

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801254

RAFAEL MUNOZ

CLAIMANT

ALLEN CANNING COMPANY  
SELF INSURED

RESPONDENT

OPINION FILED SEPTEMBER 30, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 2, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 7, 2008, and a pre-hearing order was filed on May 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 Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 8, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury on August 8, 2006.

4. The claimant is entitled to a weekly compensation rate of \$407 for temporary total disability and \$306 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to temporary total disability from January 1, 2008, to a date to be determined.
2. Claimant's entitlement to related medical treatment.
3. Attorney's fees.
4. Healing period.

Claimant's contentions are:

"The Claimant contends that during and within the scope of his employment on August 8, 2006, the Claimant was pulling on a heavy pallet, the pallet hung on a conveyor belt, and the Claimant jerked forward abruptly causing a jarring injury to the low back. The Claimant has received certain medical treatment, continues to be symptomatic, and requests additional medical treatment. The Claimant has been unable to continue his employment with the Respondent and is in his healing period as of December 3, 2007 and continues to a date yet to be determined. The Claimant is requesting temporary total disability benefits for this period of time to a date yet to be determined and attorney's fees."

Respondents' contentions are:

"The claimant contends that he continues to be symptomatic as a result of an August 8, 2006, injury he sustained while working for Allens. He seeks additional medical treatment, as well as TTD benefits from December 3, 2007, to a date to be determined. The respondent acknowledges that the claimant sustained a compensable injury to his back on August 8, 2006. The respondent has paid all medical expenses incurred by the claimant as a result of that injury. Mr. Munoz was determined to

have reached maximum medical improvement and was released from medical care in February of 2007. The respondent contends that any symptoms or problems the claimant is now experiencing, as well as any claimed disability, are not causally related to the August 8, 2006, injury and, thus, are not the responsibility of Allens. The respondent would also note that the claimant continued to work for Allen's until the seasonal layoff in December of 2007 and he is eligible for re-hire when the plant begins spring production. The respondent reserves the right to amend these contentions after the completion of investigation and discovery."

#### DISCUSSION

The central issues in this matter is whether the claimant is entitled to additional medical treatment for the admittedly compensable injury he sustained on August 8, 2006. The claimant testified that while moving some pallets, one of them became stuck, his back began to hurt, and he was unable to go into a straightened or upright position.

The claimant was seen at Cooper Clinic Pro Med in Van Buren, Arkansas, by Dr. Ted Hood. The claimant was restricted to fifteen pounds of lifting and no repetitive motions of stooping or bending over. An MRI was performed at Open Air MRI in Fort Smith at the request of Dr. Hood on October 5, 2006. The MRI found a left paracentral L4 herniated nucleus pulposus with some inferior subligamentous extension of the disc fragment. After reviewing the MRI, Dr. Luke Knox authored a letter dated October 18, 2006, which stated, "While in clinic, we reviewed his MRI scan that indeed showed the herniated disc at L4-5 on the left."

On December 19, 2006, Dr. Knox authored another letter regarding the claimant. The letter stated, "He has been followed for back and left leg pain related to herniated disc at L4-5. Actually, his leg pain is getting better. His back is worse, but he is tolerating his light duty."

The claimant then began physical therapy at Performance Physical Therapy in Fort Smith, Arkansas. The medical records indicate that the claimant did well with physical therapy. His efforts were good along with some reduction in his pain.

On February 26, 2007, Dr. Knox again authored a letter regarding the claimant. In the letter Dr. Knox states, "He has been free of his leg pain over the last three weeks. He has had 50% reduction in back pain with physical therapy. I would recommend that he go ahead and return under the guidelines detailed by the functional capacity evaluation. He has reached his maximum medical improvement."

On April 24, 2007, the claimant was seen at work well Industrial Medicine Clinic by Dr. Rebecca Lewis. The claimant reported low back pain he associated with his 2006 job-related injury. He was placed on bed rest for a day and told to apply warm moist packs to the back.

On May 8, 2007, the claimant was seen at work well Industrial Medicine Clinic by Dr. Rebecca Lewis. Those records indicate that the claimant again had a complaint of low back pain. It is also noted that he had received a steroid shot about a month ago but the

relief from the shot lasted only a day. The claimant was given medication and was told to follow up in a couple of weeks.

#### ADJUDICATION

At the hearing the claimant testified to having low back pain in the same area that he associated with the pain from the admittedly compensable injury of August 8, 2006. I believe that the claimant is experiencing this pain and that it is consistent with the medical records in this matter. I note that one of the main purposes of the Workers' Compensation Act is to provide reasonable medical treatment for claimants. While the burden of proof solely rests with the claimant, the respondents have failed to show any intervening cause or reason for the claimant's current difficulties. His pain is consistent in nature and location of the pain he experienced with the admittedly compensable injury of August 8, 2006. The claimant also experienced difficulties during 2007 with his back that were of the same nature and location. I find that a visit to Dr. Knox, his original treating physician, along with a diagnostic study of the claimant's back is reasonable and necessary treatment for the claimant's admittedly compensable injury of August 8, 2006.

#### TEMPORARY TOTAL DISABILITY

The claimant has also requested temporary total disability from January 1, 2008, to a date to be determined. In order for the claimant to receive temporary total disability benefits he must show that he was in his healing period and totally disabled from work due to his compensable injury. All of the testimony given by

the claimant indicates that although he was having back difficulties he was able to maintain work for the respondent. The respondent had also continued to make work available for the claimant.

The claimant left the employment of the respondent in December 2007. However, testimony of the claimant and respondents both show that the claimant's leaving the employment of the respondent was due to a plant layoff, and was unrelated to any difficulties associated with his compensable injury. The claimant also had the choice of going to work for the respondent at another respondent owned plant doing the same work with the plant location actually being closer to the claimant's home than the one he currently worked at. The claimant further testified that had the layoffs not occurred he would have continued to work.

At the onset, I note Dr. Knox opined the claimant reached his point of maximum medical improvement on February 26, 2007. No subsequent medical reports deal with his issue. When the end of the healing is reached is primarily a medical question. In this case no medical evidence has been offered to indicate the claimant reached a healing period, or that his condition has changed since Dr. Knox's report of February 26, 2007. Therefore, I find the claimant has failed to establish that he was within his healing period on any date subsequent to February 26, 2007.

The claimant's testimony indicates that he could have continued to do his job. The lack of medical evidence of a healing period and his ability to work during the time period for which he

is requesting temporary total disability does not support his claim for benefits. I find that the claimant has failed to meet his burden of proof regarding temporary total disability. Thus, the claimant is not entitled to temporary total disability for this claim.

#### HEALING PERIOD

I find that the issues over the claimant's healing period do not require determination at this point in that the claimant is not entitled to any temporary total disability.

#### ATTORNEY FEE

I find that the claimant's attorney is not entitled to an attorney's fee in his matter in that the only benefits awarded are for addition medical as related to an office visit and diagnostic study by Dr. Knox.

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 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 May 7, 2008, and contained in a pre-hearing order filed May 9, 2008, are hereby accepted as fact.
2. That the claimant has proven by a preponderance of the evidence that an office visit with Dr. Knox and a diagnostic study

of the claimant's back are reasonable and necessary medical treatment as related to the claimant's compensable injury of August 8, 2006.

3. I find that the claimant failed to prove that he is entitled to temporary total disability in this matter.

4. I find that the claimant's attorney is not entitled to an attorney's fee in this matter.

5. I find that the question of healing period is not relevant in that no temporary total disability has been awarded in this matter.

ORDER

The respondents shall pay for an office visit with Dr. Knox along with an appropriate diagnostic study at the direction of Dr. Knox.

The claimant is not entitled to temporary total disability in this matter.

The claimant's attorney is not entitled to an attorney's fee on the benefits awarded in this matter.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE