

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F611312

WILLIAM C. SPAUL, EMPLOYEE

CLAIMANT

WESTAFF USA, INC., EMPLOYER

RESPONDENT

**TRAVELERS PROPERTY & CASUALTY COMPANY
OF AMERICA, CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 14, 2007

Hearing before Administrative Law Judge O. Milton Fine II on July 5, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. M. Keith Wren, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Robert Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 5, 2007, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing conference took place on April 30, 2006. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. Along with an additional stipulation reached at the hearing, they are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times.

3. The authenticity of all medical records and/or bills.
4. This claim has been controverted in its entirety.
5. Claimant's average weekly wage was \$425.00 per week.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

They are as follows:

1. Whether Claimant sustained a compensable injury.
2. Whether Claimant is entitled to temporary total disability from September 29, 2006 to December 13, 2006.
3. Whether Claimant is entitled to reasonably necessary medical care.
4. Whether Claimant is entitled to attorney's fees.

Contentions

The contentions of the parties are as follows:

Claimant:

1. Claimant contends that he sustained a work-related injury on September 29, 2006 while bending down to lift up chair frames. This resulted in injury to his lower back in the form of muscle spasms and acute low back strain. Claimant treated with Dr. Gil Johnson and underwent a course of physical therapy. Claimant was released to work at a light-duty level from September 29, 2006 to December 13, 2006; however, no work was available with his employer and so Claimant was off work completely for this time period. He was then fully released to resume regular duty on December 13, 2006. Claimant contends that he sustained a compensable injury. Claimant

contends he is owed medical benefits, temporary total disability benefits from September 29, 2006 to December 13, 2006, and attorney's fees.

Respondents:

1. Respondents contend that Claimant did not sustain a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on September 29, 2006.
4. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from September 29, 2006 to December 13, 2006.
5. Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment from September 29, 2006 to December 13, 2006.

6. Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded to Claimant, pursuant to Ark. Code Ann. § 11-9-715.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing. In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant's Exhibit 1, a compilation of his medical records, consisting of a two-page abstract and 29 individually numbered pages thereafter.

Testimony

William Carl Spaul. Claimant testified that he is 35 years old and lives in Morrilton, Arkansas. He finished one semester of college. His testimony was that on September 29, 2006, he was injured while working for Respondent Westaff USA, Inc. (hereinafter "Westaff"). At the time, he was assigned to Valley Plating (hereinafter "Valley"), which is located in the Virco Manufacturing (hereinafter "Virco") building in Conway, Arkansas. Virco manufactures school desks, among other products. After the products are welded, Valley personnel take Virco's products and place them on an overhead conveyor system, where they are taken to be chromed. After plating, they are removed from the overhead line and stacked on a metal pallet.

Claimant stated that he went to work at Valley around September 27, 2006 and worked the 5:30 p.m. to 5:30 a.m. shift. The product he handled varied; but the school desks probably weighed more than 20 pounds. Claimant's testimony was that until the evening of the 29th, he did not have any trouble physically performing his job. Because of

a shortage of workers, Claimant volunteered to fill in on a job that required that he take the product off the metal pallets and either set them in a row in front of the conveyor system or actually place them on the conveyor. According to him, between 7:00 and 8:00 p.m., or shortly thereafter, while moving a school desk, he “felt something give.” He stated: “I had a burning sensation. I was thinking I could work through it and I felt my legs becoming numb, a tingling feeling to them.” When his break came he asked a co-worker to summon the supervisor and he reported what had happened. He was told to go to the emergency room at Conway Regional Medical Center, and he did so that evening.

Claimant testified that he was examined at the hospital and was initially diagnosed as having a strain. He was given an MRI. The doctor took him off work for the rest of the day, gave him a shot and a pill, and sent him home. Thereafter, Kelly Davis of Respondent Weststaff instructed Claimant to see Dr. Gil Johnson. On October 2, 2006, Dr. Johnson released Claimant to light duty with a 20-pound lifting restriction. However, Weststaff was not able to provide him with any work within that restriction. Claimant stated that between September 29, 2006 and December 14, 2006, he was not able to work anywhere. No one explained to Claimant the meaning of the term “hypertonus” in his medical record; but he testified that he experienced muscle spasms in his back.

He stated that in the fall of 1996, he suffered muscle strain in his back and was treated by a chiropractor. Claimant added that he did not have to undergo surgery and was not given an impairment rating, and once recovered he was able to do any task he did prior to the injury.

On cross-examination, Claimant testified that September 29, 2006, which was a Friday, was only his second day on the job. He had completed his 12-hour shift on the first

day. He had only worked 14 ½ to 15 hours at this job before being injured. Claimant explained that at the time he felt the sensation in his back, he was lifting a school desk like that used in college or high school. He estimated its weight at over 20 pounds. At the time, he was reaching overhead to remove it from the pallet. The desk was fastened to the pallet and he had to use snips to cut the tie wire before taking it off. Other people were doing this work as well. He testified that he was also lifting chair frames, which he described as “like a folding chair. It could be like a little school chair, little toddlers and elementary children would sit on.” When asked to explain why his prehearing filing states that he was bending down to lift a chair frame, Claimant stated that “it was a combination of the two.” He reiterated that the statement in the prehearing filing regarding the chair frame was true, and added:

As I had stated, I'd work through and it just kept getting worse and worse so as I stated, it was the combination of the two but at the particular point in time when I felt it give, it was the desk frame but I kept working through it and as I stated when the product would run out, if you will, they would bring in another product of chairs to put on the line to be chromed.

Claimant testified that because of the pain he was in at the time, he does not recall what he told the medical personnel at the emergency room. He was not told, following x-rays and an MRI, that he had a fracture or a ruptured disc in his back. Nor was he told that he might need surgery. But while the doctors suspected a ruptured disc, which led to the ordering of the MRI, they did not find one.

Claimant testified that Wade Graham was the supervisor to whom he reported the injury. He denied telling him that “I don't know if I hurt it here or if it's something that just finally caught up with me.” Claimant stated that he only told Graham what he was doing

when he injured his back. Graham asked what had occurred, but did not fill out an accident report.

Claimant stated that he drove himself to the hospital, but had his wife come along in case he was given medication that would impair his ability to drive home. When he arrived at the emergency room, Claimant told them, as reflected in the records, that he was bending, lifting and twisting when the injury occurred. While the record does not reflect what was being lifted at the time, he testified that he told them.

According to Claimant, the following Monday, October 2, 2006, he telephoned Respondent Weststaff to tell them about the injury. He spoke with Kelly Davis. She was the one who directed him to Dr. Johnson.

Claimant stated that during the months following the injury, he felt like he could work and that he attempted, without success, to obtain work in the area where he lived. When the doctor released him to light duty he told him that he "was ready to go." Respondent Weststaff did not have any light duty work available at Valley Plating and did not feel that it was worth Claimant's while to drive from Morrilton to the Little Rock area.

When questioned by me, Claimant elaborated that the desks he was lifting were two and one-half to three feet across and did not yet have wooden tops attached. They were desk-chair combinations of the type typically used in high school and college classrooms, with a place to store books beneath the seat. He was handling them prior to their being chrome-plated. The desks were stacked on a pallet that was approximately one foot off the ground. A twisting motion was required to remove them. They were stacked high enough that sometimes Claimant had to reach overhead to grab them. At the time he was

injured, the desk he was getting was either “a desk higher than I was or maybe one below that.”

Respondents’ witnesses failed to appear at the hearing.

Records

The medical records of Claimant that were introduced at the July 5, 2007 hearing and are part of Claimant’s Exhibit 1 reflect the following:

On the evening of September 29, 2007, Claimant presented to Conway Regional Medical Center with complaints of back pain. He stated that his back hurt from his shoulder blades down, and extended down both legs and his buttocks. In addition, he described spasms in his lower back. Claimant characterized the pain as sharp and burning in nature. He reported that he was “bending over and twisting” while at work and doing a lot of heavy lifting when he felt something give way in his back. Claimant stated that he had strained his back in the past, but never like this. He was assessed as having a lumbar strain and radiculopathy. Claimant was given a shot of Toradol, prescribed Vicodin and Flexeril along with a Medrol dose pak, and was given a 20-pound lifting restriction for five days. He was instructed to see a physician if he was still experiencing pain after a week.

The records of Dr. Gil Johnson reflect that Claimant presented to him on October 2, 2006 with pain in his lower back and legs. He stated that he “was lifting chair frames and felt pain in his back and into legs.” Claimant had not yet filled the prescriptions he had received from Conway Regional. Dr. Johnson voided them and prescribed Flexeril, Lortab and Ibuprofen. In addition, Dr. Johnson continued him on light duty and recommended him for physical therapy.

At his initial evaluation for physical therapy on October 2, 2006 by Julie Brannin, MSPT, Claimant was noted to have “extreme hypertonus through bilateral lumbar paraspinals” Brannin stated that Claimant presented with symptoms consistent with a lumbar flex injury, but that it was difficult to assess whether there was disc involvement as well. She opined that Claimant would benefit from three to four additional sessions of physical therapy, and then he should then return for reassessment. The records reflect that Claimant attended underwent daily PT sessions from October 2-6, 2006, but did not return thereafter. On November 8, 2006, he was discharged from PT.

In his October 5, 2006 note, Dr. Johnson noted that Claimant’s condition had not changed and that he had “not reached maximum medical benefit yet.” He noted that Claimant had been taking Flexeril and Ibuprofen, but not the Hydrocodone. Claimant was to undergo x-rays on his lumbar spine. He was going to continue PT. However, as reflected above, Claimant ended the PT sessions the following day.

Claimant underwent the x-rays on October 5. Dr. Wrenn Wooten found only minimal degenerative changes, with no acute bony abnormality.

On October 18, 2006, Dr. Johnson noted that Claimant “has been going to PT.” There is no reference to Claimant ending the sessions 12 days previous. Claimant did not present with any significant improvement, and still complained of pain. Dr. Johnson recommended an MRI and continued him on light duty.

On November 21, 2006, Claimant underwent the MRI of his lumbar spine. No evidence of acute spine pathology was found.

When Claimant returned to Dr. Johnson on November 27, he still complained of low back pain with some spasms. The doctor noted that he had shown some improvement,

but recommended that he return to PT for three more visits and that he continue on his Medrol dose pak, Ibuprofen and Flexeril. He was continued on light duty. Dr. Johnson noted that if Claimant did not improve in one week, he would consider referring him to an orthopedic surgeon.

The next document in Claimant's Exhibit 1 reflects that on December 13, 2006, Claimant presented as having "significant improvement." His gait was normal, and he reported no pain when bending. He requested to be released to regular duty, and Dr. Johnson did so.

ADJUDICATION

A. Compensability

Claimant has contended that on September 29, 2006, "while bending down to lift up chair frames," he incurred an "injury to his lower back in the form of muscle spasms and acute low back strain."

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between

the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Claimant on the date of the injury presented to the emergency room with, inter alia, muscle spasms in his back. Three days later, when being evaluated for physical therapy, the therapist noted that Claimant had "extreme hypertonus through bilateral lumbar paraspinals." "Hypertonus," also known as "hypertonia," is defined in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 30th ed., as "excessive tone of the skeletal muscles; increased resistance of muscle to passive stretching." Muscle spasms reported by a physical therapist can constitute objective medical findings. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000); *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). The medical evidence, supported by objective findings, thus shows that Claimant suffered muscle spasms in his back.

In addition, the evidence shows that Claimant was prescribed Flexeril, both by the emergency room physician and by Dr. Johnson. in *Fred's, Inc. v. Jefferson*, the Arkansas Supreme Court affirmed a Commission finding that there were objective findings to prove the claimant's injury. 361 Ark. 258, 206 S.W.3d 238 (2005). There, the claimant when presenting for medical treatment complained of muscle spasms in her back. The records reflected that she was thereafter prescribed Flexeril, among other things. In holding that

the providing of the prescription was itself objective medical evidence, the court held that “a reasonable inference from the chronology of events is that the medication and physical therapy were prescribed to aid [claimant] and to treat her injury. Any other construction of these events does not withstand scrutiny or pass the test of reasonableness.” *Id.*

Notwithstanding the negative findings of the x-rays and MRI, based on the foregoing I find that the medical evidence, supported by objective findings, shows that Claimant sustained an injury to his low back in the form of muscle spasms.

To show that his back injury arose out of his employment, Claimant must show that a causal connection existed between the injury and his employment. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs “in the course of employment” when it occurs “within the time and space boundaries of the employment, while the employee is carrying out the employer’s purpose or advancing the employer’s interests directly or indirectly.” *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997); *Pilgrims Pride Corp. v. Caldarera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996). *See Sartor, supra.*

Claimant’s testimony and the statements he made to medical personnel contemporaneously with his injury show that he suffered this injury while working at Valley Plating for Respondent Westaff. He told emergency room personnel that he was “bending over and twisting” and doing a significant amount of heavy lifting when he felt something give way in his back. His statement to Dr. Johnson three days later was that the injury occurred while he was lifting “chair frames.” Claimant’s testimony at the hearing was that

he was lifting both chair frames and desks on the evening of the injury, but that it was the lifting of a 20-pound-plus desk that triggered his pain.

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* Based upon my observation of him, I credit Claimant's testimony.

A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). I find that Claimant has met his burden of proof that he incurred a compensable injury to his low back.

B. Temporary Total Disability

Claimant has contended that he is entitled to temporary total disability benefits from September 29, 2006 to December 13, 2006. Claimant's compensable injury to his back is unscheduled. See Ark. Code Ann. § 11-9-521. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he has suffered a total incapacity to earn

wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The evidence showed that Claimant was placed on light duty upon his release from Conway Regional Medical Center on September 30, 2006 (after seeking treatment in the emergency room the previous evening). He stayed on light duty until his full release on December 13, 2006. As Claimant credibly testified, Respondent Westaff did not have light duty work available for Claimant at Valley Plating and did not feel that it was worth Claimant's while to drive from Morrilton to the Little Rock area. He attempted to gain employment in the area where he lived, but was unable to do so.

A claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where insufficient evidence exists that the claimant has the capacity to earn the same or any part of the wages he was receiving at the time of the injury. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984). I thus find that Claimant is entitled to temporary total disability benefits from September 29, 2006 to December 13, 2006.

C. Reasonable and Necessary Medical Care

Claimant also argues that he is entitled to medical benefits. Section 11-9-508(a) provides that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart*

Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

Based on the evidence adduced at the hearing, I find that Claimant is entitled to reasonable and necessary medical treatment from September 29, 2006, when he was injured and first sought treatment at the emergency room, to December 13, 2006, when he was given a full release.

D. Attorney's Fee

As the parties stipulated, and I accept, Respondents have controverted this claim, including the issue of his entitlement to temporary total disability benefits, in its entirety. Claimant's attorney is thus entitled to a controverted attorney's fee on all indemnity benefits awarded to Claimant, pursuant to Ark. Code Ann. § 11-9-715.

CONCLUSION AND AWARD

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. All accrued sums shall be paid in a lump sum without discount, and this award

shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorney is entitled to a 25 percent (25%) attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715. See *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge