

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F509984

WILLIAM SPURGEON, Employee	CLAIMANT
LOWE'S, Employer	RESPONDENT
SPECIALTY RISK SERVICES, INC., Carrier	RESPONDENT

OPINION FILED NOVEMBER 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 JARROD RUSSELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 26, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 8, 2007, and a pre-hearing order was filed on that same date. 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 Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to his low back on August 25, 2005.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle him to compensation at the rate of \$355.00 per week for total disability benefits.

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

1. Claimant's entitlement to temporary total disability and additional medical.
2. Attorney fee.

At the time of the hearing the claimant clarified his request for temporary total disability benefits to include the period from August 22, 2007 through November 1, 2007.

The claimant contends he is entitled to temporary total disability benefits, additional medical, and a controverted attorney fee.

The respondents contend that all appropriate benefits have been paid with regard to this claim.

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 stipulations agreed to by the parties at a pre-hearing conference conducted on August 8, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant's compensation rate for temporary total disability benefits equals \$355.00 per week is also hereby accepted as fact.

3. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. This includes, but is not limited to, medical treatment provided by and at the direction of Dr. Knox.

4. Claimant is entitled to temporary total disability benefits beginning August 22, 2007 and continuing through November 1, 2007.

5. Respondent has controverted claimant's entitlement to unpaid temporary total disability benefits.

FACTUAL BACKGROUND

_____The claimant is a 35-year-old man who began working for the respondent in December 2000 as a delivery driver. Claimant's job duties included loading trucks and delivering various items such as appliances, furniture, and lumber.

Claimant suffered a compensable injury to his low back on August 22, 2005. Claimant was walking backwards with a dryer he and another employee were moving from a mobile home. As the claimant stepped onto a porch step it broke causing claimant to fall backwards and land on his back, upside down, with the dryer on top of him. Claimant immediately developed pain in his lower back and he reported the injury.

Claimant was sent by the respondent to Dr. Bertram for medical treatment on August 25, 2005. Claimant was diagnosed as suffering from lumbar and thoracic back strain, muscle spasms, and bruised ribs. Claimant was given medication and released to return to work with restrictions of lifting no more than 15 pounds and avoiding stooping, bending, and lifting.

Subsequent medical reports indicate that claimant came under the care of Dr. Wilson who continued claimant's treatment with medication and also ordered physical therapy. Dr. Wilson eventually ordered an MRI scan of the lumbar spine which revealed a bulging disc at L4-5. As a result of those findings, Dr. Wilson referred claimant to Dr. Danks, neurosurgeon, for additional medical treatment. Dr. Danks treated claimant conservatively with medication, physical therapy, and a steroid injection. In a report dated February 24, 2006, Dr. Danks noted that the injections had not helped claimant's condition. He released claimant as having reached maximum medical improvement and assigned a five-percent impairment rating. He also indicated that claimant should not perform any lifting heavier than 40 pounds.

At some point in time the claimant had returned to work for the respondent but no longer worked as a delivery driver. Instead, claimant worked as a customer service

associate on the respondent's sales floor. Claimant continued to work for the respondent until he suffered an accident with a four-wheeler in July 2006 which resulted in a broken leg and surgery. Claimant was off approximately three months until October 2006 and he then again returned to work for the respondent where he worked until August 22, 2007.

Claimant testified that after his release by Dr. Danks he continued to have pain in his back and right leg. He also testified that he did not injure his back as a result of the four-wheeler accident in July 2006. In November 2006 the claimant sought medical treatment from Dr. Knox, neurosurgeon. A review of Dr. Knox's medical records indicates that since that time he has performed additional testing in an effort to determine the cause of claimant's low back pain. The most recent test was a myelogram and post-myelogram CAT scan which according to Dr. Knox's report of September 21, 2007 reveals a bilateral pars defect at L4 which is associated with the claimant's underlying bulging disc. Dr. Knox has provided various treatment for the claimant including medication, injections, and a stimulator. Dr. Knox has also taken claimant off work as of August 22, 2007.

The respondent accepted claimant's low back injury as compensable and paid some compensation benefits. However, respondent has denied liability for any additional medical treatment or temporary total disability benefits associated with claimant's continued back complaints. As a result, claimant has filed this claim.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). 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 proof.

Initially, I find based upon my observations of the claimant at the hearing as well as

his testimony and the remaining evidence presented in this case, that claimant is a credible witness. Claimant testified that even though he was released by Dr. Danks he continued to have pain in his low back and right leg which eventually resulted in him seeking additional medical treatment from Dr. Knox. Although claimant was involved in a four-wheeler accident in July 2006, claimant testified that he did not injure his back as a result of that accident and no medical records have been offered into evidence indicating that claimant injured his back as a result of that accident.

I believe that Dr. Danks' medical report of February 24, 2006 supports claimant's testimony that he continued to have low back complaints as a result of his compensable injury. In his report of February 24, Dr. Danks indicates that the epidural injections had not helped the claimant's condition. He also notes that claimant "has some chronic back pain." Thus, even though Dr. Danks stated that claimant had reached maximum medical improvement, he did not indicate that claimant no longer had symptoms but to the contrary indicated that claimant continued to have chronic back pain.

Finally, it appears from a review of Dr. Knox's medical reports that he attributes claimant's continued low back problems to the original compensable injury. In his report of August 28, 2007, Dr. Knox notes that claimant has had continued difficulty with his back and leg dating back to 2005.

In short, 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. Based upon the claimant's testimony that he continued to have back problems as well as the acknowledgment by Dr. Danks that claimant continued to have chronic back pain and Dr. Knox's medical report indicating that claimant's back pain dated back to 2005, I find that claimant's continued back problems are causally related to his original compensable injury; therefore, claimant is entitled to additional medical treatment for his compensable injury. Thus includes medical treatment which has been provided by Dr. Knox beginning

on November 30, 2006. It includes all medical treatment provided by and at the direction of Dr. Knox since that time.

I also find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits as a result of his compensable injury. The medical reports indicate that as of August 22, 2007, Dr. Knox took the claimant off work and he has remained in that status through at least November 1, 2007, the date last contained in an off-work slip completed by Dr. Knox. Based upon this medical evidence which I find to be credible and entitled to great weight, I find that claimant remained within his healing period and that he suffered a total incapacity to earn wages beginning August 22, 2007, and continuing through November 1, 2007. Therefore, claimant is entitled to temporary total disability benefits for that period of time.

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), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

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 back injury. This includes medical treatment provided by and at the direction of Dr. Knox. Claimant is also entitled to temporary total disability benefits beginning August 22, 2007 and continuing through November 1, 2007. Respondent has controverted claimant's entitlement to all

unpaid temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$304.75.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE