testified that the reason he went so long without seeing the doctor was because Dr. Capocelli told him he was going to hurt and he needed to give it time to heal. The claimant testified that it was not healing itself it was getting worse. The claimant testified that the only restrictions that he currently has are not to pick up anything heavy and try not to hurt himself.

On redirect examination, the claimant agreed that he received a check dated January 27, 2006, for a lump sum payment in the amount of \$9,323.00 from the respondents. The claimant agreed that he filed a pre-hearing questionnaire pro se which shows a certificate of service of January 24, 2007. The claimant testified that other than his compensable injury and his two surgeries he has

not had a single event that has caused any significant injury to his back.

The claimant testified that the lump sum payment which the check was dated January 27, 2006, was not received by him on the date that it was written.

The medical records set forth that the claimant was seen by Dr. Capocelli on August 10, 2006, for his complaints of low back and leg pain. Dr. Capocelli notes that the claimant is complaining of pain slightly above the previous incision that is radiating into his hip area and down the leg. Dr. Capocelli notes that the claimant also reports some numbness down the right leg and some mild neuropathic pain and this newer pain seems to be bilateral especially over to the left. After examination, Dr. Capocelli recommended that the claimant undergo an MRI and CT scan to see if some adjacent level degeneration has taken place. The doctor recommended medication. X-rays of the claimant's lumbar spine made on August 10, 2006, demonstrate a prior lumbar fusion at L5-S1 with intervertebral graph and instrumentation without evidence of failure of either. Dr. Capocelli notes that there is probably mild compression at T11 age indeterminate. The claimant had an MRI made of his lumbar spine on August 18, 2006, which showed status post L5-S1 posterior stabilization and transpedicular screws with no evidence of loosening and a small midline L5 herniated disc causing no significant root nerve displacement. The CT scan of the claimant's lumbar spine made on August 18, 2006, revealed that the 3D images demonstrated no loosening of the hardware but there was

evidence of small nodules involving L3 vertebral body and no evidence of a lucency surrounding the screws within the L5 and S1 vertebral bodies with no evidence of spondylolisthesis. The claimant was seen by Dr. Capocelli on August 30, 2006, for review of his MRI and CT scan. Dr. Capocelli notes that the MRI does not demonstrate any major adjacent level degeneration but opines that there may be mild degenerative arthritis at multiple levels of the lumbar spine but nothing that appears surgical in nature. Dr. Capocelli recommended that the claimant modify his work duties and prescribed medication. Dr. Capocelli writes on May 17, 2007, that he has seen the claimant for his ongoing condition related to an original workers' compensation injury that has required multiple surgeries and for which the claimant does continue to be somewhat symptomatic and that the doctor has been following on a periodic basis. Dr. Capocelli recommended keeping the claimant's case open as he does continue to have ongoing difficulty and the doctor opined that the claimant might need continuing treatment periodically.

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 symptoms due to his compensable back injury. The claimant suffered a severe low back injury for which he has undergone two surgeries and was ultimately rated with a 14 percent whole body impairment rating by Dr. Capocelli. The claimant has testified and the doctor's notes would indicate that his symptoms have continued to be a problem for him, however the claimant has testified that he was told that he

would have to work through his discomfort in hopes that these symptoms would minimize. Dr. Capocelli in his letter dated May 17, 2007, indicates quite clearly that the claimant's problems are related to his original injury and has continued to be symptomatic as a result of this injury. Dr. Capocelli has written that he recommends that the claimant be seen on a periodic basis for his symptoms. Therefore, the respondents should pay for the ongoing medical treatment for this claimant's compensable back injury.

The respondents raised the defense of statute of limitations which I find does not bar this claim. The claimant testified that he last received medical treatment from Dr. Capocelli on May 28, 2004, for his compensable injury. The Commission's file indicated that an AR-C was filed by the claimant on December 13, 2004, requesting additional benefits. A pre-hearing conference was held on May 25, 2005, and a pre-hearing order was entered on May 31, 2005. A hearing was held on the issue of the claimant's entitlement to additional benefits on September 1, 2005, and an opinion was entered awarding the claimant additional benefits on November 30, 2005. The claimant has testified that he received a check from the respondent dated January 27, 2006, paying him a lump sum amount for the benefits which had been awarded him. The claimant then returned to see Dr. Capocelli for his low back problems on August 10, 2006, was again seen by Dr. Capocelli on August 30, 2006, and again was seen by the doctor on May 17, 2007. From the time of the filing of the claimant's AR-C on December 13, 2004, to January 27, 2006, when the claimant received his lump sum

payment for benefits which had been awarded him the statute of limitations was tolled. The claimant again began receiving medical treatment on August 10, 2006, and has periodically been seen by Dr. Capocelli for his compensable injury. Therefore, this claim is not barred by the statute of limitations.

FINDINGS & CONCLUSIONS

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

2. On October 5, 2000, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on November 5, 2000.

4. Medical expenses have been paid to date.

5. The claimant is entitled to the maximum compensation rate for 2000.

6. Respondents No. 2 have accepted and are paying a 14 percent whole body impairment.

7. The claimant's healing period ended on July 1, 2004.

8. Prior opinion dated November 2005 is res judicata and the law of this case.

9. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. See discussion above.

10. The statute of limitations does not bar this claim. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. The respondents, therefore, should pay for all reasonable and necessary medical treatment for this claimant's compensable back injury.

The statute of limitations does not bar this claim.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE