

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F611714

LEONARD STALLWORTH, EMPLOYEE	CLAIMANT
HAYES MECHANICAL, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE CO. c/o AIG CLAIM SERVICES (TPA), INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 10, 2007

Hearing before Administrative Law Judge Barbara Webb on September 27, 2007, in McGehee, Desha County, Arkansas.

Claimant appeared pro se.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Worley, Wood and Parrish, P.A., Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on September 27, 2007, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on August 14, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the August 14, 2007 Pre-hearing Order is made a part of the hearing record.

By agreement of the parties, the stipulations as submitted by the parties in the Pre-hearing Order as amended on the record are hereby accepted:

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on August 17, 2006, when claimant sustained compensable injuries to his lower extremities.
3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$388.00 for temporary total disability benefits.
4. The claimant received a change of physician to Dr. D'Orsay Bryant on March 27, 2007.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Claimant's entitlement to additional medical benefits.
2. Claimant's entitlement to additional temporary total disability benefits.

The record consists of a one volume transcript of the September 27, 2007 hearing, consisting of the testimony of Leonard Stallworth, the claimant, and all documentary evidence consisting of Commission's Exhibit 1 (Pre-hearing Order); Claimant's Exhibit 1 (Medical Report of Dr. Bryant); Respondents' Exhibit No. 1 (Medical Reports); Respondents' Exhibit No. 2 (Accident Report and Form AR-C).

FACTUAL BACKGROUND

Leonard Stallworth is 45 years old (b.d. 2/6/62). He graduated from high school. Following high school, he served active duty in the Army and the National

Guard. After completing his military service, he became a cook and worked on Bourbon Street in New Orleans for approximately ten years. At that time, he also worked for NASA. In 1995, he began training and working as an apprentice iron worker. He worked in New Orleans until he evacuated with his family in August of 2005 to Arkansas due to Hurricane Katrina.

In July 2006, he began working for Hayes Mechanical as an iron worker. On August 17, 2006, he was injured by a falling beam causing him to fall out of a scissor lift approximately four feet to the ground. He was immediately taken to the emergency room in Monticello. He testified that both legs were hurting and that he had a cut on the back of his Achilles heel. He was released from the emergency room and went home. He explained that on the next morning, he was badly bruised and had a golf ball-sized knot in his knee. He returned to work at light duty for two weeks. Due to continuing problems, he sought treatment with Dr. Reinhart. After that, he sought treatment with Dr. Uysal with complaints of pain in both legs. He underwent MRI tests and was ultimately referred to an orthopedic surgeon, Dr. Walker. Dr. Walker prescribed pain medication and physical therapy. During therapy, the claimant noticed his left leg started giving him problems on the treadmill and stair climbing. He noted that the problems were in his hip area and in the front of his thigh. He was released to return to work on December 14, 2006, but did not return to work. He collected \$4,160.00 in unemployment benefits beginning in May of 2007. He requested a change of physician and was subsequently treated by Dr. D'Orsay Bryant on May 3, 2007, who recommended additional treatment on the left

leg. He testified that he cannot stand straight and cannot walk the way he used to walk.

On cross-examination, the claimant testified that he was injured due to the fact that the welders did not put enough weld on the beam and some of the welders failed a drug test. He believed that his injuries would not have occurred had the company initiated safety inspections. The claimant testified that currently he could lift objects like he had done before and that he was under no restrictions. He advised that he was not seeking benefits for his back. He recalled having x-rays on the right knee, ankle, and heel and an MRI on the right knee. When he was treated by Dr. Walker on October 16, 2006, he was ordered to physical therapy. He returned for evaluation to Dr. Walker on November 13th with complaints concerning his left leg. At that time, Dr. Walker noted that the claimant's injury was to both quads. He was prescribed additional therapy for two months and subsequently released from treatment on December 14, 2006.

On May 3, 2007, Dr. Bryant recommended baseline x-rays of the claimant's lumbar spine, left hip and femur. In addition, he recommended a back brace. For purposes of this hearing, the claimant is requesting authorization to have continued medical treatment with Dr. Bryant, including the baseline x-rays of the lumbar spine, left hip and femur, anti-inflammatory medication, and the back brace as recommended by Dr. Bryant.

Medical records reflect that the claimant was seen at the Drew Memorial Hospital emergency room on August 17, 2006, concerning injuries he suffered as

a result of a beam falling on his leg, hips, thigh and right ankle. The treating physician noted a contusion on the lower extremities. X-rays were performed on the lumbar spine, right ankle, right foot, pelvis, right femur and left femur. Radiology notes indicate that the impression on the left foot, right femur, left femur and pelvis were negative. The X-ray of the lumbar spine revealed mild degenerative disease. The x-ray of the right ankle revealed "probable secondary ossification center of the tip of the malleolus. Small avulsion not excluded. Mild soft tissue swelling. No gross fracture or dislocation."

On August 30, 2006, the claimant was examined by Dr. Jeffrey Reinhart. When he saw Dr. Reinhart, the claimant complained of problems with his right knee and left leg. He was diagnosed with a contusion on the right ankle and knee. He was released to return to light duty for ten days starting September 5, 2006.

On October 3, 2006, a radiology report from Chicot Memorial Hospital reflects the results of an x-ray on the right ankle, right heel and right knee. No evidence of acute fracture or dislocation was noted. A heel spur was noted.

On October 2, 2006, the claimant was examined by Dr. Askin Uysal in McGehee, Arkansas. At that time, he was complaining of joint pain in his right knee with swelling. He had problems squatting without having pain. The doctor noted that the claimant exhibited right knee swelling, pain on flexion and extension of knee, right heel with no pain and no swelling. He was diagnosed with knee pain and arthritis. The doctor noted that the x-rays of the claimant's ankle and heel were inclusive due to tissue swelling around the medial malleolus and advised that he

needed an MRI of the knee to evaluate the ligaments. He further noted that the claimant had degenerative joint disease and arthritis in his lumbar spine.

On October 5, 2006, the claimant underwent an MRI of his right knee. The MRI revealed that there was "moderate subcutaneous edema with fluid present along the anterior/lateral aspect of the knee joint most consistent with a soft tissue contusion and/or hematoma. No underlying osseous injury is noted. There is no sign of fracture or contusion." The claimant was diagnosed with a lateral subcutaneous post-traumatic contusion or hematoma with no evidence of fracture, bone contusion or internal derangement.

On October 16, 2006, the claimant was evaluated by Dr. Walker, an orthopedic surgeon. At that time, his chief complaint was right knee pain. The doctor noted that the claimant had an injury to his right knee that had persisted despite treatment with ibuprofen, rest and limited work duties. He noted that the x-rays and MRI showed post-traumatic contusion or hematoma in his lateral subcutaneous tissues of his right knee. It was further noted that the claimant continued to have pain specifically in that region and difficulty with deep knee bends or squatting or prolonged driving. X-rays of the right knee were obtained and showed no evidence of acute fracture or dislocation. At that time, Dr. Walker noted that the claimant had developed some muscle weakness which may have contributed to the pain with deep knee bending or squatting and noted that he continued to have pain in the area of the right knee contusion. He recommended that the claimant pursue a course of physical therapy.

On November 13, 2006, the claimant was seen by Dr. Walker. At the time of the evaluation, Dr. Walker noted that the claimant had gone to therapy for strengthening exercises in light of a crushing type injury to his quads with hematoma development. He noted that the claimant's symptoms had improved but that he was having more symptoms on his left thigh. Dr. Walker diagnosed him with "bilateral quadriceps contusion and right knee patellofemoral syndrome, not improved".

On December 18, 2006, Dr. Walker released the claimant to return to regular work with no work limitations on December 14, 2006.

On May 3, 2007, the claimant was evaluated by Dr. D'Orsay Bryant. Dr. Bryant concluded that the claimant had low back, left hip, and left thigh pain, noting that his symptoms were reflective of sciatica. He noted that there was no x-ray of the left thigh or hip where the quadriceps insert and that the claimant required an x-ray examination of the femur and hip as well as the back. He also recommended a muscle relaxant due to the fact the claimant had a muscle spasm in the right lower back. He also recommended anti-inflammatory medication. He also noted that a back brace could help the claimant to provide stability. Depending on the results of the x-rays and medication, he recommended physical therapy to the hip area be considered.

DISCUSSION

_____The claimant contends he is entitled to additional medical treatment for his left leg which started giving him problems during his therapy for his right leg.

The respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this matter. Respondents contend the claimant did not suffer a compensable lower back injury on or about August 17, 2006. Respondents contend the claimant was released to return to work with no restrictions and that the medical documentation does not support entitlement to additional indemnity benefits associated with this claim. In the alternative, respondents contend that they are entitled to an offset for any unemployment benefits received by claimant. Respondents contend that the claimant has not established entitlement to additional medical treatment associated with his compensable injury.

Additional Medical Treatment

The respondents have accepted the August 17, 2006, injuries to claimant's lower extremities as compensable and paid medical expenses and temporary total disability benefits through December of 2006. In support of their denial of additional treatment, respondents rely on the medical opinion of Dr. Walker releasing the claimant back to work without restriction. Respondents argue that Dr. Bryant's recommendation for additional x-rays for the back and left hip fails to consider the x-rays of the lumbar spine, left femur, and pelvis taken at the emergency room at Drew Memorial. Moreover, they point to the claimant's testimony that he is not seeking treatment for a back injury while Dr. Bryant's recommendations are based on a purported lack of testing in connection with a back injury.

On the other hand, the claimant contends that he suffered traumatic injury to both right and left legs at the time of the August, 2006 incident, that he cannot perform any heavy work, and that he currently suffers from problems with his legs that he had never experienced before. Claimant relies on the medical records of Dr. Bryant to support that the medical treatment recommended by Dr. Bryant, is reasonable and necessary medical treatment and related to the work-related injury in August of 2006.

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy 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). Respondents are responsible only for medical services which are causally related to the compensable injury. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonable and necessary. Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1 145 S.W.3d 383 (2004); Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting non-compensable condition by a

compensable injury is, itself, compensable. *Id.* Here, there is no dispute that a specific incident occurred in which the claimant suffered a compensable injury. The evidence demonstrates that there is objective medical evidence which established the current need for surgery. This is not a case where the claimant must establish that the compensable injury was the “major cause” of the need for the surgery since the claimant thus far is only seeking medical benefits and temporary total disability. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 145, 923 S.W.2d 883, 885(1996). Instead, the respondents must take the claimant as they found him and the proper determination is whether there is sufficient evidence to establish that a compensable injury was a factor in the need for the surgery. Williams v. L& W Janitorial, Inc., 85 Ark. App. 1 , 145 S.W.3d 183 (2004).

In Davis v. Helena Chemical Co., claimant suffered from a pre-existing lumbar degenerative condition before sustaining a compensable injury. Full Commission Opinion, filed August 3, 1999 (D406121). The Full Commission affirmed an administrative law judge’s finding that claimant was entitled to additional medical treatment, stating:

The respondents’ and the dissent’s central argument in this case is that the treatment the claimant is presently receiving is because of an ongoing degenerative condition which would be occurring whether or not the claimant suffered an injury in 1984. However, this argument overlooks the fact that the claimant’s previously asymptomatic degenerative process physically progressed and became symptomatic because of his 1984 compensable injury . . . the compensable injury, not some speculative event, is what resulted in the claimant’s present condition.

Id.

The Full Commission later upheld a finding of compensability where symptoms of claimant's pre-existing condition were asymptomatic for five years prior to the compensable event. Jerry Hamblton v. Guy King & Sons, Inc. & Bituminous Casualty Corp., Full Commission Opinion, filed February 22, 2001 (E904812). The Commission held that a preponderance of the evidence showed that claimant's symptoms were the result of his compensable injury, despite the fact that claimant had a pre-existing ongoing degenerative process. Id. at 19.

In the instant case, there is no medical opinion offered that the need for claimant's ongoing treatment is from the degenerative disease that preceded his injury. To the contrary, the medical records support the conclusion that the claimant's right knee condition and bilateral thigh and leg injuries were related to the work-related accident and subsequent treatment.

This medical evidence is further substantiated by the testimony of the claimant. The claimant testified that he had left leg pain which worsened after therapy for his right knee problems. Respondents' argument that x-rays were previously performed and the requested x-ray services are duplicative. However, the record reveals that some of claimant's symptoms first occurred after he began therapy. The only x-rays of the lumbar spine, pelvis, and left femur were taken immediately following the accident and prior to the physical therapy. Even if Dr. Bryant failed to consider the prior x-rays, I find that the recommended diagnostic procedures are compelling evidence of the claimant's need for additional medical treatment in light of claimant's increased symptoms after therapy. Based on the

clear weight of the medical evidence in this case from claimant's treating physician, I find that the medical treatment recommended by Dr. Bryant, including the x-rays, to be reasonable and necessary and related to the compensable injury.

ADDITIONAL TEMPORARY TOTAL DISABILITY

Claimant is contending that he is entitled to additional temporary total disability benefits for his time off work due to his admittedly compensable injury from August, 2006 until a date yet to be determined. Respondents contend that claimant was released to return to work without restrictions in December of 2006.

The claimant is entitled to temporary total benefits if he can satisfy a two-prong test: (1) claimant must be within his healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994). In the instant case, the evidence demonstrates that the claimant did not attempt to return to work when released by his doctor, but collected unemployment based on his ability to work.

Based on the preponderance of the evidence, I find that the claimant has failed to establish that he is entitled to additional temporary total disability related to his left leg. However, I would note that the claimant will be entitled to temporary total disability benefits for any work missed due to subsequent treatment of his work-related injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
3. The employer/employee/carrier relationship existed on August 17, 2006, when claimant sustained compensable injuries to his lower extremities.
4. The claimant's earnings were sufficient to entitle him to a compensation rate of \$388.00 for temporary total disability benefits.
5. The claimant received a change of physician to Dr. D'Orsay Bryant on March 27, 2007.
6. The claimant was released to return to work without limitations on December 14, 2006.
7. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical benefits associated with his compensable injuries, specifically the recommended diagnostic and conservative treatment recommended by Dr. Bryant.
8. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.
9. Claimant has proven by a preponderance of the evidence that his need for additional medical treatment from Dr. Bryant, is reasonable

and necessary and causally related to his compensable work-related injury in August of 2006.

AWARD

The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein. 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).

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge