

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312707

MICHAEL TOMLIN	CLAIMANT
CASTLE RENTAL CENTER	RESPONDENT
AIG CLAIM SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 6, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 26, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 20, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. At all relevant times, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his head and neck on September 18, 2003.

4. The claimant is entitled to a weekly compensation rate of \$245.00 for temporary total disability and \$184.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant's multiple sclerosis is a compensable consequence of the claimant's compensable injury of September 18, 2003.

2. Claimant's entitlement to any additional medical treatment.

3. Claimant's entitlement to additional temporary total disability benefits from September 3, 2004, to a date to be determined.

4. Attorney's fee.

In regard to the foregoing issues the claimant contends that he is entitled to additional medical treatment, including but not limited to treatment by Dr. Rhoads, Dr. Kareus, and Dr. Matinchev, for his compensable injuries and such additional treatment is reasonably necessary per the opinions of his current and former treating physicians, including but not limited to Dr. Rhoads and Dr. Chandler. The claimant further contends that he is entitled to additional temporary total disability benefits beginning on September 3, 2004, and continuing through a date which has yet to be determined as the claimant remains in his healing period and has not yet been released to return to work. Further, the claimant contends that although Dr. Moffitt, the physician who performed an IME on the claimant, has opined that claimant is entitled to a 10

percent permanent impairment rating to the body as a whole as a result of his compensable injury, the claimant contends he has yet to reach his maximum medical improvement, therefore, the claimant contends that the assignment of the 10 percent impairment rating is premature. The claimant contends that the issue of permanent impairment is not yet ripe; therefore, the claimant does not accept Dr. Moffitt's rating at this time. The claimant contends that his degree of permanent impairment cannot be accurately determined until such time as his reasonably necessary course of medical treatment has been completed and he has reached his maximum medical improvement with regard to his compensable injury. Finally, the claimant contends that he is entitled to an attorney's fee on the controverted benefits.

In regard to the foregoing issues the respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this claim.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant has submitted two packets of medical information marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. The respondents have submitted medical information marked Respondents' Exhibit No. 1, additional documentation marked Respondents' Exhibit No. 2, and a CD marked Respondents' Exhibit No. 3. All these exhibits were admitted without objection.

## DISCUSSION

The claimant testified that he was forty-six or forty-seven, had completed high school and attended a summer school session of college. The claimant testified that his job history would include sales as well as labor type jobs such as factory work. The claimant testified and the parties stipulated that he sustained a compensable injury on September 18, 2003, when a fire extinguisher came off the wall and hit him in the back of the head and neck. The claimant testified that he was knocked to the ground and that a large knot came up on the back of his head about the size of a baseball which was burning. The claimant testified that the respondent insisted that he go to the hospital to be checked out. The claimant agreed that as a result of his compensable injury he has seen several doctors including Dr. Danks, Dr. Morse, and the two Dr. Backs who are husband and wife. The claimant testified that about a year after his injury he was having memory problems, burning in his fingers, and trimmers. The claimant testified that he has received some benefits from the respondents but one of the reasons for this hearing was to ask for additional temporary total disability benefits. The claimant testified that none of his doctors have released him to return to work. The claimant testified that he is still having burning in his fingers, balance problems, trimmers, bowl problems, and memory problems. The claimant testified that he is taking lots of medications. The claimant was asked about his memory problems and he responded by stating that before his accident he could multitask but following

his injury he can only do one or two things and even then that is hard for him. The claimant testified that his eye sight is getting worse as well. The claimant testified that he has tingling in his right arm and hand like it is going to sleep. The claimant testified that Dr. Rhoads is his main doctor but he has not seen him for some time due to finances. The claimant testified that he also has been treated by Dr. Archer who is at UAMS. The claimant testified that he goes to UAMS approximately every three months and it was the doctors there that diagnosed him with MS. The claimant testified that he has been given injections and medication for his seizures. The claimant testified that although the medications hopefully will help with some of his symptoms it has not cured his symptoms. The claimant testified that he has sharp pains in his stomach due to MS. The claimant testified that the backs of his calves get real heavy and he has trouble walking. The claimant testified that if he sits in a chair for five or ten minutes, getting out of it is difficult because his back tightens up with spasms due to MS. The claimant testified that the symptoms which he is currently experiencing he did not have prior to the fire extinguisher falling on him. The claimant testified that he has problems sleeping due to pain as well as his bowel problems.

The claimant agreed that he was sent a CD of a surveillance of his activities made approximately two years earlier. The claimant testified that the activities he was filmed performing he no longer could do and even then he paid the price the next day because he had neck and back pain. The claimant testified that he could not

lift his son as he did in the CD because his son now weighs too much. The claimant testified that in his opinion his condition is getting worse. The claimant was asked if he has looked for work and he responded that no he did not because he would not be able to get up for the job due to his sleep problems and he physically and mentally is not able. The claimant testified that he is drawing social security disability. The claimant testified that the reason he could not hold down a job was because of his fatigue, trimmers, seizures, and mental problems. The claimant testified that he believes that it was his compensable injury that has caused all of his symptoms including his MS.

On cross examination, the claimant agreed that he has been treated at the Ozark Guidance Center in Springdale and still is seen there on occasion. The claimant was asked if he had told the counselors at the guidance center prior to his compensable injury that he was able to contact UFOs and aliens. The claimant responded that he told the counselor that he might have seen some UFOs or aliens. The claimant testified that his son might have told him that he also has seen or contacted UFOs. The claimant agreed that after his accident while working he drove himself to the hospital and after some tests were done he was released. The claimant testified that while at the hospital he filled out all of his paperwork. The claimant testified that when the fire extinguisher hit him it did not break the skin but it did leave like a gouge and lifted some skin like a blister. The claimant testified that it was some days following his incident that the

tingling started in his fingers. The claimant agreed that after he was seen by Dr. Blankenship it was determined that something was going on with him that they could not handle so he was sent to Little Rock for diagnosis and treatment. The claimant testified that it was UAMS that he was found to have tumors or lesions on his spine and in his brain. The claimant agreed that the treatment he has been receiving from UAMS has been for his MS. The claimant agreed that the fire extinguisher that hit him in the back of the head did not hit any other parts of his body. The claimant agreed that after he was diagnosed with MS all of his symptoms sort of came together but he figured that what happened was that the blow to his head caused him to develop MS. The claimant testified that he gets a twitching on the top of his head and it kind of goes numb but not in the area where the fire extinguisher hit him. The claimant testified that the numbness in his legs started probably fifteen to eighteen days after his compensable injury. The claimant testified that he has confidence in Dr. Rhoads' records. The claimant testified that about two days after he was hit with the fire extinguisher at work he returned to work for the respondent and worked for three weeks. The claimant testified that his wife does not drive so anytime the family goes anywhere he does the driving. The claimant testified that due to his accident his wife works and he watches their two children. The claimant testified that his children are four years old and seven years old. The claimant testified that his neighbor helps watch the children also. The claimant testified that he did not disagree that the

surveillance of his activities showed him doing several different physical tasks. The claimant again stated that he probably regretted these activities after he had done them. The claimant agreed that if he went back to work his social security check would be reduced or taken away.

Anita Tomlin testified on behalf of her husband. Ms. Tomlin testified that she and her husband had been together for eight years and they were together when he was injured on September 18, 2003. Ms. Tomlin testified that her husband is not the same person as he was before his accident as far as being mentally, physically, and emotionally the same. Ms. Tomlin testified that the claimant takes care of the children during the day although she cannot depend on him and has to think for him. This witness testified that she has to make sure the claimant takes his medications including his injections and that he takes care of taking his shower and daily tasks of living. Ms. Tomlin testified that the claimant does watch their children with the help of the neighbors but she gets everything ready for the children and her husband before she leaves for work each day. Ms. Tomlin testified that the claimant has problems getting dressed, walking, or just doing anything physical. Ms. Tomlin testified that all these problems developed after his injury. Ms. Tomlin testified that the claimant could not work because of his physical, mental, and emotional problems. Ms. Tomlin testified that the claimant has a lot of black outs, he cannot think, he cannot multitask and simple problems become big problems for him without her help. This

witness testified that the claimant has mood swings and anger, he cannot remember, and he tries to do something and forgets what he is doing. Ms. Tomlin testified that the claimant has a hard time being around people because he cannot remember what he is talking about, gets angry and has lots of mood swings and anxiety. Ms. Tomlin testified that her husband can drive a car but he has problems losing his way or finding his way back from where he has come from. Ms. Tomlin testified that the claimant does not remember where he is or where he has parked. This witness testified that her husband can drive without her with him but he needs help and often gets lost.

On cross examination, Ms. Tomlin testified that she makes her living working as a cook. Ms. Tomlin testified that currently she is employed with Rogers Natural Food Market. Ms. Tomlin agreed that the doctors have found that the claimant has lesions on his brain and spinal cord. Ms. Tomlin agreed that certainly the claimant's doctors are better qualified to issue an opinion regarding the cause of her husband's problems.

The medical records which are extensive set forth that the claimant was treated at the Northwest Medical Center of Benton County on September 18, 2003, for a head injury. The radiologist's reports of the claimant's cervical spine show no evidence of fracture, dislocation, disc space narrowing, arthritic change or destructive lesion. A CT to the claimant's head was negative as well. A month later on October 27, 2003, the claimant was again seen at the ER with complaints of left fingers and arm being numb

for the past twelve days. A CT scan made of the claimant's head at the ER was negative. The medical records set forth that the claimant continued to be seen at the ER for differing and continuing complaints of numbness and dizziness until he was referred to Dr. Martin Greenberg. After examination and review of the claimant's various tests it was determined that due to the claimant's memory dysfunction he may need cognitive testing and it was noted that he had a family history of cerebral aneurysm although this would not be related to a closed head injury. Due to complaints of pain it was recommended that the claimant undergo an MRI of his thoracic and lumbar spine. The claimant underwent an MRI of his brain on November 18, 2003, which was within normal limits although there was a possible mucous retention cyst or polyp located in the left maxillary sinus. An MRI of the claimant's cervical spine made on that same date revealed an area at T2 prolongation within the cervical cord at the C3 level. This test also showed an area of abnormal contrast enhancement in the craniocaudal dimension with some surrounding T2 hyper intensity. This finding was thought to perhaps be an area of acute demyelination or perhaps a small neoplastic lesion or an area of myelitis. This test also showed a mild uncovertebral hypertrophic spurring at C5-6 on the right but without significant neural impingement. The claimant underwent neural psychological evaluation by Dr. Bettye Back in April 2004.

The claimant began being seen by Dr. Phillip Rhoads on May 14, 2004, for his problems resulting from a closed head injury. The

claimant's physical examination was non revealing and Dr. Rhoads ordered blood work to be done. The claimant was seen by Dr. Carissa Candler on June 11, 2004. After review of the claimant's symptoms and physical examination nothing remarkable was noted. The doctor does write that the claimant's MRI reveal with cervical spine contusions appreciated. The claimant was diagnosed with post traumatic dementia causing clumsy hand syndrome from the C spine contusions and peripheral neuropathy. The claimant underwent an EEG on July 12, 2004, at the direction of Dr. Candler which was normal. The claimant continued to be seen by Dr. Candler for his complaints of pain which the doctor notes are here and there and no specific nature as well as headaches.

The claimant was seen by Dr. Gary Moffitt for an independent medical evaluation on August 31, 2004. After review of the claimant's reported symptoms it was noted that he had been treated by a variety of doctors including Dr. Kelly Danks, Dr. Michael Morse, Dr. Bettye Back, and Dr. Candler. After physical examination, Dr. Moffitt notes that the claimant shows an intermittent shaking of his right arm that does not appear to be consistent with any known neurologic abnormality and that during his Romberg testing he one time fell to the left almost immediately and the next time fell to the right almost immediately. Dr. Moffitt writes that there seems to be symptom magnification present. Using the A.M.A. Guides, Forth Edition, Table 3 at Page 4-142, Dr. Moffitt assesses the claimant with an emotional or behavioral impairment of 10 percent to the body as a whole and

opines that the claimant has reached maximum medical improvement. The claimant was seen by Dr. John Lee on September 8, 2004, for his reports of balance problems. Dr. Lee notes that he is not exactly sure the cause of the claimant's balance symptoms but it seems unlikely inner ear etiology and definitely does not think that it is benign paroxysmal positional vertigo. Dr. Lee recommended that the claimant undergo an ENG testing of his inner ear. Dr. Lee writes that the mucus retention cyst on the MRI is totally an incidental finding and has no bearing on the claimant's symptom complex. The medical records set forth that the claimant continued to have complaints of pain as well as dizziness and headaches throughout 2004 for which he received physical therapy and treatment from Dr. Candler. The claimant underwent an MRI of his brain and cervical spine on December 17, 2004. Dr. Rhoads writes on January 7, 2005, that these tests show hyper intense signal in the white matter on the right frontal lobe, non specific. The doctor notes that otherwise this is normal except for a mucus retention cyst in the right maxillary sinus. Dr. Rhoads writes that the claimant's cervical spine MRI shows vague signal intensity that is increased around C3 described as possibly artifact although since it has been seen in several studies may be a demyelinating plaque possibly neoplasm. The doctor notes that there is a right disc protrusion at C5-6 with mild lateral recess stenosis with questionable compromise of the right C6 nerve root. This MRI also showed minimal disc bulging at C6-7 otherwise all levels were unremarkable. On January 18, 2005, the claimant was seen by Dr.

John L. Kareus for his difficulties with memory loss, poor balance, tremor, fatigue, and weakness. Upon examination the claimant, according to Dr. Kareus, noted that with coordination and walking the claimant's reactions were of questionable voracity. The claimant was seen by Dr. Borian Matinchev on January 19, 2005, for his multiple complaints. After giving the doctor an extensive history as to his medical treatment and examination, the doctor recommended medications. The claimant was seen by Dr. Blake Little on February 8, 2005, for sleep evaluation. After taking a history from the claimant he was assessed with obstructive sleep apnea and a sleep disorder test was recommended. Dr. Little writes on March 16, 2005, that the claimant has completed a CPAP titration study noting that he did well on ten cm of pressure. Dr. Little writes that he is hopeful that this will help the claimant with his excessive daytime sleepiness. The claimant was seen by Dr. James Blankenship on March 30, 2005, for complaints of low back pain. After physical examination and review of the claimant's various tests, Dr. Blankenship notes that the claimant does have a high signal noted in his spinal column at the C2-3 area since his initial evaluation. Dr. Blankenship notes that the claimant certainly does have post concussive syndrome but whether there is any primary CNS etiology for sensorial problems is unknown. Dr. Blankenship notes that there is a second contusion noted in the spinal cord around the C5 level as shown on the most recent MRI although the sagittal T2 weighted images were of poor quality. Dr. Blankenship writes that he is most concerned with the well

circumscribed area that is hyper intense on T2 weighted imaging behind the vertebral body at T8 that is an expansile mass in the spinal column itself. Dr. Blankenship notes that this is read out as possible demyelinating disease versus a neoplastic process. Dr. Blankenship notes that his concern is that this does represent an intramedullary neoplasm and the question is whether the claimant has some type of atypical demyelinating disease with also CNS involvement. Dr. Blankenship recommended that due to the complexity of the claimant's situation he should be seen by the neurological department of the UAMS. Dr. Blankenship released the claimant from work until his appointment at UAMS.

The claimant was seen at the University of Arkansas Medical School on May 19, 2005, for his numerous symptoms. Dr. Richard Rowe took a thorough history from the claimant as well as made an examination and review of the claimant's various tests. Dr. Rowe assessed the claimant with having a lesion on his thoracic spine at the level of T8 noting that the MRI which reveals this finding is three months old and, therefore recommended a follow up MRI. The claimant underwent an MRI on May 20, 2006, which revealed a focal left sided cord lesion at T8 level with slight cord expansion. This test also showed the lesion is hypertensive on T2 weighted images and demonstrates no gadolinium enhancement. It is noted that there is also a small hypertensive focus in the cord at T5 level. The doctor who reviewed this test noted that in view of multiplicity of lesions a demyelinating etiology would be most likely and noted that a direct comparison with the previous MRI

would be helpful. The claimant was seen by Dr. Rowe on May 26, 2005, and after examination and review of the claimant's MRI the doctor notes that the claimant has a T8 lesion in the spinal cord, however the cord does not appear to be enlarged and on contrast it did not appear to be much uptake of contrast. Dr. Rowe notes that the claimant also had another T5 lesion and based on the findings on the MRI it is believed that the claimant most likely has demyelinating disease. Dr. Rowe recommended that the claimant be seen with neurology for his demyelinating disease; specifically multiple sclerosis. Dr. Robert Archer, writes on May 27, 2005, that he was seeing the claimant for his diagnosis of multiple sclerosis. Dr. Archer notes that the claimant has undergone additional MRIs and a spinal tap for a MS panel has been performed. The claimant was discharged by Dr. Archer with medications and the recommendation to return in ten to fourteen days to be seen by Dr. Aia Parthiba for review of his spinal tap results on his MS panel. Dr. Archer writes on June 6, 2005, that the claimant was hospitalized at UAMS on May 27 and 28 for evaluation of his problems which started after an episode of trauma about a year and a half earlier. Dr. Archer goes through a review of the claimant's symptoms as well as treatment. Dr. Archer notes that the claimant asked him if his problems with MS could have been caused by his trauma and the doctor reports that he told the claimant that it is possible, however whether MS can be caused by trauma is controversial. Dr. Archer notes that it may well be that the claimant had a tendency for MS but the stress of the trauma

made it easier for him to have an exacerbation. Again the doctor notes that this is a controversial area from a medical/legal standpoint noting that certainly the time course would fit for an association between the two. Dr. Archer then discussed a treatment plan for the claimant as well as medications.

Dr. Kelly Danks writes on October 13, 2005, that based on objective medical findings and within a reasonable degree of medical certainty it is his opinion that the claimant sustained a work related accidental injury on September 18, 2003, and this injury was the major cause of 51 percent or more of the claimant's need for medical treatment. Dr. Danks responds to a letter from the claimant's attorney dated February 24, 2006, where it is noted that the claimant is a patient of his but he has not seen or evaluated him in two years and, therefore is unable to answer her questions. Dr. Phillip Rhoads writes on February 24, 2006, that he is unable to give the claimant a numeric rating at that time and recommended a functional capacity evaluation. Dr. Rhoads notes that in his opinion most of the claimant's continuing and future medical treatment is going to be related to his multiple sclerosis management.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that his multiple sclerosis was caused by or exacerbated by the trauma which he received as a result of his compensable injury on September 18, 2003. It is not questioned that this claimant had a compensable injury and suffered effects as a result of this injury.

The claimant has testified to and the medical records set forth that he has been treated for and evaluated for numerous problems. The claimant's primary treating physicians have consistently kept him off work as a result of his numerous symptoms. It is noted that Dr. Gary Moffitt did evaluate the claimant and found him to be at maximum medical improvement but this was pertaining to his emotional and mental problems for which he gave him an impairment rating. The claimant continued to have physical symptoms and again was consistently kept off work by his treating physicians until he was referred to the University of Arkansas Medical School for evaluation. The issue of whether multiple sclerosis can be brought on by trauma is controversial as expressed by Dr. Archer. Although Dr. Archer opines that it is possible that the claimant's trauma may have caused his MS or at least exacerbated that pre-existing condition, his opinion is based more on time of occurrence. A 1999 report of the Therapeutics and Technological Assessment Subcommittee of the American Academy of Neurology concluded that the evidence supports no association between physical trauma and either MS onset or MS exacerbation. Researchers at the University of Arizona published a report in 1991 which concluded that except for electrical injuries there is no evidence of a direct relationship between traumatic injury and an MS exacerbation. A study at the Mayo Clinic supported the finding that traumatic injury is not related to exacerbation of MS. This Mayo study also indicated that there is no relationship between traumatic injury and MS onset. I do find, however, that the claimant is entitled to

temporary total disability as well as the cost of his medical treatment being paid by the respondents up until he was seen at the University of Arkansas Medical School.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. At all relevant times, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his head and neck on September 18, 2003.

4. The claimant is entitled to a weekly compensation rate of \$245.00 for temporary total disability and \$184.00 for permanent partial disability.

5. The claimant has failed to prove by a preponderance of the evidence that his multiple sclerosis was brought on or exacerbated by his compensable injury on September 18, 2003. See discussion above.

6. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his compensable injury up until he was referred to the University of Arkansas Medical School. See discussion above.

7. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from the date he last received benefits until he was seen at the University of Arkansas Medical School. See discussion above.

8. The respondents have controverted this claimant's entitlement to additional benefits.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has failed to prove by a preponderance of the evidence that his multiple sclerosis was brought on or exacerbated by his traumatic compensable injury on September 18, 2003.

The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his compensable injury up until he was referred to the University of Arkansas Medical School on May 19, 2005.

The claimant is entitled to temporary total disability from the date of last payment until May 19, 2005.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE