

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F709498**

**CHAD GOFF, EMPLOYEE**

**CLAIMANT**

**DH CONSTRUCTION, INC., EMPLOYER**

**RESPONDENT**

**AMERICAN HOME INSURANCE COMPANY,  
C/O AIG CLAIM SERVICES, CARRIER**

**RESPONDENT**

**OPINION FILED MAY 8, 2008**

Hearing before Administrative Law Judge O. Milton Fine II on February 14, 2008, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by Mr. Eddie H. Walker, Jr., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On February 14, 2008, the above-captioned claim was heard in Fort Smith, Arkansas. A pre-hearing conference took place on November 29, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1, which I accept. They are the following:

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

2. On August 15, 2007, the relationship of employee-employer-carrier existed among the parties.
3. The Claimant sustained a compensable injury to his left lower extremity on August 15, 2007.
4. The Claimant is entitled to a weekly compensation rate of \$122.00 for temporary total disability and permanent partial disability.
5. Medicals paid to November 13, 2007.
6. Temporary total disability paid to November 13, 2007.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant clarified the nature of the additional medical treatment he is seeking. The following were litigated:

1. Whether Claimant is entitled to additional medical by Dr. Keith Bolyard.
2. Whether Claimant is entitled to additional temporary total disability from November 13, 2007, to a date to be determined.
3. Whether Claimant is entitled to a controverted attorney's fee.

### Contentions

At the hearing, Respondents added an additional contention concerning their acceptance and payment of Claimant's impairment rating. The contentions now read:

#### Claimant

1. Claimant contends that although Respondents have paid temporary total disability benefits through September 18, 2007, they have not paid temporary total disability benefits since that date. Claimant contends that he is entitled

to temporary total disability benefits from September 19, 2007 until a date yet to be determined and reasonably necessary medical treatment. Claimant contends that although the physician that Respondents chose to evaluate Claimant has indicated that Claimant should be able to return to work, the Claimant is still under active medical treatment and has not been provided work that he can perform. Therefore, since the Claimant sustained a scheduled injury, he is entitled to temporary total disability benefits. Claimant contends that his attorney is entitled to an appropriate attorney's fee.

Respondents:

1. Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to his matter. The Claimant has reached maximum medical improvement as of November 13, 2007. A permanent impairment rating has been requested and permanent disability benefits, if appropriate, will be paid subsequent to receipt of the same.
2. Claimant has received an impairment rating that Respondents have accepted and paid.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment by Dr. Keith Bolyard.
4. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from November 13, 2007 to February 4, 2008 at the stipulated rate of \$122.00 per week.
5. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee.

### **CASE IN CHIEF**

#### Summary of Evidence

\_\_\_\_\_ Claimant was the sole witness at the hearing.

In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant's Exhibit 1, medical records dated August 17, 2007, consisting of one index page and two numbered pages; Claimant's Exhibit 2, medical records from August 24, 2007 to October 2, 2007, consisting of seven pages; Claimant's Exhibit 3, medical records from October 18, 2007 to November 5, 2007, consisting of four pages; Claimant's Exhibit 3, medical records dated September 25, 2007, consisting of seven pages; Respondents' Exhibit 1, non-medical records, consisting of ten pages; and Respondents' Exhibit 2, medical records, consisting of 24 pages.

Testimony

Chad Goff. Claimant testified that he was injured in August 2007 while working for Respondent DH Construction. While walking over to help co-workers raise a wall, something struck his nail gun and forced it back against his leg, and the gun fired. A 16-penny nail, which Claimant described as being approximately three inches long and 3/16 inch in diameter, entered his thigh and pierced his femur. Dr. Keith Bolyard, an orthopedic surgeon in Fort Smith, Arkansas, operated on the leg. Claimant underwent physical therapy as well.

Claimant stated that in August and September 2007, he experienced swelling in his knee because of the accident, rendering him unable to walk on it. He lost muscle tone in his knee, and it has not returned. Claimant testified that he still has weakness in the knee and thigh.

He also received treatment in an "Indian clinic" as well. And Jamie Baldwin, his case manager, sent him to Dr. Jeff Fox in Tulsa, Oklahoma—90 minutes from Claimant's home. At the time, he believed he was still under the care of Dr. Bolyard, and did not request the transfer. Claimant testified that Dr. Fox did "nothing" for him, but added that he ordered an MRI and drew 20 cc's of fluid from his knee. This treatment occurred on his second visit; on the first, Dr. Fox merely evaluated him. While Fox on November 5, 2007 directed him to undergo therapy three times a week for four weeks, Claimant testified that this never occurred and that Dr. Fox released him before the therapy was finished—despite his continued desire for the therapy and his denial that he refused to attend therapy sessions.

When asked to describe the condition of his knee and thigh in his injured leg, Claimant stated: "It's a constant pain, aching. And my thigh, I don't have—it ain't bothered me, but—it's just constant pain and aching and swelling." He stated that metal has been discovered in the thigh, and that he experiences weakness in the leg as well, rendering him unable to carry anything. Claimant testified that his leg has not improved at all since his first visit to Dr. Fox. He would like to return to Dr. Bolyard for additional treatment.

When questioned by Respondents, Claimant testified that Dr. Fox gave him a full release on November 13, 2007. His only work since then was cutting vinyl siding for his brother for four days in the week prior to the hearing. He has applied to work at many places. He also stated that construction work is slow in the winter, and that not much work of that type exists because he lives in a small town.

He stated that he has been on pain medication for his back, unrelated to the incident at issue, for two years "off and on." Claimant testified that he underwent physical therapy at River Valley Rehab. He learned exercises there for range of motion and strengthening. He admitted that he failed to show for his September 25, 2007 therapy appointment, but stated that his failure to attend on October 4, 2007 was at the behest of Jamie Baldwin, who asked him to cancel the appointment. He denied that he told River Valley that he had not done the exercises.

Claimant testified that the "Indian clinic" he referred to previously was Mankiller Clinic in Stillwell, Oklahoma. This is a free clinic he has attended for years. He asked Dr. Leslie Rebtoy for additional narcotic medication for his knee. He admitted that on more than one occasion, he has asked for stronger medication than the provider has been willing

to give. He also admitted that Respondent AIG arranged for his transportation to Tulsa to see Dr. Fox, and that at the time of the hearing he was not using crutches.

In follow-up questioning by his attorney, Claimant stated that despite Dr. Bolyard's September 28, 2007 note that he was to return in one month, he did not do so because he was switched to Dr. Fox. Bolyard has not released him. Claimant testified that he has never injured his knee, and that he was unaware of getting any metal in his leg prior to this accident.

When questioned by me, Claimant testified that Baldwin told him that AIG was transferring him to Dr. Fox because they were not happy with Dr. Bolyard's treatment.

Questioned further by Respondents, Claimant stated that Baldwin had him transferred to Dr. Fox because his x-rays indicated a dark area, and she was concerned that there was an infection that Dr. Bolyard was not treating. He was aware that Baldwin attempted to locate another doctor for him in Fort Smith, but that they refused to see him because they would not render a second opinion if he was treating with another doctor in town. As for his transportation to Tulsa, Claimant stated that Respondent AIG used a transportation company to take him there.

Under further questioning from me, Claimant clarified that he knew that Baldwin had called around in Fort Smith because she had told him so.

Respondents called no witnesses.

#### Records-Medical

The medical records of Claimant that were introduced at the February 14, 2008 hearing and are part of Claimant's Exhibits 1-4 and Respondents' Exhibit 2 reflect the following:

On August 16, 2007, Claimant underwent x-rays of his left leg that showed that a nail had penetrated his femur with approximately 1.5 to 2 centimeters of the anterior portion of the nail head still in the soft tissues, probably in the suprapatellar pouch of the left knee joint and the posterior aspect of the nail entering through the posterior cortex or just adjacent to it at the level of the posterior medial femoral condyle paramedian position. That same day, Dr. Keith Bolyard operated to remove the nail. The entry wound, which was over the lateral aspect of the quadriceps tendon about two centimeters superior to the pole of the patella, was lengthened proximally and distally about two centimeters. The knee joint was irrigated as well. No other foreign matter was detected.

When Claimant returned to Dr. Bolyard on August 24, 2007, he complained "bitterly" of discomfort. He presented with 1+ effusion. Dr. Bolyard refilled his Percocet prescription, but directed that any further pain medication request would be filled with Lorcet 10/650, which would be for Claimant's chronic back pain. The sutures were removed, and Claimant was directed to place his weight on the left leg to the extent that he could tolerate it.

In a subsequent visit on September 12, 2007, Claimant presented with pain, along with "pitiful quad size and tone now." Dr. Bolyard noted that Claimant was to attend therapy three times a week for range of motion and conditioning. While he had minimal effusion, Claimant presented with no sign of infection, and with the exception of some thickening around the entry wound and just superior to the superolateral pole of the patella, no abnormalities in the left leg. The Lorcet was filled. Dr. Bolyard gave the diagnosis of significant quad atrophy.

Claimant went to physical therapy on September 19, 2007 and was noted to be ambulatory without any assistive device. He was set to attend therapy three times a week for four weeks, with the goals of him returning to full duty in six to eight weeks and be within functional limits of knee range in three to four weeks. However, he failed to show for therapy on September 25, 2007. On September 27, he explained that he had undergone x-rays that found something in his leg that had him concerned about undergoing therapy.

On September 25, 2007, he underwent x-rays of his left knee at the Wilma Mankiller Health Center in Stillwell, Oklahoma. The x-rays showed "numerous fragments superior to the patella," and "a single fat fragment within the tibiofemoral joint space." A small amount of joint effusion was present as well. He presented with left leg pain. He went to the clinic on multiple occasions through the end of 2007 and attempted without success to obtain narcotics from the clinic.

When Claimant returned to Dr. Bolyard on September 28, 2007, he continued to present with pain, including in his posterior hamstring and the superior pole of the patella (where he also had minimal swelling). The note for the visit states that "[a]pparently [Claimant] had an x-ray taken at an outside clinic and they were worried about a 'streak in the bone.'" However, Dr. Bolyard took additional x-rays, which showed no significant abnormality.

The note for his October 2, 2007 rehabilitation visit reflects that Claimant was reporting that an x-ray showed infection in his posterior hamstring area. He admitted that he had not been compliant in performing his home exercises. He was advised to continue with the exercises. However, he again failed to show for therapy on October 4 and 12.

Claimant was sent to Dr. Jeff Fox for a second opinion on October 18, 2007. Dr. Fox wrote that Claimant stated that he cannot work because he cannot walk on his knee for more than 30 minutes. While Dr. Fox did not feel that Claimant had an infection, he drew 20 cc. of clear fluid. While Fox felt that Claimant should have been ready to return to full duty by this time, he recommended additional physical therapy based on his complaints. When he saw Claimant again on November 5, 2007, he recommended "aggressive therapy," and stated that "His symptoms are way dramatic for what his injury is." Dr. Fox also recommended an MRI. This test confirmed the x-ray findings of metallic material in Claimant's left leg. Fragments were located in the lateral to central fibers of the quadriceps tendon. There were no inflammatory changes in the location, however. Metallic artifact was also seen in the center of the lateral compartment partially obscuring the lateral meniscus, and along the posteromedial joint line adjacent to the medial plateau towards intercondylar region and also marginating the PCL insertion. Joint effusion was present. Dr. Fox placed Claimant on restricted duty, with no climbing and no lifting over 30 pounds. Fox noted that this was based this on the MRI results.

On November 13, 2007, Dr. Fox declared Claimant to be at maximum medical improvement and released him with a one percent (1%) impairment rating to the left lower extremity.

Dr. Fox on February 7, 2007 wrote that the "metallic artifact" in Claimant's leg "is not something that needs any further treatment." He based this on the fact that the material is very small and is located in the area of the lateral quadriceps, and that surgical treatment would not change Claimant's symptoms.

Records-Non-medical

The non-medical records in Respondents' Exhibit 1 reflect that Respondent AIG was concerned about Claimant having complications, as shown by the dark tracks on his x-ray and the atrophying of his leg muscle. The carrier arranged for Claimant to see Dr. Fox in Tulsa because no physicians in the Fort Smith area would provide a second opinion. AIG paid for Claimant's transportation to Tulsa.

The exhibit also reflects that Claimant has a child support arrearage.

**ADJUDICATION****A. Additional Medical Treatment**

Claimant asserts that he is entitled to additional medical treatment on his left leg. Respondents counter that he has reached the end of his healing period. Arkansas Code Annotated Section 11-9-508(a) provides that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App.

13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

The Commission is authorized to accept or reject medical opinions. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

As the evidence recounted above shows, Claimant still has metal fragments in his leg from the work-related accident involving the nail gun. Claimant wishes to see Dr. Bolyard again about his leg. Bolyard never released him; Claimant was still under an order to attend physical therapy three times a week when Respondent AIG switched him to Dr. Fox. While Claimant missed three therapy appointments around this time, the first absence was due to his obtaining an x-ray showing the metal fragments, the second and third were due to Baldwin instructing him on behalf of Respondent AIG not to go because of the switch to Dr. Fox. Although Fox found Claimant to be at maximum medical improvement and released him on November 13, 2007; Claimant had not completed the physical therapy that Fox himself stated was badly needed. Although Dr. Fox opined that the presence of the metallic fragments did not call for further treatment, Claimant was still presenting with effusion as late as November 5, 2008, shortly before the release.

Moreover, Claimant credibly testified the his leg is still bothering him. The muscles in the leg have atrophied significantly. Hence, I am not inclined to credit Dr. Fox's opinion. Claimant has proven that he is entitled to return to Dr. Bolyard for further treatment.

B. Additional Temporary Total Disability Benefits

Respondents paid temporary total disability benefits to November 13, 2007, when Dr. Fox declared Claimant to be at maximum medical improvement. Claimant contends that he is entitled to additional benefits until a date yet to be determined.

Claimant's compensable injury to his left leg is scheduled. See Ark. Code Ann. § 11-9-521 (Repl. 2002). For such an injury, a claimant is entitled to temporary total disability benefits "during the healing period or until the employee returns to work, whichever occurs first . . . ." *Id.* § 11-9-521(a) (Repl. 2002). See *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). 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. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

As discussed above, I find that, Dr. Fox's opinion notwithstanding, Claimant is still in his healing period. However, he returned to work for four days in the week prior to the hearing. Consequently, he is entitled to additional temporary total disability benefits from November 13, 2007 to February 4, 2008 at the stipulated rate of \$122.00 per week.

C. Additional Temporary Total Disability Benefits

Respondents have controverted Claimant's entitlement to additional temporary total disability benefits. Claimant's attorney is thus entitled to a controverted attorney's fee on

all indemnity benefits awarded to Claimant, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2002).

**CONCLUSION AND AWARD**

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. 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 Ark. Code Ann. § 11-9-809. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995). Any child support arrearage on the part of Claimant should be satisfied by the withholding of up to 25 percent (25 percent) of awarded benefits pursuant to § 11-9-110(d)(1).

Claimant's attorney is entitled to a 25 percent (25%) attorney's fee on the indemnity 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. See *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge