

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F512518

JUAN RUBIO, Employee	CLAIMANT
D.J. WEBER CONCRETE CONSTRUCTION, Employer	RESPONDENT
GUARANTEE INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MAY 1, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JOHN D. DAVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 11, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 24, 2007, and a pre-hearing order was filed on January 25, 2007. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The prior opinion of November 8, 2006 is final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee and ankle on November 8, 2005.
2. Claimant's entitlement to medical treatment for his back, left ankle, and left knee.
3. Temporary total disability benefits.
4. Attorney fee.

During the course of the hearing the claimant withdrew as an issue his entitlement to temporary total disability benefits. Claimant also indicated that any ankle problems were the result of referred pain from the back, not a separate injury.

The claimant contends he suffered a compensable injury to his left knee on November 8, 2005. He requests medical for his left knee and low back.

The respondents contend that the claimant did not suffer a compensable injury to his left knee. Respondent also contends that it has paid all medical related to claimant's compensable back injury.

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

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The prior opinion of November 8, 2006 is final.
2. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. This includes medical treatment from Dr. Routsong and Dr. Luo.
3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his knee.

FACTUAL BACKGROUND

This claim was the subject of a prior hearing on October 18, 2006. The issue at the time of that hearing was claimant's entitlement to additional medical treatment for his compensable low back injury. In an opinion filed November 8, 2006, I found that claimant had met his burden of proving by a preponderance of the evidence that he was entitled to additional medical treatment for his compensable low back injury. That medical treatment included not only continued treatment from Dr. Luo, but also any unpaid medical treatment and testing performed at the request of Dr. Knox and/or Dr. Moffitt.

Many of the facts set forth in this opinion were previously set forth in the prior opinion of November 8, 2006. The claimant was hired by the respondent to pour concrete and “work on cement”. The claimant suffered an admittedly compensable injury to his back on November 8, 2005, when he was struck in the low back by a backhoe. It is unclear from a review of claimant’s testimony at the prior hearing or at the most recent hearing exactly how this injury occurred; nevertheless, respondent did accept as compensable an injury to claimant’s low back.

After some initial medical treatment at Northwest Medical Center claimant was evaluated by Dr. Luke Knox, neurosurgeon. Dr. Knox first evaluated the claimant on November 15, 2005 and his report in connection with that visit is contained in a letter dated December 12, 2005. Dr. Knox noted in his report that claimant had marked spasms of the paralumbar spine and positive straight leg raising on the left. Dr. Knox noted that an MRI scan revealed no significant findings. Dr. Knox diagnosed claimant’s condition as an acute blunt trauma to the lumbar spine with S1 radiculopathy on the left and facet settling at L4-5. Dr. Knox prescribed conservative treatment which included an injection and medication.

Claimant’s next evaluation with Dr. Knox occurred on December 6, 2005, and in his report of that date he noted that claimant’s x-rays revealed no evidence of acute pathology and again stated that claimant’s MRI scan was normal. Due to claimant’s continued complaints of pain he ordered a physical therapy regimen. He also noted that the injection which he had previously given to claimant was ineffective.

On December 29, 2005 and December 31, 2005 claimant sought medical treatment from the emergency room at Washington Regional Medical Center complaining not only of complaints with his low back, but also of problems in his groin and scrotum area. At the time of the visit on December 29, claimant was diagnosed as having symptoms of a prostate infection and was treated with antibiotics. When claimant was evaluated on

December 31 with complaints of pain near his anus and scrotum, he was diagnosed as suffering from a moderate perirectal abscess.

Claimant returned to Dr. Knox on January 4, 2006, at which time he noted that claimant had recently been diagnosed with a perirectal fissure. It was Dr. Knox's opinion that the medication claimant had been prescribed for his back pain precipitated that condition. Dr. Knox went on to indicate that he did not believe that any surgical options were available to claimant and he recommended that claimant be evaluated by Dr. Daut.

Claimant did not see Dr. Daut for medical treatment, but instead was referred to Dr. Moffitt by the respondent. Claimant was initially seen by Dr. Moffitt on January 24, 2006, at which time he diagnosed claimant as suffering from a contusion of the back. Dr. Moffitt recommended physical therapy and a change in claimant's medication. In a report dated February 7, 2006, Dr. Moffitt noted that claimant's condition had improved "a little bit" as a result of the physical therapy. Dr. Moffitt recommended that claimant continue with his physical therapy and medication.

On February 22, 2006, Dr. Moffitt noted that claimant was not any better. He noted that claimant was still complaining of pain in his lower back and that an x-ray of his hip was normal. Dr. Moffitt ordered additional testing including a metabolic profile, rheumatogram, urinalysis, and bone scan.

Claimant's next visit with Dr. Moffitt occurred on March 3, 2006, at which time Dr. Moffitt noted that claimant's lab testing revealed an elevated sugar level, but that the rest of the lab work was normal. Dr. Moffitt noted that although the claimant's MRI scan was not revealing, he was still concerned that there might be a radicular problem causing claimant's back symptoms. As a result, he ordered a CT myelogram.

The medical records do not indicate that claimant returned to Dr. Moffitt following this visit; instead, claimant returned to Dr. Knox on April 20, 2006. At that time, Dr. Knox noted that the claimant continued to have "significant component of back pain, leg pain,

and weakness". Dr. Knox also recommended a myelogram since the claimant's prior MRI scan had been unremarkable.

A CT scan of claimant's lumbar spine was performed on May 9, 2006 which revealed a lateral disc protrusion at the L4-5 level which impinged on the L4 root. Following that myelogram claimant was evaluated by Dr. Knox on May 25, 2006, at which time Dr. Knox indicated that the findings on the myelogram did not explain the atrophy and weakness in claimant's left leg. He also indicated that he could not recommend any surgical options with respect to claimant's compensable injury, but instead recommended that claimant receive follow-up care from Dr. Cannon for pain management.

Instead of Dr. Cannon, claimant was seen by Dr. Luo for pain management at the referral of Dr. Knox. Dr. Luo's first evaluation of the claimant occurred on June 9, 2006, at which time she recommended an injection.

Since the time of the last hearing on October 18, 2006, claimant has continued to receive medical treatment from Dr. Luo including injections for his low back complaints. In addition, claimant has received medical treatment from Dr. Routsong, a physician in Dr. Knox's office.

In addition to the medical treatment for claimant's compensable back injury, the claimant has also undergone medical treatment for a meniscus tear in his left knee. On June 22, 2006, Dr. Arnold evaluated the claimant for his left knee condition and ordered an MRI scan. An MRI scan revealed a meniscus tear and Dr. Arnold subsequently performed surgery on claimant's left knee on August 18, 2006.

Claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable back injury. He also contends that he suffered a compensable injury to his left knee as a result of the incident on November 8, 2005.

ADJUDICATION

The initial issue for consideration involves claimant's request for additional medical treatment relating to his compensable back injury. A claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 32 (2004). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury.

As previously noted, since the time of the last hearing claimant has continued to receive medical treatment from Dr. Luo for his low back injury. Dr. Luo's treatment has consisted of injections and medication. In addition, claimant has also received medical treatment from Dr. Routsong, D.O., a physician in Dr. Knox's office, for his low back injury. Dr. Routsong has diagnosed claimant's condition as a lumbar strain and has treated claimant with medication and physical therapy.

In the prior opinion filed November 8, 2006, I found that claimant was entitled to additional medical treatment for his compensable low back injury. That opinion was based in part on the opinion of Dr. Knox that claimant was in need of additional medical treatment in the form of pain management from Dr. Luo. I find no evidence that would indicate that claimant is still not in need of additional medical treatment for his compensable low back injury. The parties in this case took the deposition of Dr. Knox on March 12, 2007. During the course of that deposition Dr. Knox was asked numerous questions regarding objective findings with respect to claimant's low back complaints. However, as I noted in the prior opinion, a claimant is not required to show by objective medical findings that he is entitled to additional medical treatment. *Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W. 2d 1 (1999); *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W. 2d 196

(1997).

Significantly, I believe it is important to note that although Dr. Knox at his deposition had the opportunity to review medical reports from Dr. Luo and Dr. Routsong, Dr. Knox has not seen or evaluated the claimant since June 19, 2006, a date prior to the last hearing. Based upon the fact that he had not seen the claimant since June 19, 2006, Dr. Knox stated that he did not have any opinion as to the claimant's condition subsequent to that date.

Q. Dr. Knox, when did you last see him?

A. It would have been 6/19/06.

Q. Well, do you have any opinion of his condition after that time?

A. No.

In summary, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. I find that claimant has met his burden of proof. At the time of the prior hearing, Dr. Knox was of the opinion that claimant was in need of additional medical treatment in the form of pain management from Dr. Luo. Since the time of that hearing claimant has not been evaluated again by Dr. Knox, but has received medical treatment for his low back injury from Dr. Luo. Dr. Luo's treatment has consisted of injections and medication. In addition, claimant has also been evaluated and treated by Dr. Routsong, a partner in Dr. Knox's office. I find that the medical treatment provided by Dr. Luo and Dr. Routsong is reasonable and necessary and causally related to claimant's compensable low back injury. This will include any treatment which is causally related to claimant's back condition, including pain radiating into the claimant's lower extremities.

The second issue for consideration involves claimant's contention that he suffered a compensable injury to his left knee on November 8, 2005. At the time of the hearing

claimant acknowledged that the ankle claim is merely referred pain from claimant's low back condition and not a separate injury.

I find after reviewing the evidence presented that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his knee as a result of the incident which occurred on November 8, 2005. As previously noted, a review of claimant's testimony at the prior hearing and at the most recent hearing makes it difficult to understand exactly how the claimant suffered the injury to his low back other than knowing that he was struck in the low back by the bucket on a backhoe. There is no indication in any of claimant's testimony that he was struck in the left knee at that same time. Claimant also acknowledged that he did not fall out of the bucket and did not fall to the ground.

Q. Well, my question is, isn't it true that whatever hit you did not hit you in your left knee?

A. Yes, exactly. The lever that hit me didn't hit me on the knee. That's right.

Q. And the lever didn't hit you on the left ankle either, did it?

A. I don't know what hurt me on the knee, but it was on the side of that scoop. I don't know if it hit me on that side or - -

Q. Well, are you claiming that the scoop now hit you in the knee and the ankle?

A. No, no, but I don't know how that happened, really.

Q. And you did not fall out of the bucket, did you?

A. No.

Q. And you didn't fall on the ground, did you?

A. No.

Claimant went on to indicate that he did not remember how many days after this

accident that his knee began bothering him. Claimant testified that it might have been two or three days later.

It is also important to note that the initial medical reports do not contain a history of knee complaints. While the claimant did complain of pain radiating into his lower extremity, there are no specific complaints of left knee pain.

In summary, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left knee as a result of the incident which occurred on November 8, 2005. By claimant's own testimony, he does not know how his knee was injured on that date. There is no indication that claimant was struck in the left knee and no indication that claimant twisted the knee while falling. Furthermore, claimant testified that he did not develop pain in his left knee until at least two or three days after this incident. Given this evidence, I simply find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left knee as a result of the accident on November 8, 2005.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. This includes medical treatment from Dr. Luo and Dr. Routsong. Claimant has failed to prove

by a preponderance of the evidence that he suffered a compensable injury to his left knee while employed by the respondent. Therefore, his claim for compensation benefits relating to the left knee is hereby denied and dismissed.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii) attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE