

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511072

COREY D. GOODEN

CLAIMANT

CO-BAR CONTRACTING, INC.

RESPONDENT EMPLOYER

LIBERTY MUTUAL

RESPONDENT CARRIER

ORDER AND OPINION FILED FEBRUARY 11, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE MARQUIS E. JONES, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on December 12, 2007. A prehearing conference was held on October 16, 2007 and a prehearing order was filed on October 17, 2007. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable October 13, 2005, injury.
2. The compensation rates are \$240/180.
3. Respondents paid medical and temporary total disability benefits through October 31, 2005.

The claimant contends that he sustained a compensable psychological injury on October 13, 2005, when he was buried in a ditch following a construction cave-in. The

claimant is contending he is entitled to medical benefits and temporary total disability benefits from October 31, 2005 through January 7, 2006 and attorney's fees.

Respondents accepted the initial physical injuries as compensable; however, the mental injuries have been controverted.

ISSUES TO BE LITIGATED

1. Compensability of a psychological injury.
2. Medical benefits.
3. Temporary total disability benefits from October 31, 2005 through January 7, 2006.
4. Attorney's fees.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a compensable October 13, 2005, injury.
2. The compensation rates are \$240/180.
3. Respondents paid medical and temporary total disability benefits through October 31, 2005.

4. The claimant has proven by a preponderance of the evidence that he sustained a psychological injury on October 13, 2005, when he was buried in a cave-in of a trench.

5. The claimant has proven that medical treatment he has received for the psychological injury is reasonable and necessary.

6. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to earn wages from October 31, 2005 through January 7, 2006.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee on 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 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 25 years old, worked for the respondent employer putting in a new sewer lines. The claimant was working in a trench on October 13, 2005, when the trench collapsed, covering the claimant with dirt. The claimant was being lowered into the trench and he was measuring for a manhole to be installed. The trench was about 17 feet long and as wide as a backhoe bucket. The claimant did not know why the trench collapsed; however, his head hit the wall and his ear was torn, his left knee was dislocated and his right shoulder was hurt and his hand was hurt. The claimant testified that he continues to have problems with his knee swelling and hurting.

The claimant's mother-in-law testified that the claimant was buried by dirt in the cave-in for about 10 minutes while the claimant's wife testified that it was an hour and

10 minutes before the claimant was totally uncovered after the cave-in. The claimant was taken by air ambulance to UAMS for treatment.

The claimant testified that he has trouble sleeping and he described some problems:

A [Witness] That just don't happen. Like she said, I can be sitting there - - It's almost like - - I'm not trying to get off the subject, but, like she said with the whole thing, you know, I used to be kind of a carefree person and not be scared to do stuff. Well, it's almost like - - I know everybody in here has done it - - how you have deja vu. You'll be sitting there, and you'll be doing something but you'll be thinking about something totally different. I mean I can just be sitting there, trying to do something, and it's just like it's happening again. I don't really know how to - - It's unexplainable. And the nightmares - - like I literally fell out of my bed I've been so scared, thinking, you know, that I'm in that same situation again.

Q [Mr. Jones] What about your ability to ride in an elevator? Explain that to Your Honor.

A I don't like to be nowhere closed in, point blank. Anywhere confined I just don't like it.

Q Were you like this prior to the - -

A No; uh-uh. (T., p. 46, lines 4-22.)

The claimant testified that he would like to see a psychologist or a psychiatrist so he could try to get normalcy back in his life. The claimant has not returned back to work in a full time capacity. He has performed odd jobs.

The claimant went to see Dr. James Moneypenny, a psychologist, after being referred by his attorney. The claimant testified he saw Dr. Moneypenny two or three times and the doctor prescribed some medication to help him sleep. Dr. Moneypenny diagnosed the claimant with post-traumatic stress. According to the claimant, Dr.

Money Penny has recommended further care.

ADJUDICATION

The claimant contends that he sustained a psychological injury stemming from his compensable injuries where he was buried in a trench cave-in. The provisions of Ark. Code Ann. §11-9-113 are controlling for a compensability determination and this provision provides:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

In the present case, the claimant was evaluated by Dr. James Money Penny, a psychologist, on October 20, 2005 and again on November 1, 2005, with each session lasting about two hours. Dr. Money Penny administered some testing to the claimant as well as counseling the claimant. Dr. Money Penny's report presents a diagnosis of Acute Post Traumatic Stress Disorder. The claimant also presented to the Counseling Associates, Inc., in Morrilton, Arkansas and a January 2, 2006, report indicates a diagnosis of PTSD, Code 309.81, and this was signed by Dr. Moore and Angela Howard, LSW. While Dr. Money Penny did not specifically reference the *Diagnostic and Statistical Manual of Mental Disorders, 4th Ed.*, he did state a diagnosis from the DSM-

IV and he identified symptoms of the claimant consistent with the criteria identified for Acute Stress Disorder, Code 308.3. Dr. Moneypenny observed the claimant close in time to the compensable incident. Dr. Moneypenny's report describes the claimant's compensable event indicating the claimant was buried under a large volume of dirt for approximately one hour and states, in part: "At the time of the evaluation he was clearly suffering from Acute Stress Disorder and other symptoms likely to evolve into Posttraumatic Stress Disorder."

In the absence of evidence, or at least some argument, that Dr. Moneypenny is not an expert in the field of psychiatry, Dr. Moneypenny is presumed to be a trained profession, who is qualified to make a valid diagnosis of a mental condition. A diagnosis in accordance with the DSM-IV "implies" that valid diagnostic criteria was present to support the diagnosis. *Ritchie Grocery v. Glass*, 70 Ark. App. 222, 16 S.W.3d 289 (2000).

After considering the claimant's testimony and the medical evidence, to include Dr. Moneypenny's report and the report from Counseling Associates, I find the claimant has proven by a preponderance of the evidence that he sustained a psychological injury, along with his compensable physical injuries, and is entitled to benefits associated with a psychological injury. The claimant discussed being afraid now, nightmares, inability to sleep, lack of concentration, afraid of closed spaces, recurrent dreams of the event and a change in personality (no longer a carefree person). The claimant also has not worked regularly since the event. Dr. Moneypenny described the claimant being buried under a large volume of dirt for approximately an hour and opined that the claimant was clearly suffering from Acute Stress Disorder likely to evolve into

Posttraumatic Stress Disorder.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

Respondents are responsible for the reasonable and necessary medical care associated with the psychological injury. Ark. Code Ann. §11-9-508. I found Dr. Money Penny's evaluations and the Counseling Associates' evaluation to be reasonable and necessary and related to the traumatic event. Dr. Money Penny diagnosed the claimant with Acute Stress Disorder and the characteristics identified in Dr. Money Penny's report were consistent with the criteria in the DSM-IV for the Acute Stress Disorder.

The claimant further contends that he is entitled to temporary total disability benefits associated with the psychological injury from October 31, 2005 through January 7, 2006. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be unable to earn wages. *Ark. State*

Hwy. & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has proven by a preponderance of the evidence that he remained in his healing period and was unable to earn wages from October 31, 2005 through January 7, 2006. Dr. Money Penny opined on December 23, 2005, that the claimant was unable to make the necessary adjustments and function effectively in any vocational or social setting. The claimant has been unable to follow up with Dr. Money Penny because of his inability to pay for treatment; therefore, there is no medical report releasing the claimant back to work. I find that the claimant remained in his healing period and unable to work through January 7, 2006. The claimant's testimony and the medical evidence support the temporary total disability benefits awarded.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a psychological injury on October 13, 2005, when he was buried in a cave-in of a trench. The claimant has proven that medical treatment he has received for the psychological injury is reasonable and necessary. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to earn wages from October 31, 2005 through January 7, 2006.

The claimant's attorney is entitled to the maximum statutory attorney's fee on 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 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**