

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404828

TALMAGE E. ROOK, EMPLOYEE	CLAIMANT
CITY OF JONESBORO, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE - WCT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 20, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on October 12, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kenneth J. Kieklak, Attorney-at-Law, Fayetteville, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney-at-Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 12, 2007, to determine claimant's entitlement to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on September 26, 2007, and a Prehearing Order was filed on September 27, 2007. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including April 24, 2004; that the claimant sustained a compensable injury to his left lower extremity on said date; that he earned wages

which would entitle him to compensation rates of \$270.00 per week for temporary total disability and \$203.00 per week for permanent partial disability; that the claimant's healing period ended on or about October 17, 2004; that respondents paid appropriate temporary total disability, to date; that respondents accepted and paid a ninety percent (90%) permanent impairment to the lower extremity as a whole; and that respondents have controverted claimant's entitlement to a running prosthesis.

By agreement of the parties, the sole issue presented for determination was whether the claimant was entitled to additional medical, specifically, a fourth prosthesis, designed with the ability to allow the claimant to run which respondents have resisted.

Claimant contended, in summary, that although respondents have paid for previous prostheses, he maintained he was in need of a running prosthesis because none of the others adequately allow for an active lifestyle; that the requested prosthesis had been recommended, was reasonably necessary, and that the cost should be borne by respondents.

The respondents contended that they have provided the claimant with three (3) prostheses and that providing a running prosthesis was not reasonably necessary.

The claimant was the only lay witness to testify. The record is composed of the transcript of the October 12, 2007, hearing containing six pages of documentary

evidence presented by the claimant in support of his claim, together with the evidentiary deposition of Edward Martin, certified in prosthetics by the American Board of Certification, as well as the claimant's discovery deposition which were introduced as "Joint Exhibit 1" and "Joint Exhibit 2," respectively, and contained in the Commission file in bound form. Both parties submitted post-hearing briefs in support of their respective contentions.

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 made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that he is entitled to a running prosthesis. The requested artificial limb, recommended by the claimant's primary treating physician, Dr. George Wood, is reasonably necessary in connection with the claimant's admitted injury, and should be provided by respondents as medical services.

DISCUSSION

The relevant facts in this case are undisputed. The claimant, Talmage Eugene Rook, is forty-three (43) years old. The claimant sustained a compensable injury on April 24, 2004, when he was injured in the line of duty as a firefighter for the City of Jonesboro. On that day, the claimant was responding to an emergency call when the fire-truck he was driving collided with a tractor-trailer rig. The claimant sustained a severe injury to his left leg in the collision, ultimately requiring amputation of his leg above the knee. Respondents have exercised good faith in meeting their obligations under our workers' compensation laws by providing the claimant with all appropriate indemnity benefits, as well as extensive medical treatment and physical therapy. The record reflects that the claimant's medical condition has required a series of prosthetic devices. Respondents have provided the claimant with three (3) prosthetic legs, specifically, a temporary mechanical prosthesis, a hi-tech computerized prosthesis, and an aquatic prosthesis which allows the claimant the ability to swim for exercise.

On October 30, 2006, Dr. George Wood, claimant's primary treating physician, prescribed the claimant an additional prosthesis which would enable the claimant to perform prosthetic ambulation, exceeding basic skills (i.e., high-impact); child, active adult, athlete. (Cl. Ex. A, p.5)

Dr. Wood also wrote a letter of medical necessity in which he states, in part:

Patient is a 43 year old active adult with three young children. Since his amputation in 2004, he has been limited from high impact activities he formerly was able to do in his daily life style. Tim requests a running prosthesis to allow him to return to a complete quality of life without limitations. The running prosthesis is aligned and

fitted for activity and could not be utilized in moderate active. (Cl. Ex. A, p.4)

Ark. Code Ann. §11-9-508(a) provides:

The employer shall promptly provide an injured employee with such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

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. 18, 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 (1996); *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*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The record reflects that respondents have provided the claimant with three (3) prostheses to meet a part of the claimant's needs. The question is whether the requested running prosthesis is reasonably necessary. In my opinion, the claimant's credible testimony, together with the medical opinion of record, specifically, the recommendation of claimant's primary treating physician, as well as the existing case law supports this claim.

The goal of providing an amputee with certain prosthetic devices to restore the claimant as closely as possible to his physical condition prior to the accident has been supported by both the Full Commission and our Courts which have routinely awarded hi-tech prostheses. See, *Carter v. Wonder Cable TV Construction*, AWCC E812754, Full Commission Opinion filed June 19, 2002; *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

As previously pointed out, the claimant currently has three (3) prosthetic devices. However, each provides a unique and separate purpose. None of the claimant's prostheses is sufficient to provide varied activities. The hi-tech, computerized leg serves many of the claimant's day-to-day living. The aquatic leg enables the claimant to be immersed in water and engage in some water exercises in his personal swimming pool during warm weather months. The claimant's mechanical or temporary leg has been modified to allow the claimant to engage in activities that could otherwise damage his computerized leg. Specifically, the socket of the mechanical leg has been adjusted for better fit and mobility. It has been recommended that the claimant use the mechanical leg for various activities. Although the claimant's mechanical leg has been modified, it is not appropriate for running. Therefore, the claimant has been unable to perform most, if any, cardiovascular exercises using any of his three (3) prostheses. Despite this, the claimant testified at the hearing, that he was determined to exercise and attempted to run with the modified mechanical leg. Unfortunately, this caused damage to his

stump and scar. The damaged contributed to claimant's need for a scar revision surgery which was performed on April 17, 2006. Thereafter, the claimant's treating physician, Dr. George Wood, wrote a prescription for the specialized running leg, together with the letter of medical necessity, aforementioned.

The respondents argue that if it is required to provide a running prosthesis to restore the claimant as far as practical to his physical condition before his accident, that other prostheses might be requested in the future, pointing out that the next request could be for a specialized prosthesis such as a golfing prosthesis, surfing prosthesis, and light-weight trans-tibial prosthesis, specifically designed for cycling. Clearly, arguments can be made that there are limits to what is reasonably necessary. In my opinion, the claimant has made a request that is both reasonably necessary and supported by the medical and expert testimony, specifically, the recommendations of claimant's primary treating physician and a certified prosthetic expert. In its brief, respondents argue that neither the legislature nor the Courts require employers to provide any kind of artificial limb that the injured employee wants, crudely suggesting that Arkansas Law strikes a balance between hooks and peg legs and multiple recreational artificial limbs. Respondents maintain that the attempt to balance needs and wants may require a myoelectric prosthesis, even though the insurance industry might regard such devices as experimental, but should also provide that the employer and carrier is not required to provide multiple artificial limbs upon request. Respondents' arguments are simply not persuasive.

The Act requires respondents to provide medical treatment that is reasonably necessary with the purpose of restoring employees as near as possible to their pre-injury status. Clearly, the Act contemplates that improved technology will result in improved prostheses. Providing the claimant a running prosthesis is a reasonable request. The Act provides for replacement prostheses. It does not limit the number. However, I feel compelled to point out that having multiple prostheses that are used for varied purposes directly affects the longevity of the prosthesis itself. Accordingly, having multiple artificial limbs should, in fact, extend the life-span of the limited use prostheses. Although cost is never the primary consideration, it is obviously a factor to be considered. Otherwise, the immediate dispute would not have been presented for determination.

Reasonably necessary medical includes restoring the claimant as near to his physical condition before his accident as possible. Respondents have an obligation to provide the claimant with medical treatment that will improve and maintain his quality of life.

After full consideration of the facts, issues, and the law, it is hereby determined that the claimant has shown, by a preponderance of the credible evidence, that he is entitled to a running prosthesis prescribed by his primary treating physician. Accordingly, I hereby make the following:

AWARD

Respondent, Arkansas Municipal League – Workers' Compensation Trust,

is hereby directed and ordered to pay for a running prosthesis as prescribed in "Claimant's Exhibit A, pp.5-6," to be paid in accordance with the medical cost containment guidelines established by Commission Rule 099.30.

Because this is a medical only claim, no attorney's fee is appropriate pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge