

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709019 & F710536

JERRY D. HALE, EMPLOYEE	CLAIMANT
HYTROL CONVEYOR COMPANY, INC., EMPLOYER	RESPONDENT
MANAGEMENT CLAIM SOLUTIONS, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 8, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on April 18, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Bill E. Bracey, Jr., Attorney-at-Law, Blytheville, Arkansas.

Respondents represented by Mr. Bill H. Walmsley, Attorney-at-Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted April 18, 2008, to determine whether the claimant sustained one or more injuries arising out of and during the course of his employment with Hytrol Conveyor Company, which would entitle him to applicable workers' compensation benefits.

A prehearing conference was conducted in these claims on February 27, 2008, and a Prehearing Order was filed on said date. At the April 18, 2008, hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to an additional stipulation concerning the applicable compensation rates if compensability was determined.

It was stipulated that the employment relationship existed between the parties at all relevant times, including on and before September 19, 2005, as well as August 24, 2007; and that respondents had controverted both a gradual onset carpal tunnel injury, as well as compensability of an alleged injury on August 24, 2007, resulting from a specific incident identifiable in time and place of occurrence. At the hearing, the parties agreed that the claimant's average weekly wage was \$615.70 which would entitle him to compensation rates of \$410.00 per week for temporary total disability and \$308.00 per week for permanent partial disability if the claimant could prove entitlement to benefits.

By agreement of the parties, the following issue are to be presented for determination:

- 1) Compensability of a carpal tunnel syndrome.
- 2) Compensability of an August 24, 2007, alleged injury.
- 3) Claimant's entitlement to temporary total disability.
- 4) Respondents' responsibility for medical and related treatment.
- 5) Attorney's fees.

Claimant contended, in summary, that he sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on August 24, 2007, when he fell at work, sustaining multiple injuries to his head, neck, back, and left arm; that he was entitled to temporary total disability benefits beginning August 25, 2007, and continuing through the present, maintaining that his

healing period had not ended; that respondents should be held responsible for all outstanding hospital, medical, and related expenses, together with continued reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded. The claimant further contended that he also sustained a carpal tunnel injury arising out of and during the course of his employment which first manifested itself on or about September 19, 2005, and that medical treatment mis-diagnosed and concealed the nature of the injury thus tolling any statute of limitations defense. The claimant specifically reserved entitlement to permanent disability benefits pending a determination on the agreed issues.

The respondents contended that the claimant did not sustain a compensable injury or injuries arising out of and during the course of his employment with Hytrol Conveyor, maintaining that there was no medical evidence supported by objective findings to support the allegation of an August 24, 2007, injury. Respondents further contended that the statute of limitations had run on any carpal tunnel injury prior to the filing of a claim. Alternatively, respondents contended that the claimant's work duties did not involve repetitive activities and that any carpal tunnel injury was unrelated to the claimant's employment.

In addition to the claimant, Dr. Judith Butler, the claimant's primary care physician was called as a witness and testified at the hearing. The record is composed solely of the transcript of the April 18, 2008, hearing consisting of two (2) volumes, including a volume of exhibits, together with the claimant's discovery

deposition which was introduced as “Respondents’ Exhibit E” and retained in the Commission file in bound form.

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. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. On or about October 26, 2007, the claimant filed a claim for benefits alleging both a carpal tunnel claim, as well as a claim for injuries related to a specific incident on August 24, 2007.
4. Any claim for a work-related carpal tunnel injury is barred by statute of limitations. The record reflects that the claimant was aware of a carpal tunnel injury for more than two (2) years prior to the filing of his claim.
5. On August 24, 2007, the claimant sustained multiple injuries as the result of a specific incident identifiable in time and place of occurrence when he slipped and fell at work which temporarily aggravated his pre-existing spinal condition, entitling him to appropriate workers’ compensation benefits.

6. The claimant has failed to prove, by a preponderance of the credible evidence, that he remains temporarily totally disabled within the meaning of the Arkansas workers' compensation laws. Specifically, the record reflects that the claimant has received either appropriate temporary total disability and/or short-term disability benefits provided by the employer and is not entitled to additional temporary total disability.
7. Respondents are entitled to a credit or offset for all medical and disability benefits paid by other providers pursuant to Ark. Code Ann. §11-9-411.
8. The claimant's healing period ended on or before October 13, 2007.
9. Respondents have controverted both claims in their entirety. Accordingly, claimant's attorney is entitled to a statutory attorney's fee on any benefits previously paid and/or to be paid in the future pursuant to, and limited by, Ark. Code Ann. §11-9-715.
10. The issue of claimant's entitlement to permanent disability benefits, if any, has been specifically reserved.

DISCUSSION

This is an extremely difficult and confusing claim(s). The record reflects that the claimant is an extremely poor historian. Further, the claimant's only corroborating witness was Dr. Judith Butler, a family practice physician who has been the claimant's primary care physician since at least 2002. Although the claimant stated in his deposition that Dr. Butler has been his primary care physician

since 1992, Dr. Butler testified that she moved to Arkansas in 1999 and began treating the claimant in 2002. For reasons set out further below, I did not find Dr. Butler to be a credible witness, more specifically in making an assessment of the claimant's impairment and disability which was introduced as "Respondents' Exhibit G, pp.1-6."

However, Dr. Butler's testimony was enlightening because it revealed that the claimant had a number of physical problems which pre-dated the August 24, 2007, incident which is the subject of one of the claimant's two (2) claims against the employer herein. Dr. Butler has treated the claimant for a number of physical problems, including the claimant's bilateral carpal tunnel claim which is an alleged gradual onset injury, as well as the claimant's August 24, 2007, fall. It must be noted that an August 24, 2007, work-related incident when the claimant fell is apparently undisputed. However, respondents dispute that an injury occurred as the result of the fall. In fact, respondents exercised good faith in meeting its obligations under our workers' compensation laws by initially providing the claimant with some medical treatment and diagnostic testing following the August 24, 2007, incident, as well as paying some initial indemnity benefits until the claimant was released by Dr. Gregory Ricca, as will be set out further below.

Concerning the claimant's carpal tunnel claim, the claimant testified that he began experiencing problems with both hands in 2005; that he saw Dr. Butler in August or September, 2005, at which time he underwent diagnostic studies,

specifically, EMG studies which revealed bilateral carpal tunnel syndrome; and further that Dr. Butler advised him that he had developed carpal tunnel syndrome, probably related to repetitious motion at work which was clearly conveyed to the claimant at least as early as October 11, 2005. As previously pointed out, the claimant first made a claim for a carpal tunnel injury on October 26, 2007, and subsequently underwent surgery on the left upper extremity on December 27, 2007. (Resp. Ex. E, pp.24-26, 28-30, 33)

Dr. Butler confirmed that she diagnosed bilateral carpal tunnel injuries to the claimant's upper extremities and advised the claimant no later than October 11, 2005, of her diagnosis. Dr. Butler felt the condition was consistent with a description of the claimant's work as to its cause. (Tr.22)

On cross-examination, it was pointed out that Dr. Butler's license to practice medicine in Arkansas was temporarily suspended in April, 2005, through June 23, 2005, because she was writing excessive pain management prescriptions. On direct-examination, Dr. Butler stated that she had assigned a seventy percent (70%) permanent impairment rating to the claimant's cervical spine using a MIOR index, purportedly a Florida Uniform Permanent Impairment Rating Schedule which I found rendered Dr. Butler's medical opinions highly suspect. In fact, as previously pointed out, her disability rating issued in an April 9, 2008, report when totaled exceeds a one hundred percent (100%) impairment to the body as a whole which is an impossible conclusion. (Tr.26)(Resp. Ex. G, p.5)

On cross-examination, Dr. Butler acknowledged that an MRI of the claimant's thoracic spine performed on September 28, 2005, reflected a herniated disc in the thoracic spine, almost two (2) years before the August 24, 2007, fall at work. Although Dr. Butler maintained that the claimant was totally asymptomatic related to the thoracic spine findings, Dr. Butler indicated that she had reviewed the claimant's lumbar myelogram results, as well as his post-myelogram CT scan from June 4, 2002, while stating that she disagreed with the interpretations made by Dr. Gregory Ricca, a neurosurgeon in Jonesboro, Arkansas. However, Dr. Butler acknowledged that the claimant had congenital spondylolisthesis and also congenital spondylosis of the lumbar spine which contributed to the claimant's overall physical impairment. In summary, Dr. Butler's opinions are self-contradicting.

Again, it is undisputed that the claimant experienced significant physical problems before his August 24, 2007, incident at work. A portion of the claimant's testimony in his discovery deposition which is extremely illuminating is set out below:

Q. You had a drug screen sometime after you fell on August the 24th, 2007?

A. Yes, sir.

Q. Had you had any kind of pain medication before you had that drug screen?

A. Well, yes, sir.

Q. What had you had?

A. I had hydrocodone.

Q. When had you taken that?

A. I had taken it early probably that morning.

Q. Before you went to work?

A. Right.

Q. Hydrocodone, you were taking it for what purpose?

A. For pain.

Q. Pain where?

A. Pain in my back, my shoulders, all over.

Q. That morning before you went to work, you were having pain in your back?

A. Yes, sir.

Q. What part of your back?

A. My feet, my lower back.

Q. You were having pain in your lower back, in your feet and where else?

A. In my hands.

Q. All right. Any place else?

A. My arms.

Q. And your arms. Any place else in your body that you were having pain before you went to work that morning on August 24?

A. No, sir.

Q. Would you regularly take a hydrocodone in the morning before you would go to work?

A. Most of the time.

Q. And this is before you fell?

A. Right.

Q. Do you know how many milligrams that hydrocodone was that you were taking back then?

A. It was 7.5.

Q. Milligrams?

A. Yes, sir.

Q. Did it affect your driving ability at all?

A. No, sir. Hytrol was aware that I was on medication.

Q. The drug screen showed up positive. Is that right or wrong or do you know?

A. I don't know. When I went to the emergency room, they gave me – injected me even before they did the urine test.

Q. I notice in looking at Dr. Cagle's reports also, he says that you suffer from rheumatoid arthritis?

A. Yes, sir.

Q. How long have you suffered from rheumatoid arthritis?

A. I don't remember.

Q. Can you tell me about how many years?

A. Possibly two.

Q. Two prior to the time that you saw Dr. Cagle?

A. Yes, sir.

Q. So possible back sometime like 2004?

A. Yes, sir, probably.

Q. Would it have been possible that you suffered from rheumatoid arthritis as early as of time you fell back in 2002?

A. I don't think so.

Q. You also were diagnosed before you fell with having a problem with the alignment of your spine. Are you aware of that?

A. I've had degenerative spine.

Q. You've had degenerative spine disease for a number of years?

A. I guess since birth is what I've been told.

Q. Who told you that?

A. All doctors.

Q. Dr. Butler. Have you heard the term spondylolistheses?

A. Yes, sir.

Q. Is that the congenital disorder that they've described to you that you've had?

A. I believe so. L5-S1.

Q. It looks like back when you were seeing Dr. Cagle in 2006 that you were taking Lorcet and other pain medications. Is that right?

A. I don't know what other pain medication it would be.

Q. Do you remember taking Lorcet?

A. Yes, sir.

Q. Naprosyn?

A. Yes, sir.

Q. Robaxin?

A. Yes, sir.

Q. How long have you been taking Xanax?

A. I've been taking it I'd say seven years.

Q. And that is for anxiety and depression?

A. Yes, sir.

Q. How long have you been diagnosed with anxiety and depression?

A. Around seven or eight years.

Q. During this period of time from April of 2006 up through July of 2007, you were regularly taking Lorcet Plus, right?

A. Right.

Q. Regularly taking Mobic?

A. I don't know about regular. He give it to me every other month.

Q. Regularly taking Naprosyn?

A. Yes, sir.

Q. Soma?

A. I did back then.

Q. Robaxin?

A. Yes, sir.

Q. How long have you been taking Lorcet?

A. I've been taking Lorcet ever since the fall of 2002. I never took any of this before my accident at Hytrol in 2002.

Q. Would it be fair that the Lorcet, the Robaxin, the Naprosyn and the Soma were all because of pain from your back? Would that be a fair statement?

A. Not all of it.

Q. Part of it due to pain where?

A. I've had muscle weakness and muscle pains.

Q. Where?

A. In my legs, in my arms.

Q. Pain in the back, would that be one of the reasons you were taking Lorcet, Robaxin, Soma, these other medications?

A. Yeah. Plus my foot, when it got broke, it just never got right.

Q. Would your back be one of the reasons why you were taking these medications?

A. Somewhat.

Q. You were having pain in your low back, weren't you?

A. Right.

Q. And have ever since 2002, right?

A. Yes, sir.

Q. Tell me about falling off a porch back in 2005.

A. I was on my way to work. I got up that morning. I had to take the garbage out. I took the garbage to the curb. I came back in the house, and I got my stuff and was going out to the car to go to work. I slipped off the porch, off the step and caught my left hip.

Q. Did you fall?

A. Yes, sir.

Q. What part of your body struck the ground?

A. It was my left hip.

Q. Did it hurt your back?

A. Well, yeah. Pain shot through my back and my leg.

Q. Did you go get medical treatment as a result of that fall off the porch?

A. Yes, sir. I went to Dr. Butler. (Resp. Ex. E, pp.48-53)

The record reflects that respondents paid the claimant temporary total disability beginning August 24, 2007, and continuing through on or about October 1, 2007, at which time it terminated all workers' compensation benefits. The claimant then had a portion of his medical bills paid by group insurance, as well as drew short-term disability from his employer. (Tr.68, 86)

Respondents apparently terminated all medical and disability after obtaining a neurosurgical evaluation from Dr. Gregory F. Ricca, a neurosurgeon in Jonesboro, Arkansas. Dr. Ricca's evaluation was performed on September 19, 2007. Dr. Ricca's final impression, discussion, and summary are set out below:

IMPRESSION:

- 1) Complaints of Neck Pain, Low Back Pain and Numbness in the Upper Extremities and Lower Extremities since a fall at work on 8/24/7.
- 2) Bilateral Spondylolysis Lumbar 5 (756.11)
- 3) Grade I Congenital Spondylolisthesis of L5 on S1 (756.12)
- 4) Bilateral Carpal Tunnel Syndrome
- 5) HTN (401.9)
- 6) Hepatitic C, Chronic (070.54)
- 7) Insomnia, Chronic (307.42)
- 8) GERD (530.11)
- 9) Bilateral CTS (354.0)
- 10) No significant change in grade I spondylolisthesis of L5 on S1 with bilateral spondylolysis of L5 from 5/24/2 to 8/31/7.
- 11) No other clinically significant structural abnormalities are seen in the CT of the Head and the cervical, thoracic and lumbar spines.

DISCUSSION:

Mr. Hale presents with numerous complaints. Bilateral Carpal Tunnel Syndrome can explain his bilateral hand numbness, tingling, and weakness. The EMG/NCV by Dr. Spanos on 9/19/5 found this to be electrically severe on the right and moderate on the left.

I cannot explain Mr. Hale's other complaints from an anatomic standpoint. Mr. Hale displayed a lot of pain behavior during today's examination. His sensory exam changed dramatically. His exquisite tenderness to very light touch to the skin of the thoracic and lumbar back is non-anatomic. I am not able to correlate Mr. Hale's history, physical findings and radiographic findings.

SUMMARY:

Other than Carpal Tunnel Syndrome, I cannot identify an organic cause, or several organic causes, of Mr. Hale's symptoms. (Resp. Ex. A, pp.130-131)

In a follow-up report, Dr. Ricca stated that he could not correlate the claimant's symptoms with the August 24, 2007, work incident and further opined that he could not identify a structural abnormality that would prevent the claimant from engaging in normal work activities. (Resp. Ex. A, p.132)

However, I feel compelled to point out that Dr. Ricca did not have benefit of a cervical MRI obtained by Dr. Butler on October 13, 2007, which revealed a small posterior cervical disc protrusion without any significant stenosis. (Res. Ex. A, p.134)

Amazingly, based upon the aforementioned diagnostic study, Dr. Butler assessed a seventy percent (70%) whole body impairment to the cervical spine. However, as previously noted, permanent disability was specifically reserved.

COMPENSABILITY OF CARPAL TUNNEL SYNDROME

In his carpal tunnel claim, the claimant does not contend that said injury was

caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997). Because carpal tunnel syndrome is recognized as a gradual onset injury, it is not necessary that a claimant prove that his carpal tunnel injury was caused by rapid, repetitive motion. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

Respondents have asserted as an affirmative defense that the claimant's carpal tunnel injury is barred by statute of limitations. The evidence in this claim supports respondents' assertion.

Ark. Code Ann. §11-9-702(a)(1) provides that a claim for compensation shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury.

