

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709219

BILLY BEAN	CLAIMANT
HANES BRANDS, INC.	NO. 1 RESPONDENT
AIG CLAIM SERVICES, INC. CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

**OPINION FILED AUGUST 12, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by SUSAN WALKER ALLEN, Attorney, Russellville, Arkansas.

Respondent No. 1 represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On May 15, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 16, 2008, and a pre-hearing order was filed on April 17, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 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 this claim.
2. The claimant sustained an injury on July 15, 2007.
3. The compensation rates are unknown at this time.
4. Healing period is unknown at this time.

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

1. Compensability.
2. Claimant's entitlement to temporary total disability.
3. Claimant's entitlement to medical.

4. Attorney's fees.

Claimant's contentions are:

"We contend that claimant is entitled to seek further medical help, continue seeing Dr. Schlesinger, and have it paid for through the respondent, as well as having his prescriptions filed as needed. That claimant is entitled to TTD from ? to present until released by his surgeon, Dr. Schlesinger. The claimant withdraws the October 10, 2006, injury date."

Respondents' contentions are:

"Respondents contend that claimant did not suffer any compensable injury while working for respondent employer. Respondents contend further that the claimant failed to give notice of any work-related injury until filing his Form AR-C and that in the event compensability is found, respondents should not be liable for payment of any benefits until actual notice was received. Respondents further assert that the claimant's medical treatment was paid for by a third party carrier and that respondents should be given credit for any medical benefits paid in the event compensability is found and respondents are held liable for payment of medicals."

### **DISCUSSION**

The central issue in this case is whether the claimant sustained a compensable injury to his C6-7 region of his spine in an employment related accident on July 15, 2007. The burden rests upon the claimant to prove these compensable injuries.

In order to meet this burden, the claimant must first show that the alleged injury satisfies the statutory requirements of Ark. Code Ann. §11-9-102. This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury alleged to be compensable. Further, this subsection requires that the actual existence of a physical injury must be based upon or supported by objective findings as that term is defined by Ark. Code Ann. §11-9-102.

The claimant testified that on July 15, 2007, he "grabbed the bobbin of yarn, and I stepped up on the little step stool, and I went -- I reached up to try to put the yarn up there. And when I did, I got it about half way on. My left arm started going numb, and

the next thing I know, I got a little dizzy and then the pain shot right through my shoulders and straight up my neck. And as far as I know, the bobbin was still hanging half way on there when I grabbed a hold of the ladder, because I almost fell.”

Medical evidence presented in this case shows that the claimant has had cervical spine problems prior to the alleged work related injury on July 15, 2007. On December 12, 2006, an MRI was performed at the Johnson Regional Medical Center in Clarksville, Arkansas. Dr. Douglas Kerin reports “there are disc ridge complexes at C5-C6 and C6-7 which are producing bilateral recess stenosis. This appears to be fairly symmetric at C5-6. There is no herniated disc.”

On December 18, 2006, the claimant reports to Dr. Michael Westbrook of the Westbrook Medical Clinic the presence of neck pain into his left arm, that the left hand is weakened, and decreased grip is present. After reviewing the MRI of the claimant Dr. Michael Calhoun writes a letter to Dr. Westbrook regarding the claimant and states, “Review of the MRI does show some spondylosis in central and foraminal stenosis at C5-6 and C6-7.”

On January 23, 2007, Dr. Ronald Williams writes a letter to Mr. Jeff Snider D.C. in which Dr. Williams reports “an MRI of the cervical spine shows foraminal narrowing bilaterally at C5-6 and C6-7.” Dr. Williams also reports that he intends to conduct a cervical myelogram and EMG and nerve conductive studies of the upper extremity.

On January 25, 2007, Dr. Williams again writes to Jeff Snider, D.C. regarding the results of the claimant’s EMG and nerve conduction studies of the left arm which were essentially normal. Dr. Williams further states, “His cervical post myelogram CT shows bilateral foraminal narrowing at C5-6 and C6-7. With his bicep weakness, I think this is most likely the C5-6 level causing his problem.

on January 24, 2007, diagnostic imaging was done at St. Vincent’s Health System being read by radiologist Dr. Gean Matchett. Impressions from that diagnostic imaging

particularly in the cervical area of the report "prominent disc -- osteophyte disease at C5-C6 and C6-C7 producing mild canal stenosis and narrowing of the neural foramina bilaterally. This disease in the cervical region appears to be greatest in the C6-C7 where there is severe narrowing of the neural foramina.

On February 1, 2007, the claimant was admitted to St. Vincent's Health System for surgery regarding his cervical spine problems. Dr. Ronald Williams performed the surgery and gave the following preoperative note, "This is a forty-five year old right handed white male. Since October 2006, he has had difficulty with neck pain going into the left arm. He has good course of conservative treatment under the direction of Dr. Snider in Clarksville, but the pain has tended to persist. He has had a recent myelogram, post myelogram CT that demonstrated central canal stenosis at C5-C6 with bilateral foraminal narrowing at the same level." The operative report of the surgery also reveals that the following procedures were done; an anterior cervical fusion at C5-6, anterior cervical discectomy at C5-6, partial corpectomy of C5, partial corpectomy of C6, and placement of iliac crest allograft at C5-6.

On July 15, 2007, the claimant testified that he injured himself while working for the respondent. The claimant contends that while hanging a bobbin of yarn he felt numbness in his arm and had to be removed from the facility in a wheelchair. Specifically, the claimant contends that this hanging of a bobbin of yarn caused damage to C6-7 in his cervical spine.

On July 16, 17, 18, and 23, 2007, the claimant was seen by Jeffery Snider, D.C. in regard to pain in his neck. Mr. Snider was informed on July 16, 2007, by the patient that he believes this was from an incident that occurred at work when he was taken from the plant in a wheelchair. The claimant on all three visits was urged to see the surgeon that performed the previous back surgery on the claimant.

On July 25, 2007, the claimant was seen by Dr. Schlesinger who is the partner for the now retired Dr. Ron Williams who performed the C5-6 fusion on the claimant. The claimant relates to Dr. Williams "here in the last month or so he has had an onset of severe pain in his neck, inter scapular region, and running down his left arm." The letter of Dr. Schlesinger also indicates that he believes there is a disc herniation at C6-7; however, he believes a myelogram and CT scan of the cervical spine will better define the anatomy and plan for potential surgical intervention. In a letter dated August 8, 2007, Dr. Schlesinger indicates that the myelogram and CT scan do support the MRI findings of a C6-7 left sided disc herniation and foraminal stenosis. Dr. Schlesinger indicates that at this point he plans on proceeding with surgical intervention.

On August 26, 2007, Dr. Schlesinger sent a letter to Jeff Snider, D.C. regarding the claimant. The letter states, "Mr. Bean underwent anterior cervical decompression and fusion at the C5-6 level for the left C6 radiculopathy and spinal stenosis without difficulty on August 21, 2007. The patient was discharged to home the following day."

On October 7, 2007, Dr. Schlesinger makes an evaluation note which states: "He previously had an anterior cervical fusion in February 2007. The patient was fused from C3-C4 in February, and then now has been fused at C6-C7." On October 29, 2007, Dr. Schlesinger sent a letter to Jeff Snider, D.C. regarding the claimant. The letter states: "He has done relatively well from his surgery on August 21, 2007 for anterior cervical decompression and fusion at C5-C6."

### **ADJUDICATION**

The central question in this matter is whether the claimant sustained a compensable injury on July 15, 2007 or if the complaints of numbness and pain in his cervical spine are related to or are a reoccurrence of the cervical spine problems the claimant had prior to July 15, 2007. It is clear from the medical record that the claimant has a history of cervical spine problems particularly in the C5-C6 and C6-C7 area. The record is void as to any

operative report for surgery that was apparently performed on the claimant after the July 15, 2007 alleged injury. There are references made by Dr. Schlesinger regarding surgery that was performed, however, it references the C5-C6 area even though the diagnostic studies contemplated a herniated disc at C6-C7. Those diagnostic studies were done after the July 15, 2007 date. However, it is unclear where surgery was actually performed on the claimant. The claimant states in testimony to the Commission that his work related injury was to C6-C7. However, on August 26, 2007, Dr. Schlesinger indicated that the claimant had a fusion at the C5-C6 level for the left C6 radiculopathy and spinal stenosis without difficulty on August 21, 2007. The diagnostic studies prior to July 15, 2007 also indicate that the claimant had present problems with the C6-C7 area of the cervical spine which Dr. Gene Machete indicated in a diagnostic imaging report that, "Disc disease in the cervical region appears to be greatest at C6-C7 where there is severe narrowing of the neuroforamen." This diagnostic study was performed on January 24, 2007.

On July 25, 2007, the claimant informed Dr. Schlesinger that, "Here in the last month or so he has had an onset of severe pain in his neck intrascapular region and running down his left arm." His report of pain in his neck and left arm would appear to be from a point prior in time than that of his alleged injury of July 15, 2007. This would indicate that the pain he was experiencing was a reoccurrence of the pain that he had experienced prior to July 15, 2007, and that the pain was most likely related to his cervical spine problems that have been reported in great detail in previous diagnostic reports.

The claimant filed two form AR-C's. One of those AR-C's indicates that there was an accident that occurred on July 15, 2007 in which, "I injured the discs in my neck again, the lower one this time. I was standing on a ladder threading the feeding machine and hanging the full bobbin of yarn. I lost feeling in my left arm, pain in my back, and felt weak." The other form AR-C filed by the claimant states: "I injured the C-3 and C-4 discs in my neck. I was injured while standing on a ladder threading the knitting machine and

hanging the full bobbin of yarn. I lost feeling in my left arm and leg and felt weak.” This AR-C form reports an accident date of October 10, 2006. The claimant contends however that he is not seeking any benefits related to the October 10, 2006 injury that he reported in the form AR-C that reflects that date of accident. The claimant contends that he is only seeking benefits for the injury that he contends occurred in July 15, 2007.

For the claimant to prove that he suffered a compensable injury in this matter, he must show by a preponderance of the evidence that the damage or injury to his body, in this case the damage purportedly to the C6-C7 portion of his cervical spine, was caused by the incident that he related on July 15, 2007. I find that the claimant has been unable to do in this matter. The evidence before the Commission shows that the difficulties or any damage to the C6-C7 portion of his spine was there prior to July 15, 2007. There are multiple diagnostic studies that purport disease and problems with that area of his cervical spine and the claimant reports the same type or very similar symptoms a month or so prior his July 25 visit to Dr. Schlesinger. I find that difficulties the claimant experienced on July 15, 2007, and forward, are merely a reoccurrence of the problems he previously had not an aggravation of these injuries.

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 A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 16, 2008, and contained in a pre-hearing order filed April 17, 2008, are hereby accepted as fact.

2. That the difficulties of the claimant are a reoccurrence of his prior cervical problems and not an aggravation.
3. That the claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury on July 15, 2007.
4. That the claimant is not entitled to any benefits in this matter.

**ORDER**

\_\_\_\_\_ That the claimant's claims in this matter are denied and this case is dismissed in its entirety.

**IT IS SO ORDERED.**

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE