

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607158

JOHN L. VAUGHAN

CLAIMANT

ALMATIS, INC.

RESPONDENT EMPLOYER

COMMERCE & INDUSTRY INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 10, 2007

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE C. BURT NEWELL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on November 3, 2006. A prehearing conference was held on September 12, 2006, and an Amended Prehearing Order filed on October 23, 2006. A copy of the prehearing order was introduced as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on April 10, 2006, at which time the claimant sustained a specific incident injury.

2. The compensation rates are \$488/366.

The claimant contends that on April 10, 2006, he sustained an industrial injury during a slip and fall at work and injured his neck. The claimant contends he is entitled

to medical benefits and temporary total disability benefits from May 13, 2006 through September 17, 2006 and attorney's fees.

Respondents contend the claimant did suffer a compensable injury to his lower back on April 10, 2006, and the injury was accepted and benefits paid. Respondents have controverted the neck injury in its entirety. Respondents contend the claimant's problems associated with his neck and knee are not related to the claimant's work. Respondents, alternatively, contend if the neck is a compensable injury, respondents are entitled to an offset for short-term disability benefits paid the claimant from May 16, 2006 through August 16, 2006, and a credit for group health benefits paid in this matter.

ISSUES TO BE LITIGATED

1. Compensability of a neck injury.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

The testimony of two witnesses was proffered by claimant's counsel. These witnesses were not identified within 14 days of the hearing, as required by the prehearing order; therefore, their testimony was not considered in writing this opinion but is available in a brown, sealed envelope if my ruling was in error. The Full

Commission will have that testimony available for consideration. Respondents' counsel objected to the witnesses presenting testimony, since they were not properly identified in a timely manner.

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on April 10, 2006, at which time the claimant sustained a specific incident injury.

2. The compensation rates are \$488/366.

3. The claimant has proven by a preponderance of the evidence that he sustained a neck and back injury on April 10, 2006.

4. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued for his neck injury, to include the surgery.

5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was unable to earn wages from May 13, 2006 through September 17, 2006.

6. Respondents are entitled to an offset for benefits paid under the group short-term disability plan and the group health plan. Ark. Code Ann. §11-9-411.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee on 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 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 59 years old, has been employed as a maintenance mechanic since 1981. According to the claimant, on April 10, 2006, as he was working on the jet mill, he slipped and fell in a spill. The claimant landed on his back, but did not immediately have pain. He reported the incident to the operator and his supervisor. The claimant went to the plant doctor, Dr. Evelyn Cathcart, and reported he was sore in his back, but he returned to finish his shift. According to the claimant, within a week he began to feel some numbness and weakness in his right arm and some burning in his upper back, neck or shoulder. The claimant used Tiger Balm for the next several weeks. The claimant testified that he reported to his supervisor that he was losing strength in his right arm and had trouble loosening and tightening bolts.

According to the claimant, he started missing work on May 8, 2006, when he went to his family doctor, Dr. Thomas Hollis, who referred him to Dr. James Arthur. Dr. Arthur performed neck surgery the following day. The claimant was off work for four and a half months and drew some short term disability benefits.

Under cross examination, the claimant confirmed that on his AR-N Form his wife completed the form and he signed the form. The claimant confirmed the form has written "back" following the question, "What part of your body is injured?" The claimant further confirmed that his signature is on some Blue Cross Blue Shield forms and the answer is "no" to the question regarding whether the medical care is due to an accident. The claimant confirmed that he drew short term disability from May 16 through August 16. The claimant confirmed that he had a physical with Dr. James Cooper on April 21, 2006, and neck problems were not indicated in his report. The claimant testified that he

considered his neck part of his back and that is why he simply indicated back injury on his Form N.

Garland Garrett, maintenance supervisor for the respondent employer for 28-1/2 years, testified that he is the claimant's supervisor. Mr. Garrett testified that on May 8, 2006, the claimant came and advised him that he was hurting so bad that he had to go to the doctor and he did not know if it was a crick or just what. Mr. Garrett testified that the claimant never mentioned his neck as being work related, only that the claimant did tell him about losing strength when he was trying to tighten bolts. Mr. Garrett testified the claimant did not ask to see the company doctor and he first learned that the claimant was contending his neck condition was related to the April 10, 2006, slip and fall when the paperwork came through that he was having neck surgery. Mr. Garrett testified that the claimant was an excellent employee and a hard worker; however, Mr. Garrett confirmed that the claimant did not indicate to him that his neck problems were the result of his slip and fall at work.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the

requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant first sought medical attention following his slip and fall on April 10, 2006, with the company doctor, Dr. Evelyn Cathcart. Dr. Cathcart's records reveal that the claimant slipped and felt a burning pain that started in his low back and this went down into his foot. Dr. Cathcart diagnosed the claimant with lumbar strain over preexisting back disease and prescribed some medication. The next medical record is from Dr. James Cooper dated April 26, 2006, where the claimant had his yearly physical. Dr. Cooper's report referred to the claimant's back problems a week or two earlier but noted that condition is improving. Dr. Cooper found the claimant to be healthy with no major health problems. The next medical report in evidence is a May 9, 2006, report from Dr. Thomas Hollis, the claimant's family doctor, with the claimant's major problem being neck and shoulder pain and Dr. Hollis referred the claimant to Dr. James Arthur for further evaluation. The MRI revealed a disk herniation at C3-4 with narrowing of the neural foramen. The reports from both Dr. Hollis and Dr. Arthur indicated the claimant reported a fall three to four weeks earlier. Dr. Arthur's May 11, 2006, report indicated the claimant began having neck and right arm pain with muscle spasms following the fall at work. The claimant underwent a discectomy and fusion on May 11, 2006, and was released to return to work on August 17, 2006, with some restrictions. Dr. Cathcart recommended the claimant remain off work another month and returned him to work with restrictions on September 18, 2006.

On October 25, 2006, Dr. Arthur opined that the claimant's disc herniations

reflected a sudden onset of injury, as opposed to a chronic long-standing neck problem and verified that the MRI revealed the herniations and also that the claimant reported a slip and almost fell on April 10, 2006, at work.

Claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is no other reasonable explanation for the injury. *Hall v. Pittman Const. Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962).

After considering all the credible evidence, to include the credible testimony of claimant, I find the claimant has proven by a preponderance of the evidence that he sustained a compensable neck injury on April 10, 2006, when he slipped at work. While the first mention of a neck problem in the medical evidence is the May 9, 2006, report from Dr. Hollis, the claimant's family doctor, this report does indicate the claimant fell at work about one month ago and the MRI revealed disk herniation at C3-4. I found Dr. Arthur's opinion that the claimant's cervical problems and the need for surgery were the result of a sudden onset injury rather than a chronic gradual onset to be persuasive that the claimant's condition was the result of his work-related fall. While the claimant did not report the cervical problems immediately after his fall, he did testify that he began having weakness and numbness in his right arm and burning in his upper back, neck or shoulders within a week of the fall. The claimant testified to using Tiger Balm to

help relieve the symptoms. I found the claimant to be a credible witness and he presented a plausible account of his fall and the problems he encountered thereafter. Further, the claimant's supervisor, Garland Garrett, testified that the claimant did not report a neck injury immediately, but he also testified that the claimant was an excellent employee and of upstanding character.

Respondents are responsible for all the reasonable and necessary medical treatment the claimant has pursued for his neck injury, to include the surgery by Dr. Arthur. Ark. Code Ann. §11-9-508.

Claimant next contends he is entitled to temporary total disability benefits from May 13, 2006 through September 17, 2006. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, I find the claimant did remain in his healing period and was unable to earn wages from May 13, 2006 through September 17, 2006. The claimant underwent cervical surgery on May 11, 2006 and Dr. Arthur gave the claimant a release to return to work on August 16, 2006, with a 40-pound lifting limitation. The claimant saw the company doctor, Dr. Evelyn Cathcart, and she took the claimant off work for another month, returning him back to work on September 18, 2006, with a 40-pound limit. The claimant returned to work and at the time of the hearing continued to work. I find the medical evidence supports the claimant's testimony that he remained in his healing period and unable to work from May 13, 2006 through September 17, 2006.

Respondents contend it is entitled to an offset for group short-term disability

benefits and group health insurance benefits the claimant has received as a result of the injury. I find that respondents are entitled to an offset for all benefits paid under the group disability and health insurance plans pursuant to Ark. Code Ann. §11-9-411.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a neck and back injury on April 10, 2006. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued for his neck injury, to include the surgery. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was unable to earn wages from May 13, 2006 through September 17, 2006. Respondents are entitled to an offset for benefits paid under the group short-term disability plan and the group health plan. Ark. Code Ann. §11-9-411.

The claimant's attorney is entitled to the maximum statutory attorney's fee on 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 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

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.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**