For purposes of commencing the statute of limitations under A.C.A. §11-9-702(a)(1), the word "injury" is to be construed as "compensable injury," and an injury does not come "compensable" until (1) the injury develops or becomes apparent and (2) claimant suffers a loss in earnings on account of the injury; thus, the statute of limitations does not begin to run until both elements are met. *Hall's Cleaners v. Wortham*, 311 Ark. 102, 842 S.W.2d 7 (1992). However, our Supreme Court has held that for scheduled injuries, a loss of earnings is presumed once the claimant becomes aware of the injury. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). See also, *Pina v. Wal-Mart Stores, Inc.*, 91 Ark. App. 77, ___ S.W.3d ___ (2005).

The record reflects that the claimant underwent EMG studies and was advised that he had carpal tunnel syndrome on or before October 11, 2005. The within claim was not filed until October 26, 2007. Accordingly, the claim for a carpal tunnel injury is barred by the statute of limitations. Further, claimant's argument that the medical treatment mis-diagnosed and concealed the nature of the injury thus tolling any statute of limitations defense is simply inconsistent with the record in this claim.

COMPENSABILITY OF AN AUGUST 24, 2007, INJURY

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations.

However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The claimant's August 24, 2007, incident is undisputed. A preponderance of the credible evidence reflects that the claimant has satisfied each and every element of compensability and has shown that the August 24, 2007, incident temporarily aggravated the claimant's pre-existing condition, entitling him to appropriate medical treatment, as well as a period of temporary total disability. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven a compensable injury within the meaning of the Arkansas workers' compensation laws. However, as reflected by the medical evidence including reports from all the treating physicians, the claimant's condition has long since stabilized, and, the claimant's ongoing problems, save the carpal tunnel claim are either pre-existing and/or permanent in nature. Permanent disability has been specifically reserved.

ENTITLEMENT TO ADDITIONAL TEMPORARY TOTAL DISABILITY

Temporary total disability is determined by the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. It is that period in which an employee is within the healing period and totally incapacitated

to earn wages. *Arkansas State Highway Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *J.A. Riggs Tractor Co. v. Etzlkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 925 S.W.2d 170 (1996). The healing period is that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of the injury will permit, and if the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996); *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Mad Butcher v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that he remains within the healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. see, *Palazolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

Dr. Ricca, a neurosurgeon, has opined that the claimant can return to gainful

employment without restrictions other than the claimant's carpal tunnel syndrome which is barred by statute of limitations. Based upon Dr. Ricca's evaluation, the claimant can engage in normal work activities. Admittedly, claimant's primary care physician, a family physician, disagrees with Dr. Ricca's assessment. However, even Dr. Butler has not recommended any additional treatment, save prescription medications which the record reflects the claimant was taking prior to the within claim. Dr. Butler has assessed permanent impairment which indicates that the claimant has reached maximum medical improvement. Again, the claimant's entitlement to permanent disability, if any, has been specifically reserved.

MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant has the burden of proving his entitlement to ongoing medical

treatment. As reflected by the claimant's testimony, he was taking numerous prescription medications prior to the August 24, 2007, injury. No further medical treatment, save the carpal tunnel syndrome has been recommended, to date. Accordingly, claimant has failed to prove entitlement to additional medical treatment beyond that previously paid and/or authorized by respondents prior to its controverting the claim in its entirety. Further, as previously noted, respondents are entitled to a credit or offset for all benefits previously paid by other providers pursuant to Ark. Code Ann. §11-9-411. Although no additional benefits are awarded herein, because respondents have controverted both claims in their entirety, and claimant having prevailed on compensability of the August 24, 2007, injury, claimant's attorney is entitled to the maximum statutory attorney's fee pursuant to, and limited by Ark. Code Ann. §11-9-715. Because respondents have controverted compensability of the August 24, 2007, injury, it remains responsible for the initial medical provided by Dr. Butler after August 24, 2007, including diagnostic testing to determine the nature and extent of the August 24, 2007, injury. Of course no attorney's fee is allowed on the controverted medical.

I feel compelled to point out that while Dr. Butler's report and testimony lacked credibility, I, likewise, did not find Dr. Ricca's reports concerning the claimant's unrestricted release to be persuasive, especially given all of the claimant's pre-injury problems. Further, Dr. Ricca did not have benefit of the diagnostic studies performed after his evaluation. Because permanent disability has

been reserved, the parties are encouraged to either agree to an independent medical evaluation or explore some other amicable resolution of the remaining issues rather than require additional protracted litigation. However, this suggestion will demand open and constructive cooperation between the parties.

By necessity, all additional issues not addressed herein are, specifically, reserved.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge