

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606528

CARL BOLT, EMPLOYEE	CLAIMANT
BAILEY PAINT CO. INC., EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO, SUMMIT CONSULTING, INC., CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 4, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on March 10, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

The respondents were represented by THE HONORABLE Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on March 10, 2008, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on January 28, 2008. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties, either pursuant to the Prehearing Order or at the start of the hearing, and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including June 1, 2006.

3. The parties will stipulate to compensation rates prior to the hearing. (At the time of the hearing, the parties stipulated that the claimant was earning sufficient wages to entitle him to a weekly temporary total disability compensation rate of \$324.00, and a weekly permanent partial disability rate of \$243.00).

4. The claim has been controverted in its entirety.

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

1. Compensability of claimant's alleged left shoulder and neck injury.

2. Whether claimant is entitled to temporary total disability compensation from the date of the injury, until a date yet to be determined, except for a half day he worked shortly after the injury.

3. Whether the claimant is entitled to medical treatment.

The claimant contends that he sustained a left shoulder and neck injury as a result of jumping off a scaffold, approximately four feet high. Claimant further contends he is entitled to temporary total disability compensation and medical benefits.

The respondents contend that the claimant was not injured when he jumped down off of a scaffold. He has no objective medical

findings.

The documentary evidence in this case consists of the Commission's Prehearing Order of January 28, 2008, the claimant's Response to the Prehearing Questionnaire, and the respondents' Response to the Prehearing Questionnaire, which were all marked as Commission's Exhibit No. 1. The remainder of the Commission's file was also made a Commission's exhibit, but has been incorporated by reference only in the hearing transcript, as it has been marked as Commission's Exhibit No. 2. The respondents' medical packet was marked as Respondents' Exhibit No. 1.

The following witness testified at the hearing: the claimant.

DISCUSSION

The claimant, age 46 (10/30/61), had worked for the respondent-employer for approximately three weeks as a painter. During the hearing, the claimant gave a brief explanation of his prior work experience. The claimant essentially maintains that on the morning of June 1, 2006, he sustained injuries to his neck and left shoulder as a result of jumping down approximately four feet off a scaffold. According to the claimant, he "jarred something" and it has hurt ever since. The claimant essentially testified that he continued to work, but his pain worsened.

The claimant essentially testified that he promptly reported the incident to the respondent/employer, who later that morning transported him to Conway for medical treatment, as the claimant

was seen by Dr. Meador. He also admitted to having received medical care from Dr. William Warren, who referred him for physical therapy treatment. According to the claimant, he received only one treatment of physical therapy before discontinuing it on his own because it worsened his symptoms. The claimant testified that the respondents refused to allow him to treat with another physician. (Based on documentation in the Commission's file, it appears that the claimant requested a change of physician, but the Commission was unable to honor this request due to the respondents having controverted the claim).

He also admitted to seeking treatment from Dr. Charlotte Barry (The claimant inadvertently refers to her as Barry Bonds) on January 10, 2007, who performed some x-rays. According to the claimant, he was unable to obtain the results or copies of these tests due to financial challenges.

The claimant essentially admitted that although he has not returned to work since the day of his injury (with the exception of the half day he worked shortly after the incident), he admitted no doctor has directed him to totally refrain from working. With respect to his current symptoms, the claimant testified he continues with pain/discomfort of the left shoulder and neck. The claimant also maintains that he has headaches and pain behind the ear. According to the claimant, the onset of these symptoms often results in tearing of his eyes. He denied any prior medical

problems with his neck or shoulder.

On cross examination, the claimant admitted to previously being given a no lifting over 10 pounds restriction due to heart-related problems. The claimant testified that he hurt his shoulder, neck and arm as a result of the incident. He did not know whether he injured his elbow during the incident. However, upon being questioned about the reference to his elbow in medical notes from Concentra, the claimant admitted that he did experience pain at the elbow down to his hand.

The claimant again admitted to treating with Dr. Sharon Meador and Dr. William Warren. The claimant also maintains that he sought additional treatment from Dr. Barry Bonds (Dr. Charlotte Bonds), and that he went to a hospital in Hot Springs, but the doctor refused to treat him because it was a workers' comp injury. The claimant admitted that the respondents paid for his treatment with Dr. Warren. According to the claimant, during the last two years, he has done odd jobs, such as watched dogs for an old lady, and other little things like that here and there. The claimant testified that his source of income/help comes from a friend who works at a lumber yard. The claimant denied having received unemployment benefits or any kind of disability benefits.

He testified that he continues in pain, as his pain is sometimes better than it was in June of 2006, and every once in a while it is worse.

The medical evidence of record demonstrates that the claimant sought treatment from Dr. Sharon Meador due to symptoms relating to his alleged injury of June 1, 2006. Dr. Meador assessed the claimant as having, "cervical strain, left shoulder strain, and right elbow strain." She took the claimant off work for the balance of the work day, and directed him to then return to work on modified duty. She directed the claimant not to engage in any overhead work, and limited his lifting, pulling and pushing to 10 pounds. The Commission's file demonstrates that Dr. Meador prescribed medications for the claimant's injury, which included, but was not limited to Flexeril.

On June 9, 2006, the claimant saw Dr. William Warren due to a chief complaint of shoulder pain. The claimant's statement was "Patient states: "I was on the scaffold and somebody took my walk board, so I had to jump 3½ ft. injuring my neck , left shoulder and right arm." Dr. Warren reported the following History of Present Illness:

The mechanism of injury was jumping down from 5 feet from a scaffold. The pain began abruptly. The pain is located on neck, the left shoulder and the right elbow. The pain is described as acute, moderate, aching, throbbing and soreness. Pain intensity Level: 6/10. The pain did not radiate. Denies paresthesias, sensory loss, numbness, weakness, stiffness, abdominal pain, urinary incontinence, fecal incontinence, dysuria, shortness of breath, difficulty breathing, morning stiffness or radicular symptoms.

MUSCULOSKELETAL:

Cervical: Focal moderate palpation tenderness of the left neck musculature including the trapezius and levator scapulae muscles are noted and; this tenderness is considered to be muscular in origin. No ecchymosis. No pain on motion. No snuff box tenderness. No swelling. Full range of motion. Capillary refill normal in the left and right hands. The opposite side was unremarkable. The remainder of the musculoskeletal examination was unremarkable.

Thoracic: Bilateral shoulder range of motion normal. Strength normal.

Lumbar: FROM. No palpable bony or muscular tenderness. Normal gait. No Waddels sign. Good toe/heel walk. No lateral shift.

Left Shoulder: Tenderness of the anterior aspect of the clavicle and shoulder diffusely. Shoulder shows no deformity. Full range of motion. Normal rotator cuff motion. Normal median, radial, and ulnar nerve function. Normal radial pulse. The opposite side was unremarkable. The remainder of the shoulder examination was unremarkable.

Bilateral Upper Arms: No deformity. No swelling. Full ROM.

Right Elbow: Tenderness of the olecranon and this tenderness is considered to be soft tissue or muscular in origin. Elbow shows no deformity. No ecchymosis. No swelling. Full range of motion. Normal median, radial, and ulnar nerve function. Normal radial pulse. The opposite side was unremarkable. The remainder of the elbow examination was unremarkable....

X-RAY / LAB REPORT:

3 Views

C-Spine X-Ray:

C-Spine x-ray: Negative.

2 Views

Left shoulder 2-ray: Negative.

3 Views

Right elbow x-ray: Negative.

Dr. Warren's assessment was, "cervical strain, shoulder strain and elbow pain." He placed the claimant on Celebrex and

scheduled him for physical therapy three times within the next week before his next physician visit. Dr. Warren also placed the claimant on modified activity, which included the following:

Neck restrictions to include: unable to operate company vehicles, no lifting/pushing/or pulling more than 20 pounds, no over the shoulder reaching. Unable to operate company vehicle.

Shoulder restrictions- Including no over shoulder lifting or reaching; 20 pound limitation in lifting, pushing and pulling; no ground level lifting. No CMV driving.

ADJUDICATION

It appears the claimant contends that he sustained a compensable injury to his neck and left shoulder while working for the respondent-employer on June 1, 2006. However, the respondents essentially contend that the claimant was not injured when he jumped down off of a scaffold because he has no objective medical findings.

Ark. Code Ann. §11-9-102(4)(A)(i) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the

direct control of the patient. Ark. Code Ann. § 11-9-102 (16). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E) (i).

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 Speciality Plastics, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

The testimony elicited from the claimant at the hearing, demonstrates that the claimant jumped down approximately four feet from a scaffold on the morning of June 1, 2006, while working for the respondent-employer. The claimant credibly testified that he promptly reported the incident to management, who later transported him Conway OccuMed Treating Physician, for medical treatment, which was administrated under the care of Dr. Sharon Meador. Her medical notes dated June 1, 2006, show that she diagnosed the claimant as having, "cervical strain, left shoulder strain and right elbow strain." Prescription notes demonstrate that Dr. Meador prescribed medications for the claimant, which included, but was not limited to Flexeril. The claimant saw Dr. Warren on June 9, 2006. Dr. Warren's reports corroborate the claimant's account of the incident. His assessment was, "cervical strain, shoulder strain and elbow pain," for which he prescribed

Celebrex, physical therapy three times within the next week, and administered an injection of Toradol. X-rays taken on June 9, 2006 of the C-spine and left shoulder were negative.

Notwithstanding the negative findings of the x-rays, and despite the absence of a reason for the prescribing of Flexeril by Dr. Meador, pursuant to the Arkansas Supreme Court's ruling in Fred's, Inc. v. Jefferson, 361 Ark. 258, 206 S.W.3d 238 (2005), I am constrained to find that this prescription for Flexeril after an injury constitutes objective findings. As such, the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left shoulder and neck by medical evidence supported by objective finding, during the course of and arising out of his employment on June 1, 2006.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The testimony elicited from the claimant during the hearing demonstrates that the claimant has continued in debilitating pain and related symptoms since his compensable injury. While I realize

that the respondents have paid some of the claimant's medical expenses, the claimant's testimony demonstrates that he remains in need of additional treatment in order to diagnose the extent of his injury and to treat that injury. In addition to this, the claimant credibly testified that the physical therapy treatment provided by the respondents caused him more discomfort, and that the medication regimen provided no relief for his compensable symptoms. Therefore, under these circumstances, I find that the respondents are liable for all reasonable and necessary medical treatment needed in connection with the claimant's compensable shoulder and neck injury pursuant to Ark. Code Ann. § 11-9-508 (a).

The claimant next contends that he is entitled to temporary total disability for his compensable injury.

For an unscheduled injury, an injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. Parker, 4 Ark. App. 124, 628 S.W. 2d 582 (1982).

In the present case, I also find that the preponderance of the evidence establishes that the claimant is entitled to temporary total disability compensation beginning on June 2, 2006, (except for

the hours worked on that day), and continuing to a date yet to be determined. Specifically, when the claimant first sought treatment from Dr. Meador on the day of his injury, Dr. Meador directed the claimant not to engage in any overhead work, and limited his lifting to 10 pounds. On June 9, 2006, Dr. Warren placed the claimant on modified work duty (See above discussion). There is no subsequent medical report of evidence demonstrating that these restrictions have been removed. During the hearing, the claimant testified that he attempted to return to work the next day following his injury but was unable to work due to pain and related symptoms from his injury. The claimant also essentially testified that he has been unable to engage in gainful employment since this time due to pain and symptoms resulting from his compensable neck and shoulder injury. There is absolutely no evidence of record demonstrating that the respondent-employer has offered the claimant any work within his medically imposed physical limitations. The claimant testified that he has had to rely on a friend for financial help.

In sum, based on the medical evidence presented, the testimony elicited at the hearing, the absence of testimony from the respondents controverting the same, I find that the preponderance of the credible evidence establishes that the claimant has remained within his healing period since the date of his injury, and has continued within this healing period through the date of

the hearing. I further find that the foregoing evidence establishes that the claimant has been rendered totally disabled from performing all forms of regular gainful employment as the result of the effects of his compensable injury. Thus, the claimant has satisfied all the statutory requirements for his entitlement to temporary total disability, beginning on June 2, 2006 (except for the hours worked on that day), and continuing through a date yet to be determined.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including June 1, 2006.
3. The claimant is entitled to a weekly temporary total disability compensation rate of \$324.00 and his permanent partial disability rate is \$243.00.
4. This claim has been controverted in its entirety.
5. The claimant established by medical evidence supported by objective findings that he sustained a compensable specific incident injury to his left shoulder and neck while working for the respondent-employer on June 1, 2006.
6. The claimant proved by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment for his compensable injury of June 1, 2006.
7. The claimant proved by a preponderance of the credible evidence, his entitlement to temporary total disability from June 2, 2006, (except for the hours worked on that day) and continuing to a date yet to be determined.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion. 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 Arkansas Code Ann. §11-9-809.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml