

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700988

STEVEN DIDDLE	CLAIMANT
WESTWOOD HEALTH & REHABILITATION, INC.	RESPONDENT
CCMSI	RESPONDENT

OPINION FILED JUNE 19, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 25, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 5, 2008, and a pre-hearing order was filed on February 6, 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 employment relationship existed at all relevant times including July 19, 2006.
2. The claimant sustained a compensable injury as the result of a specific work related incident on said date.
3. The claimant earned sufficient wages to entitle him to the maximum applicable compensation rate of \$488 per week for temporary

total disability and \$366 per week for permanent partial disability.

4. The respondents have previously paid various medical and related expenses.

5. The respondents have controverted claimant's entitlement to temporary total disability as well as entitlement to additional medical treatment.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. whether the claimant is entitled to temporary total disability.

2. whether the claimant is entitled to additional medical treatment.

The claimant contends:

"That he sustained a compensable back injury working as a nurse assistant while lifting a patient on July 10, 2006; that his current need for medical treatment and period of disability is causally related to the admitted injury; that respondents terminated additional medical treatment and that he is entitled to continued, reasonably necessary medical treatment, including, but not limited to a recommended myelogram; that he is entitled to temporary total disability beginning August 25, 2007, (which is the date unemployment compensation was terminated) and continuing through the present, maintaining that his healing period has not ended; and that a controverted attorney's fee should attach to any additional benefits awarded."

The respondents contend:

"That it has paid all appropriate benefits to which the claimant is entitled; that the claimant was non-compliant with medical treatment and did not attend prescribed

physical therapy; that the claimant subsequently quit his job and went to work for a tree service and did not seek additional medical treatment until six (6) months later; and that additional medical treatment is not reasonably necessary nor related to the admitted injury. Respondents further maintain that the claimant sustained an independent intervening accident on January 3, 2007.”

DISCUSSION

The central issue in this matter is the causal connection between the claimant's current need for additional medical treatment and the admittedly compensable injury the claimant suffered while employed by the respondent on July 19, 2006. The claimant began working for Westwood Health & Rehabilitation, Inc. in January 2006. He continued to work there through September 1, 2006, at which time he left their employment. He testified that he did so because he was unable to perform his job and for personal reasons.

WORK HISTORY

Sometime in October 2006 the claimant began working for Fayetteville Health & Rehabilitation and continued employment there until November 2006. The claimant then worked for Beverly Healthcare of Rogers from November 2006 until late January 2007. During the last week in January 2007 the claimant returned to employment with Fayetteville Health & Rehabilitation but only worked for a period of one week.

MEDICAL HISTORY

The testimony and medical records indicate that on July 20, 2006, the claimant visited Dr. Kathleen E. Vandergriff. He

reported that on July 19, 2006, while transferring a patient, his back gave out and he felt a sharp pop in his back. A radiologist's report based on an x-ray ordered by Dr. Vandergriff of the claimant's lumbar spine stated, "no acute abnormalities noted."

Dr. Vandergriff released the claimant to return to work with a ten-pound lifting restriction on July 20, 2006. On July 28, 2006, the claimant again reported to Dr. Vandergriff with an apparent complaint of muscle spasm at which time Dr. Vandergriff prescribed medications. She also returned the claimant to work without restrictions.

The claimant's next medical treatment was when he visited Northwest Medical Center emergency room on December 27, 2006. The ER triage records indicated that the claimant stated that while lifting a patient at work he had some numbness down his right leg and pain in the lower back. X-rays were taken and a radiological report was generated which indicates five views of the lumbar spine of the claimant were taken and the impressions were, "unremarkable lumbar spine." The radiological report was ordered by Dr. Peter Ball who also did the physical examination of the claimant at that time. Dr. Ball notes a clinical impression of an acute herniated disc at L4-5.

On January 27, 2007, the claimant reported to the Washington Regional Medical Center emergency room where he complained of lower back pain. He gave a history of a back injury in July, and stated that he was "seen at Springdale a month ago where they x-rayed my back", and reported that he had a "herniated disc." The claimant

also reported the “onset of symptoms as gradual” and that the “onset was six months ago.” The claimant was released from the emergency room, given instructions to be off work for two days, and told to consider chiropractic therapy. The claimant was prescribed Vicodin, Valium, and Prednisone at that time.

On February 13, 2007, the claimant reported to the Northwest Medical Center emergency room and was again seen by Dr. Peter Ball where his chief complaint purports to be a “back injury at work on (sic) January 3, 2007.” The medical records indicate that he reported a recent injury that occurred while “lifting a patient at work.” An emergency nursing record was also generated that day with a chief complaint of “lower back pain.” It indicates that it is chronic and indicates a recent injury occurred on “December 27, 2006.” The nursing record also reports that the claimant indicates an initial history of a “back injury in July 2006 from lifting a patient who slipped.” At this time, Dr. Peter Ball prescribed medications for the claimant and released him from the emergency room.

A letter from D. Luke Knox, M.D. was sent to Peter Ball, M.D. on April 12, 2007, which reflects that the claimant was seen in the neurosurgical clinic on April 12, 2007, for consultation of back and left leg pain that was requested by Dr. Peter Ball. Dr. Knox notes that, “the claimant’s examination is remarkable in that he had a positive straight leg raising test on the left. It was mildly positive on the right. He had diminished sensation over the entire left leg. He had no evidence of long track findings. He

had significant paraspinal muscle spasm with restricted range of motion, primarily in extension. His reflexes were otherwise felt to be physiological.” Dr. Knox also noted that while the claimant was at the clinic he had the claimant redo his lumbar spine films which had demonstrated no evidence of fracture but he notes there was significant disc space settling at L4-5. Dr. Knox suspects that he has a significant bulge at L4-5 and further notes that he would like the claimant to undergo an MRI scanning for further evaluation.

On May 25, 2007, the claimant reported to the Northwest Medical Center emergency room. The emergency physician’s record indicates a chief complaint of back pain and states that the claimant reported a “back injury in July 2006.” The claimant was diagnosed with a herniated disc and was given medications.

On June 22, 2007, the claimant reported to the Northwest Medical Center ER and the emergency room physician’s records indicate that his chief complaint is back pain with an “injury at work” in “July 2006.” The claimant was diagnosed with a back strain and prescribed medications.

On July 15, 2007, the claimant reported to the Northwest Medical Center emergency room and the emergency physician’s records indicate his chief complaint to be back pain which started in “July 2006.” The claimant was diagnosed with a herniated disc and he received medications.

On August 8, 2007, the claimant reported to the Northwest Medical Center emergency room. Reports associated with that visit

reference a chief complaint of back pain which started "four days ago." He also reports an injury which occurred "last year on a job." The claimant was diagnosed with a back sprain and given medications.

On August 27, 2007, the claimant received an MRI of the lumbar spine that was performed by Steven Harms M.D. The impression of that MRI are as follows:

1. Disc desiccation at L4/5 and L5/S1.
2. Small left paracentral disc herniation L4/5.
3. Mild generalized bulging annulus at L5/S1.
4. Spondylosis at L4/5 and L5/S1.
5. Mild bilateral facet hypertrophy at L4/5 and L5/S1.
6. Mild left neural foraminal narrowing at L4/5.

On August 31, 2007, the claimant reported to the Northwest Medical Center emergency room and the emergency physician's records indicate his chief complaint is back pain that started on "July 19, 2006." The claimant reports that he was "injured at work and he has filed for workers' compensation." At that time he was ordered to follow up with Dr. Knox and was given prescriptions.

On October 3, 2007, the claimant was seen at the Neurosurgery Clinic of Northwest Arkansas by Dr. Luke Knox. The claimant received an MRI scan and Dr. Knox reports that it showed significant disc bulge at L4/5 and says that it was read out as demonstrating a small left paracentral disc herniation which Dr. Knox suspects is the culprit of his complaints. He further recommends that the claimant undergo a myelogram. Dr. Knox, in a report dated October 3, 2007, states that an x-ray of the claimant's spine showed, "AP, lateral, flexion, extension, and oblique views of the lumbar spine, demonstrating five non-rib-

bearing lumbar vertebrae with significant disc space collapse at L4-5, with a McNab traction spur and concomitant facet settling. There is normal pedicle architecture throughout the lower thoracic and lumbar spine. There is well-maintained sagittal balance. There is no evidence of bony lesion. There is no evidence of spondylolysis and/or spondylolisthesis. Most prominent feature appears to be at the L4-5 level, without evidence of overt instability on flexion and extension views.”

On October 22, 2007, Dr. D. Luke Knox completed a letter to the claimant’s employer stating that he was under his professional care and should remain off work through a follow up visit with him. In a following report on December 4, 2007, Dr. Knox indicates that he would like to have a myelogram and notes that the patient is becoming somewhat frustrated due to his consistent difficulties and pain syndrome.

On February 28, 2008, an MRI was done at Washington Regional Medical Center by Robert A. Irwin, M.D. which gave the following impressions:

1. Early multilevel spondylosis as described above, most pronounced at L4-5 with the left parasagittal broad based disc protrusion which lies adjacent to the descending left L5 nerve root which is slightly displaced.
2. Mild L4-5 and L5-S1 neuro foraminal narrowing.

ADJUDICATION

I find it to be significant that the claimant began working in January 2006 with the respondent Westwood Health & Rehabilitation Services, Inc., suffered an admittedly compensable injury on July

19, 2006, and was treated on July 20, 2006, including an x-ray which showed no acute abnormalities. It is previously noted that the medical records reflect that the claimant was released on July 28, 2006, with no work restrictions. In September he left the employment of the respondent and was employed by two other nursing facilities, Fayetteville Health & Rehabilitation and Beverly Healthcare of Rogers.

It is not until December 2006 that the claimant again seeks any type of medical treatment regarding his lower back. However, the December 27, 2006, medical records and x-rays reflect that the claimant had an unremarkable lumbar spine. It is not until April 2007 that the first indication of some type of abnormality is found by Dr. Knox. At this point, the claimant has left Beverly Healthcare of Rogers and returned to work for Fayetteville Health & Rehabilitation leaving employment with them at the end of January 2007.

To receive the additional medical benefits that the claimant has requested he must prove that the additional medical benefits were necessitated by or connected with the admittedly compensable injury of July 19, 2006. To do so he must show that it is more probable than not that they arose from and are reasonably related to the admittedly compensable injury of July 19, 2006. In the claimant's testimony the following exchange occurred on cross examination by Attorney for the respondents:

Q. Okay. Now, the--the medical records and, according to the index, it looks like you were kind of going to the doctor up until

July of 2006, and then you didn't go back until December of 2006. Does that sound right?

A. I went in July when I first was injured yes. And I kept trying to get them to let me go back to the doctor. And--and they gave me the run around about it, saying that--you know, Westwood would tell me to call the Occupational Clinic to get an appointment. I would call them. They would tell me that Westwood had to verify it and approve it. And finally I went to the ER in December.

The claimant in this matter is a nurse and appeared, when giving testimony, to be quite competent in understanding medical procedure and terminology. I find it hard to believe that if the claimant was suffering pain from the period of July to December that regardless of his allegations that he was receiving the "run around" about going to the doctor that he would have gone to an emergency room and sought treatment. The medical records in this case are quite clear that beginning in December 2006 and moving forward the claimant went to the emergency room on multiple occasions reporting low back pain. It seems odd that had he had back pain during the months of August, September, October, and November that he would not have sought treatment through an emergency room if other treatment was not available to him.

In testimony the claimant describes that while working for Fayetteville Health & Rehabilitation he was doing "med passes, pill passes, and I was continually having to go like to the bottom drawer of the med cart, and the up and down motion, the stooping

was aggravating it worse.” On cross examination by the respondents’ attorney the claimant was asked:

Q. And, you know, inherently in--in a nursing home, you’re going to have to lift some patients and you’re going to have to turn some people over in bed. And did you have to do some things like that at--at Fayetteville?

A. Yes, Sir.

Q. Okay did that hurt you?

A. Yes.

On direct examination by the claimant’s attorney the claimant was asked:

Q. And--and your job duties there (Beverly), did they involving lifting patients or what kind of job duties did you have there?

A. Just mostly very little lifting mostly, just rolling a patient to their side, like, to get to there bottom you know; just doing wound care you know; putting band-aids on, you know--things of that nature.

From the claimant’s testimony it is obvious that he had job requirements with the two other employers during the time period after July 2006 that caused him to exert physical force that could have caused his current back difficulties. The temporal relationship of his pain complaints to medical providers was much closer to his other employment than with the respondent. I find that it is more probable that his current lumbar difficulties are related to some incident or incidents that occurred a Beverly

Healthcare of Rogers or Fayetteville Health & Rehabilitation rather than stemming from his admittedly compensable injury of July 19, 2006. His current difficulties could have also stemmed from some routine activity that has no association with work of any kind. The work history of the claimant along side his medical records indicate that he had no medical problems from July 28, 2006, until he left respondent's employment in November 2006 that required medical treatment. The claimant testified to back problems during this period; however, I do not find his testimony credible in that he was able to go to the emergency room on multiple occasions when he had pain in 2007. If the claimant was truly having lower back difficulties his medical training as a nurse would have provided him with the knowledge required to seek medical treatment of some nature.

The claimant has simply failed to prove that his current need for additional medical treatment was necessitated by or connected with the July 19, 2006, injury. Thus, he is not entitled to additional medical benefits. I further find that the claimant is not entitled to any disability benefits for the same reasons. That is he did not establish that any disability he might have sustained was connected to his compensable injury.

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 witness and to observe his 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 February 5, 2008, and contained in a pre-hearing order filed February 6, 2008, are hereby accepted as fact.

2. The additional medical benefits requested by the claimant were not necessitated by or connected with the admittedly compensable injury of July 2006.

3. The temporary total disability requested by the claimant was not necessitated by or connected with the admittedly compensable injury of July 2006.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits or temporary total disability for his compensable low back injury. Therefore, this claim for additional benefits and temporary total disability is denied in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE