

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E810760**

**RICKY CRAIG, EMPLOYEE**

**CLAIMANT**

**CROUSE LOGGING, EMPLOYER**

**RESPONDENT**

**AMERICAN INTERSTATE, CARRIER**

**RESPONDENT**

**OPINION FILED MAY 15, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 15, 2008 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE OSCAR HIRBY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of permanent total disability benefits and attorney's fees.

At issue is whether or not this claim is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702 and whether or not the claimant is eligible for wage loss disability benefits pursuant to Ark. Code Ann. 11-9-505, §11-9-522, and Rule 34. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on August 13, 1998 at which time the claimant sustained a compensable head injury at a compensation rate of \$359.00/\$269.00. Medical expenses and temporary total benefits were paid until July 10, 2000. The

claimant receives Social Security Disability benefits (since 2002) and treatment through the Veteran's Administration.

The claimant contends that he is permanently and totally disabled as a result of his closed head injury. The claimant further contends that he is not a good candidate for vocational rehabilitation. The respondents are estopped from denying this claim because the employer repeatedly laid the claimant off work when he was symptomatic rather than use workers' compensation benefits.

The parties agreed that this claim was mistakenly given two claim numbers, as the claimant reported an incorrect date of injury when he filed his AR-C.

The respondents contend this claim is barred by the statute of statute of limitations. Alternatively, the claimant was never assessed an impairment rating due to a lack of objective medical findings and therefore, the claimant is ineligible for wage loss benefits.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaire and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant, who was hesitant in his speech and seemed confused at times; his wife, Betty Craig, who became emotional describing her husband's personality change after the injury; and insurance adjuster, Jeremy Johnson.

The claimant, age 56 (D.O.B. May 30, 1952) has an eleventh grade education and received a G.E.D. while serving in the military. His work history includes long-haul trucking and operating construction equipment (bulldozers, backhoes, forklifts), (see October 6, 2000 Consult Request at p. 87 of the claimant's exhibits). He also has training in plumbing and waste water management. He began work for the respondent employer in 1994 earning \$50,000.00 a year. His health history

includes a left foot injury in the 1970's (VA records indicate a foot injury claim was denied as congenital), ankle surgery, right shoulder surgery in 1989 (distal claviclectomy with impingement caused by disuse), bilateral shoulder surgery in 1990, knee surgery in the 1980's, depression and alcohol abuse, (see pages 12 and 23 of claimant's exhibits).

On August 13, 1998, the claimant was hit in the head with logging equipment, breaking his safety hat. He was taken to the emergency room (ER) for treatment and came under the care of general practitioner, Dr. Chambers neurologist, Dr. Frigon, and orthopedic surgeon, Dr. Clark. The claimant testified this injury caused loss of sight and hearing, memory loss, sleep disorder, depression, chipped teeth, neck and radiating back pain, paralysis in his hands, and headaches.

Nevertheless, he returned to work after two or three months wearing a neck brace and using pain medication. He continued to work for the next twelve months at what he described as part time light duty (Tr. p. 10-11, 26-27), until he was laid off for one month in June, 1999. He thought his condition worsened in 1999 but when he tried to return to Dr. Chambers he discovered his claim was controverted, so he started going to the VA Hospital (Tr. p. 12-13, 15-17, 19-20, 29). The claimant also drew unemployment benefits from May to September, 2000. The claimant said he was sick during this time and used ESD benefits while resting. He did not look for work (Tr. p. 11, 17-18). The claimant left the respondent's employ on June 7, 2001, because the VA doctors found him disabled.

The claimant's wife, Betty Craig, also has a workers' compensation injury and draws Social Security Disability benefits. They have been married 35 years and Mrs. Craig testified the claimant underwent a personality change after his head injury.

Jeremy Johnson, the adjuster on the case testified the claim was accepted and expenses were paid until July 10, 2000.

### **MEDICAL EVIDENCE**

The claimant's exhibit packet is not in chronological order as requested by the prehearing notice. The prehearing notice also requires an abstract of packets exceeding 50 pages, but none was provided. Many of the records could have been redacted.

Initially after the accident, the claimant complained of headaches, neck pain and shoulder weakness. However, diagnostic testing (X-rays, MRI scans) in 1998 and 1999 showed no evidence of head or neck injuries.

Dr. Charles Clark's report of February 3, 2000 indicates the claimant's neck pain had resolved but he now complained of low back pain. Based on x-rays, he was diagnosed with degenerative disc disease at L5-S1.

In 2000, the claimant also sought treatment for depression at the VA Hospital. He complained of memory loss and blurred vision. Ophthalmologist, Dr. Scott Claycomb diagnosed borderline pterygia and recommended artificial tears.

The claimant was evaluated by neuropsychologist, Dr. Gary Souheaver, in 2000 while he was drawing unemployment benefits. The doctor noted that the claimant's symptoms were similar to problems he developed in 1989 after a right shoulder injury for which he required psychiatric treatment. Dr. Souheaver diagnosed depression with anxiety features. Testing revealed mild to moderate cerebral brain impairment which could be exacerbated by depression. His memory scores were average but attention, cognitive flexibility and visual spatial abilities were moderately impaired.

The claimant also reported that his fingers curled up and he lost control of them (dystonia). By October 30, 2003 these symptoms had resolved.

An EMG/NCV study in 2001 was interpreted as showing a “dominately sensory axonal and demyelinating polyneuropathy. There is no evidence for radiculopathies on the right.”

In 2001, the claimant reported he was using a cane as he had fallen from weakness in his left ankle. He reported back pain but was unable to describe the location of his pain. Johnny Smelz noted that the claimant’s complaints were out of proportion to her examination findings and his request for pain injections was denied. Instead he was referred to physical therapy and a pain clinic.

Range of motion on formal examination was decreased in the cervical spine and shoulder due to pain. No obvious deficits observed on spontaneous movements... Give away weakness throughout all major muscle groups of both upper and lower extremities with complaints of pain throughout. No deficits noted on observation of spontaneous behavior.

In 2004, the claimant was hospitalized after threats of suicide and homicide. He was depressed by the death of his son in 2002, marital problems, and his hatred of his mother-in-law. The report indicates the claimant had been treated for depression and alcohol abuse in the past but that he was noncompliant with therapy appointments and medication.

Examples of the claimant’s memory loss appear at pages 98 and 113 of the claimant’s exhibit packet.

### **IMPAIRMENT/DISABILITY**

With regard to impairment and disability, the claimant’s general practitioner offered the following opinion:

Dr. David Chambers’ report of 9-3-98:

Mr. Craig had a significant head injury on 8-13-98. I saw him again

on 8-19-98. He was improving at that time. He was advised to stay off work the rest of the day on 8-19-98 and to return to regular duty on 8-20-98. He was scheduled for return exam on 8/24/98 but did not keep his appointment.

His diagnosis is head injury due to blunt trauma. His prognosis is good. I do not at this time anticipate any future surgery related to this event. I do not anticipate any permanent impairment due to this injury. I would point out that he was not seen on 8-24-98 as scheduled. I do expect him to have headaches for some time (up to six or eight weeks or more) that might be aggravated by the noise and vibration of a filler/buncher. I still feel that he could safely do this work barring any new neurological findings.

Veteran's Administration Mental Health Clinic Report of 11-26-01:

...He has been evaluated by the Vocational Capacity Clinic and the following is the summary of the clinic's findings:

'The multi disciplinary team reviewing today's findings and his medical records feel that his physical problems represent a considerable employment handicap and the combination of these physical problems with his cognitive deficits make continuance of gainful employment unlikely.'

It is the determination of Mr. Craig's treatment team that he is disabled and unemployable.

An April 23, 2001, VA Consult Report, (p. 78 of the claimant's exhibits), indicates the claimant was working intermittently, mowing yards and making repairs. He stated his pain had improved and he wanted to work part-time within the Social Security cap for earnings. In an April, 2005 Progress Note the claimant reported working on a ranch with his son, feeding cattle and mending fences, (p. 96 of the claimant's exhibits).

It is noted that when the claimant talked about performing work as a plumber and backhoe operator, Nurse Frances Jones voiced concerns that the claimant's vocational goals were unrealistic, (see November 28, 2004, Progress Note at p. 107 of the claimant's exhibits). However, the claimant

testified he did have work experience in plumbing and operating heavy equipment.

**DOCUMENTARY EVIDENCE**

Documents were presented establishing the following time lines:

8-13-98	Date of Injury
6-3-99 to 6-19-99	Unemployment benefits
5-6-00 to 9-2-00	Unemployment benefits
7-10-00	Last payment by Workers' Compensation Carrier
6-7-01	Last day of work
9-10-01	AR-C filed

The claimant testified he was aware that his claim had been controverted and that is why he began treating at the VA. He also testified his employer told him how to contact the insurance carrier and he spoke with Joanna Thomason on several occasions. His employer also encouraged him to see a doctor and helped him draw ESD benefits. There is no evidence that the claimant was misled about the status of his claim and his employer was trying to help him financially. Based on this testimony, I find no evidence that the statute of limitations is barred by estoppel. Southern Hospitalities v. Britain, 54 Ark. App. 318, 925 S.W.2d 810 (1996).

**FINDINGS AND CONCLUSIONS**

The Commission has addressed closed head injuries in a number of cases, including Erikca Wentz v. Service Master, (E909278), reversed and remanded by the Court of Appeals, 75 Ark. App. 296, 57 S.W.3d 753 (2001); Dianna Watson v. Tayco, Inc., (#F005469)(affirmed in an unpublished opinion October 2, 2002); Robyn Manor v. Wal-Mart Stores, Inc., (#F105092), (affirmed in an unpublished opinion September 15, 2004) and Linda Parson v. Arkansas Methodist Hospital,

(#F501700), (reversed and remanded by the Court of Appeals June 20, 2007). These cases hold that employees have the burden of proving a compensable injury substantiated by objective medical findings which are not under their voluntary control. Neuropsychological testing alone is insufficient evidence of a brain injury, and there must be some other objective evidence.

In the case at bar, the evidence shows the respondents accepted and paid this claim for a head injury until the claimant was released without impairment. He returned to work but his condition worsened, with symptoms “all over his body” (Tr. p. 12). When he tried to return to his treating physician, Dr. Chambers, he found out his claim was controverted and began treating at the VA. There is no evidence that the claimant was misled about the status of his claim.

The claimant’s treatment at the VA was wide-ranging and it is unclear if there is any causal connection between these symptoms and his 1998 head injury. MRI scans showed no evidence of a head or neck injury. The claimant complained of hearing loss but I found no treatment records in the exhibits for hearing loss. He complained of vision loss but the VA records show he needed glasses and he was diagnosed with mild pterygia (a growth in the eye from the conjunctiva to the cornea), which is a congenital condition. He complained of shoulder pain and weakness and objective evidence was found of neuropathy in the upper extremities, however, these symptoms relate to prior bilateral shoulder surgeries. There was objective evidence of dystonia in the claimant’s hands, but there is no explanation for the cause of this condition in the medical records. And the dystonia symptoms improved as of 2003. The symptoms of sleep disorder and personality change are subjective and clouded by alcoholism and depression.

None of the claimant’s symptoms have been assessed an anatomical impairment rating and there are no specific work restrictions. Without an impairment rating, the claimant is not entitled

to an award of wage loss disability benefits, Wal-Mart Stores, Inc. v. Connell, 340 Ark. 475, 10 S.W.3d 882 (2000).

Accordingly, I find this claim is barred by the statute of limitations and even if the claim was still active, I could not award wage loss disability benefits in the absence of a permanent impairment rating for a condition causally related to the head injury.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on August 13, 1998 at which time the claimant sustained a compensable head injury.
2. The last payment of benefits by the carrier was for a date of service on July 10, 2000. The claimant filed an AR-C on September 10, 2001 which is over one year after the date of last payment. Therefore, this claim is barred by the statute of limitations.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge