

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F104464

JONATHAN LIVINGSTON	CLAIMANT
SILOAM SPRINGS SCHOOL DIST.	RESPONDENT
RISK MANAGEMENT RESOURCES	RESPONDENT

OPINION FILED APRIL 28, 2008

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On March 11, 2008, the above captioned claim came on for a hearing in Springdale, Arkansas. A pre-hearing conference was conducted on January 8, 2008, and a pre-hearing order was filed on January 9, 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 employer/employee relationship existed on or about April 12, 2001.

2. On that date the claimant sustained a compensable injury in the form of a fracture to his hip.

3. On that date the claimant was earning wages sufficient to entitle him to a compensation rate of \$169 per week for TTD and \$154 per week for PPD.

4. The claimant was paid TTD from April 13, 2001, through May 23, 2001, and January 17, 2002, through March 11, 2002.

5. The respondents have paid a 15 percent anatomical impairment rating to the body as a whole.

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

1. Statute of limitations.
2. Medical expenses.
3. Controverted attorney's fee.

The claimant contends that on April 12, 2001, the claimant was in the stage area of work and fell four feet and injured his right hip. He further contends that he is in need of further medical services for his compensable injury.

The respondents contend that they have paid all benefits to which the claimant is entitled. In addition the respondents contend this claim is barred by the applicable statute of limitations. The last medical was paid for treatment that occurred on November 6, 2006. This was the last benefit paid in the case.

#### BACKGROUND

\_\_\_\_\_ On April 12, 2001, while employed as a computer technician with the Siloam Springs School District the claimant fell off a stage and sustained an admittedly compensable injury that was in

the form of a broken hip. Dr. B. Ray E. Mitchell, Jr. performed a closed reduction and cannulated screw fixation of the claimant's right hip on April 12, 2001.

On January 17, 2002, Dr. W. Duke Harris noted a preoperative diagnosis of "painful retained screw times three status post fracture right femoral neck." Dr. Harris then surgically removed the three pins or screws. On May 4, 2003, Dr. Harris noted that, after review of the MRI results, the claimant may need further reconstructive surgery.

On July 5, 2002, Dr. C. Lowry Barnes evaluated the claimant's right hip. Dr. Barnes noted, "The decision that he (claimant) has to make is how much pain he can tolerate at this time before having arthroplasty treated."

On February 17, 2003, Dr. Harris evaluated the claimant and again noted that the claimant would require a total hip arthroplasty at some point in the future. On November 6, 2006, Dr. Harris evaluated the claimant and noted a "rather markedly distorted hip." Dr. Harris also stated his belief that the time was going to come when the claimant's hip is going to give him a lot of difficulty. On November 29, 2007, Dr. Harris saw the claimant and again noted that at some point the claimant's hip will give him enough difficulty to cause him to want to have hip arthroplasty. Dr. Harris also suggested that the claimant return in eight months for an x-ray of his hip.

From Claimant's Exhibit No. 1 we find a form AR-C was received by the Arkansas Workers' Compensation Commission on June 20, 2001, that claimed temporary total disability, medical expenses, and attorney's fees. I find no evidence of adjudication of these claims until the March 11, 2008, hearing that I conducted in Springdale, Arkansas. All medical expenses were paid by the respondent prior to the November 29, 2007, evaluation by Dr. Harris.

## DISCUSSION

### I. STATUTE OF LIMITATIONS

In a brief filed by the respondents after the March 11, 2008, hearing the respondents admit that no hearing was conducted in this case prior to the one on March 11, 2008. It is argued by the respondents that the "issues were resolved previously essentially settled, this has the same effect as a hearing, which essentially adjudicated the AR-C previously filed."

Black's Law Dictionary, Sixth Edition, defines adjudication as, "The formal giving or pronouncing a judgement or decree in a court proceeding." There had been no adjudication in this matter prior to March 11, 2008, when it was heard before this Commission. Voluntary payments of some benefits may have been made by the respondents, but those benefits were never adjudicated or awarded by this Commission.

Van Wagner v. Wal-Mart, \_\_\_\_ SW 3d \_\_\_\_ (February 1, 2007), clearly requires that some sort of adjudication must occur to

either bring finality to the matter or restart the time on the statute of limitations. Here no adjudication occurred, so the timely filing of the AR-C on June 20, 2001, tolled the statute in regard to all benefits requested and not adjudicated through March 11, 2008, at which time this Commission heard the matter.

## II. MEDICAL EXPENSES

As to medical expenses, the medical records prove the claimant still requires reasonably necessary medical treatment for his compensable injury. This includes periodic monitoring of the stability of the physical damage to his hip and appropriate treatment to maintain this stability. The respondents are liable for the expense of such reasonably necessary medical services as provided in Ark. Code Ann. §11-9-508.

## III. ATTORNEY'S FEES

The injury in this matter occurred on April 12, 2001. Attorney's fees were payable on medical expenses under Ark. Code Ann. §11-9-715. The respondents have clearly controverted the claimant's entitlement to any additional benefits by raising Ark. Code Ann. §11-9-702(b) including additional medical services. The appropriate fee for the claimant's attorney would be the maximum statutory attorney's fee on all additional controverted benefits herein and hereinafter awarded.

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 January 8, 2008, and contained in a pre-hearing order filed January 9, 2008, are hereby accepted as fact.

2. The statute of limitations was tolled by the filing of AR-C Form dated June 4, 2001, thus the statute of limitations has not run.

3. The claimant is entitled to all reasonable and necessary medical expenses and future reasonable and necessary medical expenses related to the compensable injury as provided in Ark. Code Ann. §11-9-508.

4. The claimant is entitled to have attorney's fees paid on all reasonable and necessary medical expenses and future reasonable and necessary medical expenses related to the compensable injury as provided by Ark. Code Ann. §11-9-715 as of April 12, 2001, the date of injury.

ORDER

The claimant is entitled to all reasonable and necessary medical expenses and future reasonable and necessary medical expenses related to the compensable injury as provided in Ark. Code Ann. §11-9-508.

The claimant is entitled to have attorney's fees paid on all reasonable and necessary medical expenses and future reasonable and necessary medical expenses related to the compensable injury as provided by Ark. Code Ann. §11-9-715 as of April 12, 2001, the date of injury.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
Administrative Law Judge