

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705106 (05/10-07)

CASEY LONG, EMPLOYEE

CLAIMANT

POPE LAWN CARE, EMPLOYER

RESPONDENT

CYPRESS INSURANCE CO., CARRIER

RESPONDENT

OPINION FILE AUGUST 25, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 22, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

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

STATEMENT OF THE CASE

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefit. On July 29, 2008, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions regarding the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Casey Long-the claimant, Shirley Long, and Herman Long, coupled with the Pre-hearing Order comprise the record in this claim.

DISCUSSION

_____ Casey Long, the claimant, with a date of birth of June 26, 1989, completed the 11th grade. At the time he commenced his employment with respondents, the claimant was seventeen years of age. Claimant commenced his employment with respondent on May 1, 2007, as a laborer. The claimant sustained an injury to his left ankle on May 10, 2007, when he was run over by equipment as he was unloading trees from a truck.

Following the accidental injury the claimant was transported to the emergency room of St. Bernards Medical Center. After receiving emergency medical treatment relative to his left ankle the claimant ultimately came under the care and treatment of Dr. Claiborne Moseley, II, a Jonesboro orthopedic surgeon. The testimony in the record reflects that the claimant continued to treat with Dr. Moseley relative to his injury until he was discharged from the care of same.

The testimony of the claimant reflects that at the time of his discharge from the care of Dr. Moseley he continued to experience symptoms and complaints associated with his injury. Nevertheless, claimant testified that he did return to the employment of respondent and worked for a short period of time. Claimant explained that he was unable to continue working for respondent due to residuals of his injury, which included pain, swelling and weakness, and as a consequence he was fired. Claimant maintains that at the time of his discharge from the care of Dr. Moseley his left ankle was still discolored, painful and swollen.

Pursuant to a conversation with the claims adjuster, Ms. Bobbye Smith, claimant testified that he learned that he could request a change of treating physician regarding his May 10, 2007, compensable injury. Accordingly, claimant submitted his request for a change of physician to the Arkansas Workers' Compensation Commission. On October 17, 2007, a Change of Physician Order was entered by the Medical Cost Containment Department of the Arkansas Workers'

Compensation Commission designating Dr. Michael Haughey, a Jonesboro pediatrics, as the claimant's authorized treating physician.

While the claimant acknowledged that he did not see Dr. Haughey prior to the entry of the October 17, 2007, Change of Physician Order, he estimated that he had seen Dr. Haughey up to 15 times before he was discharged from the care of same in late October 2007. Claimant's testimony reflects that his treatment under the care of Dr. Haughey medication. Claimant was also furnished a brace to wear on the left lower extremity by Dr. Haughey. Claimant asserts that at the time of his discharge from the care of Dr. Haughey his ankle was discolored, swollen, and painful. The testimony of the claimant reflects that his effort to schedule a follow-up appointment with Dr. Haughey was denied by the office personnel of Dr. Haughey.

The testimony of the claimant reflects that at the time of his discharge from the care of Dr. Moseley and Dr. Haughey he was informed by both physician that they had nothing further to offer him in the way of treatment. The Claimant testified that he had Medicaid until he reached the age of 19 years of age. Claimant testified that until his Medicaid ended he sought treatment under the care of Dr. Lamb, his primary care physician. The testimony of the claimant reflects that Dr. Lamb saw him on several occasions and prescribed medication in connection with the left ankle complaint. Claimant testified that he has not sought medical treatment since his Medicaid ended because he did not want to incur a large bill that he could not pay.

The testimony of Mrs. Shirley Long, the claimant's mother, and Mr. Herman Long, the claimant's father was corroborative of that of the claimant. While the claimant had medical records present at the hearing, he had not exchanged them with opposing party or furnished them to the Commission in accordance with the Pre-hearing Order. Respondents objected to the

offered exhibits, and the same were excluded from consideration in this ruling. The exhibits were allowed to come in as proffered exhibits. The parties acknowledged the offered exhibits involved the claimant's medical treatment prior to his discharge from the care of Dr. Haughey. While the claimant testified that he had been seen by his primary care physician, Dr. Lamb, and had received some medical treatment relative to the left ankle following his discharge by Dr. Haughey, the proffered exhibit did not contain those records.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the documentary evidence, and application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 10, 2007, the relationship of employee-employer-carrier existed among the parties, when the claimant sustained a left ankle injury arising out of and in the course of his employment.
3. On May 10, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$187.00/\$154.00, for temporary total/permanent partial disability.
4. On October 17, 2007, a Change of Physician Order was entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission designating Dr. Michael Haughey as the claimant's authorized treating physician relative to the May 10, 2007, compensable left ankle injury.
5. On or about November 1, 2007, the claimant was discharged from the care of Dr. Michael Haughey relative to the compensable May 10, 2007, left ankle injury.

6. The claimant suffered a scheduled left ankle injury in the May 10, 2007, compensable accident and was provided a brace to wear by Dr. Moseley at the time of his last visit with same.

7. The claimant sustained internal injuries to his left ankle in the May 10, 2007, compensable accident. Claimant remains symptomatic relative to the left ankle injury, to include discoloration, swelling, pain, and weakness. There is no evidence in the record to reflect that the claimant has reached the end of his healing period. The claimant has not been able to work due to residuals of the compensable injury. The claimant is entitled to the payment of temporary total disability benefits for a scheduled injury until he reaches the end of his healing period or is returned to work. Ark. Code Ann. §11-9-521, *Wheeler Construction Co., v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of May 10, 2007.

9. The respondents have controverted the payment of temporary total disability benefits to the claimant subsequent to the last payment of same in November 2007.

CONCLUSIONS

The compensability of the claimant's May 10, 2007, left ankle/foot injury is not disputed. Claimant asserts that as a result of the compensable injury he remains in need of medical treatment, for which respondents are liable. Further, the claimant asserts that he is entitled to the payment of temporary total disability benefits from the date the benefits were suspended. Respondents assert that all appropriate workers' compensation have been paid in the claim.

The present claim is one governed by the provisions of Act 796 of 1993, in that the

claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

There is not a dispute regarding the nature of the claimant's injury. The evidence reflects that the claimant's left lower extremity was run over by equipment while claimant was unloading trees. The claimant was transported to the emergency room of St. Bernards Medical Center by ambulance following the accident. Following his discharge from St. Bernards Medical Center the claimant came under the care and treatment of Dr. Claiborne Moseley,II, a Jonesboro orthopedic surgeon, relative to his left ankle injury.

The evidence in the record reflects that the claimant was discharged from the care of Dr. Moseley on or about July 3, 2007. Upon his July 2007 release by Dr. Moseley the claimant returned to the employment of respondent. Claimant asserts that his employment with respondent was terminated because he was unable to do the work due to residuals of his compensable injury.

The claimant credibly testified that he learned of the change of physician mechanism from the claims adjuster, Ms. Bobbye Smith, and as such requested same. At the time of his change of physician request the claimant noted that he was continuing to experience symptoms in his left ankle attributable to the May 10, 2007, compensable injury. Specifically, the testimony presented on behalf of the claimant reflects that the left ankle was discolored, and swollen. At the time of his injury the claimant was a minor, 17 years old, and was accompanied by a parent during each of the visits to his treating physician, which included being present in the examining room.

The testimony in the record reflects that the claimant was seen on several occasions by

Dr. Haughey following the October 17, 2007, entry of the Change of Physician Order. Ms. Shirley Long, the claimant's mother, provided credible testimony regarding the condition of the claimant's left ankle at the time of his last visit with Dr. Haughey as well as her observation of the left ankle. The evidence further reflects that the claimant was furnished a brace by Dr. Haughey at the time of the last visit. The credible evidence reflects that the claimant wears the brace daily to in walking. The claimant provided testimony regarding weakness in the left ankle which has resulted in him falling.

The evidence reflects that the claimant's efforts at employment since the May 10, 2007, compensable left ankle injury have been unsuccessful due residuals of the compensable injury. The claimant has sought and obtained medical treatment from his primary care physician, Dr. Lamb, due to complaints relative to his left ankle since being unable to schedule an appointment with his authorized treating physician, Dr. Haughey. At the time of the afore the claimant still had access to Medicaid, which ceased once he reached 19 years of age in June 2008. Claimant testified that he was eligible for Medicaid due his diagnosis of Attention Deficit Disorder (ADD) as a child.

The claimant sustained an admitted compensable scheduled injury on May 10, 2007. Ark. Code Ann. §11-9-508 (a) mandates that an employer provide such medical services as may be reasonably necessary in connection with an employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *Wackenhut Corporation v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). The Arkansas Workers' Compensation Commission has ruled that medical treatment intended to reduce or enable an injured worker to cope with chronic pain

may constitute reasonably necessary medical treatment. *Billy Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991, (D704562).

The credible evidence in the record reflects that the claimant continued to wear a brace which was furnished to him by Dr. Haughey at the time of his last visit. Further, the evidence reflects that the claimant's left ankle remains discolored as a residual of the compensable injury; that the ankle swells, and is both painful and weak. The claimant is limited in the amount of weight that he can lift due to residuals of the left ankle injury. It is clear that the brace would not have been prescribed or furnished by Dr. Haughey but for the treatment of the compensable injury with the same being reasonably necessary. The refusal of the office staff of Dr. Haughey to schedule an appointment for the claimant for further treatment of the compensable injury does not eliminate the claimant's need for further treatment for the compensable injury. The claimant has sustained his burden of proof by a preponderance of the evidence that further medical treatment is reasonably necessary in connection with his compensable left ankle injury of May 10, 2007.

The claimant suffered a scheduled injury on May 10, 2007. There is no evidence in the record to reflect that the claimant has reached maximum medical improvement or the end of his healing period as a result of the injury. Ark. Code Ann. §11-9-102 (12) defines the healing period "as that period for healing of an injury resulting from an accident". The claimant continues to experience residuals relative to the compensable injury, to include pain, swelling, weakness, and discoloration. The afore residuals have adversely impacted on the claimant's ability to return to sustained gainful employment. Indeed, the credible testimony of the claimant reflects that his employment with respondent-employer was terminated by respondent because

the claimant was unable to do the work because of the residuals of his injury. Because the claimant sustained a compensable scheduled injury, remains within his healing period, and has not returned to work due to residuals of the compensable injury, he remains entitled to the payment of temporary total disability benefits. Ark. Code Ann. §11-9-521, *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The claimant has sustained his burden of proof by a preponderance of the credible evidence that he remains within his healing period and has not return to work due to residuals of his compensable scheduled injury, and correspondingly entitled to the payment of temporary total disability benefits. Respondents have controverted the payment of temporary total disability since the last payment of same.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits as the weekly rate of \$187.00, for the period commencing at the point in time the same ceased and continuing until such time as the claimant reaches the end of his healing period or is returned to sustained gainful employment. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonably necessary medical, hospital and other apparatus expenses, to include medical related milage, arising out of and in connection with the claimant's compensable injury of May 10, 2007.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE

