

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601080

CEDRIC MARION, EMPLOYEE

CLAIMANT

ROADMASTER DRIVER SCHOOL OF W.M., EMPLOYER

RESPONDENT

UNION INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED APRIL 30, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 23, 2008, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional medical benefits. On March 25, 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 issue to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission exhibit #1.

The testimony of Cedric Marion, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Cedric Marion, the claimant, with a date of birth of July 20, 1972, is a high school graduate, who commenced his employment with respondent-employer on December 15, 2005, as a driving instructor. On January 27, 2006, the claimant sustained injuries to his right shoulder and left hip growing out of a motor vehicle accident while within the course and scope of his employment. The afore was accepted as compensable by respondent, and appropriate corresponding workers' compensation benefits paid on behalf of the claimant. Claimant did not miss sufficient time from work to entitle him to indemnity benefits.

Claimant maintains that he continues to experience residuals of his January 27, 2006, injury to his right shoulder. During direct examination claimant denied that he had previously suffered an injury to the right shoulder or required medical treatment relative to the right shoulder prior to the January 27, 2006, accident. Claimant acknowledged receiving medical treatment by the providers reflected in the medical evidence in the record, to include that under the care of Dr. Riley Jones, a Memphis orthopedic surgeon.

Regarding his current symptoms which he attributes to the January 27, 2006, accident, claimant noted the he experiences pain in the right shoulder, although the same is not constant. Claimant has not sought medical treatment from any area emergency room regarding his right shoulder complaint, although he has obtain medical treatment at the emergency room for migraine headaches.

The testimony of the claimant reflects that he has been employed by four (4) different employers since leaving the employment of respondent. Each of the claimant's subsequent employments entailed operating large trucks. Further, the evidence reflects that the claimant has undergone and successfully passed Department of Transportation physicals in his subsequent

employments. Claimant acknowledged that he did not identify any complaints with his right shoulder on the employment application or physical histories while pursuing employment with his subsequent employers.

The medical in the record reflects that the claimant was seen at the emergency room of Crittenden Memorial Hospital on January 27, 2006, following the accident which services as the basis for the present claim. Claimant's injuries were diagnosed as bruises to his shoulder and hip. The emergency room records further reflect that x-rays were obtained during the claimant's January 27, 2006, visit. Claimant was seen at Baptist Minor Medical Center and Baptist Occupational Medicine and referred for physical therapy with directions to follow up with the physician on February 4, 2006.

During a February 22, 2006, visit to Baptist Minor Medical Center the claimant was referred to an orthopedic for evaluation/treatment of his right shoulder complaint. (RX. #1, p. 22). The claimant's right shoulder complaint was diagnosed as a contusion injury. (RX. #1, p. 26).

On March 31, 2006, the claimant was seen by Dr. Riley Jones, a Memphis orthopedic surgeon, pursuant to the above-mentioned referral. The March 31, 2006, office note relative to the claimant's visit reflects, in pertinent part:

PI: Patient presents today for a Workman's Compensation injury. He states that he has had no previous problems with his right shoulder. He has not been seen by anyone. He states he was injured on 1/21/06, he was in a truck at a stand-still when he was hit, and he hit the window. He did not have his seatbelt on. There were no airbags. He bounced around the cab and began having pain in his right shoulder and numbness in his upper back. He says he has continued to have this. He has had only minor treatment at Concentra. In reviewing his chart, we have a chart on Mr. Marion dated 1/11/06, 33 year-old right hand dominant gentleman.

He is a truck driver instructor referred by Dr. Motley for evaluation of his right shoulder. He describes numbness and tingling in the right arm. No neurovascular complaints. No radiation distally. No known trauma. He just woke up with these symptoms 5 to 6 days ago. Symptoms are worse with overhead activities. At that time, Dr. Sokoloff saw him and treated him for right shoulder impingement, right rotator cuff tendinitis, placed him on NAPROSYN with GI precautions and a home exercise program.

PE: on examination today, he is a well developed, well-nourished gentleman, in no apparent distress. He is alert and oriented. He has tenderness over the biceps tendons. He has a mild impingement. He has no instability. Negative anterior drawer sign. Negative posterior drawer sign. Negative Spurling test. Full ROM of the neck. Neurovascular exam is within normal limits. No instability. No AC joint tenderness.

Xrays of the cervical spine show no abnormalities.

Xrays of the right shoulder show no abnormalities. (RX. #1, p. 27-28).

The claimant was treated with an injection in the right shoulder and provided Relafen and released to continue performing light duty. The March 31, 2006, office note of Dr. Jones further reflects:

. . . It appears that this gentleman by documentation had this prior to his injury and I am not sure why he has not told us about him having treatment because he has seen 2 doctors about this prior to being involved in this accident. (RX. #1, p. 28).

On April 21, 2006, claimant was referred by Dr. Jones for a MRI of the right shoulder. The MRI disclosed minimal distal supraspinatus tendinosis with no evidence of rotator cuff tear. (RX. #1, p. 29). The claimant was last seen by Dr. Jones on May 30, 2006. The office note of the afore visit reflects:

The patient returns today. He comes in today and he has full range of motion in the shoulder. He is having no pain at this point. Negative Speed test. He forward flexes 180, abducts 180, externally rotates 90, extends 60, adducts 40. At this point I think we can discharge him

from the clinic. He is at MMI. There is no PPI./ad (RX. #1, p. 31).

After a through consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, 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 January 27, 2006, the relationship of employee-employer-carrier existed among the parties.
3. On January 27, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$320.00/\$240.00, for temporary total/permanent partial disability.
4. On January 27, 2006, the claimant sustained injuries to his right shoulder and left hip arising out of and in the course of his employment.
5. The claimant has failed to prove by a preponderance of the evidence that further medical treatment to his right shoulder is reasonably necessary in connection with the January 27, 2006, injury sustained in the employment of respondents.

CONCLUSIONS

It is undisputed that the claimant sustained injuries to his right shoulder and left hip within the course and scope of his employment with respondents on January 27, 2006. Claimant maintains that he continues to experience residuals of the injury to his right shoulder and desires further medical treatment for same at the expense of respondents. Respondents maintain that they have provided all appropriate workers compensation benefits in this claim and that further

treatment is not reasonably necessary in connection with the injury sustained by the claimant.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant seeks further workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

Ark. Code Ann. §11-9-508(a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. The sole issue before the Commission at this juncture is whether the treatment sought by the claimant is reasonably necessary in connection with the January 27, 2006, injury to his right shoulder. While it is not disputed that the claimant sustained injuries to his right shoulder and left hip in the January 27, 2006, motor vehicle accident which required medical treatment, the evidence preponderates that at the time of the claimant's May 30, 2006, final visit to Dr. Riley Jones he had full range of motion in the shoulder and was no longer having pain.

More importantly, the evidence in the record reflects that the at most the January 27, 2006, motor vehicle accident produced a temporary exacerbation of the claimant's preexisting right shoulder condition. While the claimant testified that he had not previously experience a complaint relative to his right shoulder prior to the January 27, 2006, motor vehicle accident the credible evidence in the contrary. Indeed, the claimant had been referred by his primary care physician to the Memphis Orthopedic Group relative to right shoulder complaints and seen by an orthopedic at that facility on January 11, 2006, which was prior to the January 27, 2006, motor vehicle accident. Further, Dr. Jones expressed the opinion at the time of his initial visit with the claim on March 31, 2006, that "by documentation" the claimant had the same symptoms prior to the January 27, 2006, accident as he complained of subsequent to the accident. The claimant has

failed to sustain his burden of proof by a preponderance of the evidence that further medical treatment relative to his right shoulder is reasonably necessary in connection to the compensable accident of January 27, 2006. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE