

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504222

ROY G. TIPTON, EMPLOYEE	CLAIMANT
COLSON MONETTE, EMPLOYER	RESPONDENT
FEDERAL INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #3

OPINION FILED MARCH 05, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on January 25, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondent #1 represented by Mr. David C. Jones, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 represented by Mr. David L. Pake, Attorney-at-Law, Little Rock, Arkansas.

Respondent #3 waived appearance.

STATEMENT OF THE CASE

A hearing was conducted January 25, 2008, to determine whether the claimant was entitled to additional workers' compensation benefits for an admitted, compensable injury.

A prehearing conference was conducted in this claim on September 26, 2007, and a Prehearing Order was filed on September 27, 2007. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

At the prehearing conference, it was stipulated that the employment relationship existed between the claimant and respondent #1 on February 21, 2005; that the claimant sustained a compensable back injury on said date; that he earned sufficient wages to entitle him to compensation rates of \$387.00 per week for temporary total disability and \$290.00 per week for permanent partial disability; that respondents #1 paid temporary total disability through September 20, 2005; and that respondents #1 controverted all medical treatment after September 20, 2005, as well as all indemnity benefits after said date.

At the hearing, the parties amended their stipulations, agreeing that the claimant either was paid all appropriate temporary total disability or continued working for the employer herein until November 14, 2005, and would not be entitled to additional temporary total disability before November 14, 2005, which was apparently the last day that the claimant worked.

By agreement of the parties, the primary issue presented for determination was whether or not a medically diagnosed spinal syrinx was directly and causally related to the February 21, 2005, admitted incident and injury. If answered affirmatively, the following corollary issues were presented for determination:

- 1) The date claimant's healing period ended.
- 2) Claimant's entitlement to additional temporary total disability.
- 3) Respondent #1's responsibility for additional medical treatment.

At the prehearing conference, the claimant contended, in summary, that as a result of the February 21, 2005, admitted injury, he required additional medical

treatment after respondents terminated all benefits on or about September 20, 2005; that respondents should be held responsible for all outstanding hospital, medical, and related expenses, including, but not limited to, treatment by Dr. Adada, which included back surgery; that respondents should remain responsible for continued follow-up medical treatment; that he was entitled to additional temporary total disability for the period beginning September 21, 2005, and continuing until on or about September 6, 2007, at which time he was released by Dr. Adada; and that a controverted attorney's fee should attach to any additional benefits awarded. Claimant specifically reserved entitlement to permanent impairment, as well as wage-loss disability, if applicable. Again, at the hearing, the claimant amended his contentions to request temporary total disability beginning November 14, 2005, through September 6, 2007.

Respondents #1 contended that it had paid all appropriate benefits in regard to the claimant's back and/or neck injury of February 21, 2005, maintaining that claimant's continued complaints and physical problems are not related or associated with the February 21, 2005, injury. Specifically, respondents #1 contended that the claimant's continued problems were the result of a prior injury and claim, possibly a result of his pre-existing condition or a result of a medical or congenital defect not directly associated or related to the injury in the current claim. Respondents #1 further contended that the claimant should be bound by Dr. John D. Brophy's independent medical examination report and opinion of July 3, 2006. Respondents #1 maintained that the claimant previously requested a change of physician through

the Commission to Dr. Brophy in December, 2005; that Dr. Brophy refused the claimant's and Commission's request for a change of physician and that based upon Dr. Brophy and Dr. Scott Schlesinger's eventual refusal to accept the claimant as a new patient, the parties mutually agreed upon Dr. Brophy to perform an IME to determine whether the claimant's spinal syrinx and continued problems were associated with the injury in the current claim or related to other issues. Again, respondents #1 maintained that Dr. Brophy's opinion should be controlling in this claim. Respondents #1 further contended that the claimant was previously released following a functional capacity evaluation to return to work, while maintaining that work was available within his capacity and that claimant should not be entitled to any temporary total disability following his release to return to work at full duty as of September 16, 2005. Furthermore, respondents #1 contended that the claimant executed a Commission Form AR-N and would not be entitled to payment for treatment by providers outside the authorized chain of treating physicians approved by the carrier. Based upon the IME report and prior medicals, respondents #1 contended that the major cause of claimant's continued problems and cervical issues (the alleged syrinx) was not related to the original injury. Alternatively, respondents #1 contended that it would be entitled to an offset for any group health and/or disability payments made to or on behalf of the claimant, including both short-term and long-term disability benefits.

Respondents #2 and #3 have no liability on the issues presented for determination. The attorney for respondent #2 appeared, but did not participate in

the proceedings. Respondent #3 agreed to defer to the outcome of litigation on the end of claimant's healing period.

The claimant was the only lay witness to testify. The record is composed solely of the transcript of the January 25, 2008, hearing which is composed of a transcript of the claimant's testimony and a separate exhibit transcript containing volumes of medical and non-medical exhibits. The claimant and respondents #1 submitted post-hearing briefs addressing how the medical evidence supported their respective contentions. In addition, respondents #1 proffered the unsolicited discovery deposition of the claimant taken August 17, 2006, contemporaneous with its post-hearing brief which is 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 claimant and to observe his 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 February 21, 2005, the claimant sustained a temporary aggravation of a pre-existing spinal condition which resulted in a period of disability and need for medical treatment.

4. The claimant's healing period for the admitted injury ended on or before September 16, 2005. Respondents have paid all appropriate temporary total disability to which the claimant is entitled. The claimant has failed to prove that he is entitled to additional temporary total disability as the result of his admitted injury.
5. Respondents are responsible for all hospital, medical, and related expenses, including various diagnostic testing through July 3, 2006, at which time an independent medical examination and evaluation determined that the claimant's spinal syrinx, a/k/a syringomyelia, was unrelated to the traumatic accident of February 21, 2005. Respondents are not responsible for medical and related treatment, including back surgery performed by Dr. Adada after July 3, 2006, because it is herein specifically determined that the claimant's need for treatment was unrelated to the admitted minor incident.
6. In the event it was determined that the claimant's spinal syringomyelia (hereinafter syrinx) was the result of the February 21, 2005, work-related trauma, which is inconsistent with the findings and conclusions herein, then respondents would be responsible for all medical treatment, including surgery, because it is herein specifically found that all treatment was provided by referral of an authorized treating physician or through chain of referrals by authorized physicians.
7. Further, in the event it is determined that the claimant is entitled to additional benefits, respondents #1 would be entitled to an offset or credit, dollar-for-

dollar for all short-term and long-term disability benefits paid pursuant to Ark. Code Ann. §11-9-411.

DISCUSSION

This is an extremely difficult claim. It is primarily a medical question. Although it is undisputed that the claimant was involved in a work-related incident which resulted in an injury which was accepted as compensable, the true nature and extent of the claimant's physical problems, need for treatment and resulting disability was not diagnosed until long after the incident. Further, the record as a whole reflects that most, if not all of the claimant's symptoms had manifested themselves prior to the immediate claim, but had never been properly diagnosed. Further, the medical opinion of record in this claim concerning the causal connection between the admitted incident and the spinal syrinx is conflicting. However, it is apparent that the medical opinion which relates the claimant's spinal syrinx to a February 21, 2005, incident is based upon an incomplete and/or inaccurate medical history provided by the claimant. A claimant's testimony is never considered uncontroverted. In fact, the testimony of an interested party is always considered to be controverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

Again, the medical opinion which relates the claimant's spinal syrinx to a traumatic work-related event is based on the claimant's medical history. As will be set out further below, the claimant's testimony is replete with inconsistencies and

contradictions. The record reflects that the claimant sustained prior injuries and made similar physical complaints which he failed and/or refused to disclose to his medical providers following the immediate claim. In fact, the one medical expert that had benefit of claimant's complete medical history, Dr. John D. Brophy, opined that the claimant's spinal syrinx was unrelated to the work injury described by the claimant on February 21, 2005. It must be further noted that Dr. Brophy's examination and evaluation was an independent medical evaluation by a mutually agreed upon physician, specifically to address the causation issue.

It was stipulated that the claimant sustained a compensable back injury on February 21, 2005. The claimant's description of the accident, its prompt reporting, as well as his course of medical treatment is set out below:

Q Okay, Roy, for the Court's understanding, in the day you claim you were injured at work at Colson – can you describe for us, first, what your job was; second, what you were doing, and, third, how you got hurt?

A My job is process technician. I program machines. I make sure everything's there that is needed for that job, and make sure the operator does what they are supposed to do, and make sure the die-setters put everything they're supposed to there. I start the machine and make sure everything's running good, and we call QC to okay everything. And the day that I fell, they were having trouble with a press, press 14, and I was coming down from a material hopper that sits to the side of the machine they roll up to the machine. That day they were having a lot of problems, they couldn't get it running all day, and I had to start from the very beginning of the total process. When I got up on top of that hopper to check everything out and make sure it had plenty of material, make sure the hoses and everything was fine, I was coming down, and when I did, I stretched all the way down to the floor. I was hanging onto a bar, and I had stepped on the other bar. Just as I put my toe on the floor, I let go of the bars coming down, and my foot went out from under me. When I did, my left leg went across the bar, my right hip hit the concrete, and my back hit the pipes against the machine that was attached to the machine. The bar went up under my arm, one bar did, and the bars going the other way come back and hit me on my back. It was just like I fell, right at that time, all at once on the entire injury the same

way, just all at once.

Q Okay. Did anybody come to your assistance?

A Yes, there was an operator there on the other side of the hopper that seen me fall.

Q Okay.

A He hollered at me a couple of times to make sure I was all right. I tried to get up, and I got up and crawled out from under the machine, and just as I done that, my plant manager and supervisor walked up and asked me what was wrong. They knew something was wrong because I was bent over hurting. They told me to write it up immediately. I told them I was going to go ahead and try to work that night, you know, and make sure – well, there's only one technician at that job, and I'm the one there.

Q Okay. Did you work the 3:00 to 11:00 or the graveyard shift?

A I was working 3:00 to 11:00 at that time.

Q Okay. How far into your shift was it when this happened?

A It was about 9:00, because we had done had our meeting and I'd tried to check a couple other small problems that was going on. Then they wanted me to get a material check or moisture check on the material at that point, and I was trying to get it going and go through all of the process.

Q Okay. I don't think there's any disagreement. It's undisputed that this was reported –

A Uh-huh, yes, sir.

Q – but did anyone – who's in charge of that at your plant?

A What do you mean?

Q In charge of handling workers' comp claims?

A Now it's Sheila Overton.

Q Okay.

A Human resource. I don't remember who it was before, though.

Q Okay. How soon was it after the injury date that they got you to the doctor?

A They made an appointment I think the 25th. It was like two or three days later.

Q Okay. That's reflected in the medical. Was that with Dr. Michael Lack?

A Yes, sir.

Q Okay. And did you see Dr. Lack a couple other times after that appointment?

A Yes, sir.

Q Okay. And what kind of treatment did Dr. Lack provide for you?

A He put me on some medication trying to – he put me on light duty, too, no heavy lifting or anything like that, and no bending or stooping, and he put me on medication to try to help with the pain.

Q Okay. You next saw Dr. Terence Braden. If I say – and I want to clarify something. If I say, "How did you get to Dr. So and So?" –

A Yes, sir.

Q – I don't mean, "I drove there." I mean, I have a bad habit of saying that when I should say, "Who sent you to Dr. Braden?"

A Oh, okay.

Q But did Dr. Lack send yo to Dr. Braden?

A Yes, sir. (Tr.17-20)

It is undisputed that respondents #1 (hereinafter "respondents") provided the claimant with considerable medical testing and treatment which included various specialists to evaluate the claimant's condition and complaints. Further, the documentary evidence introduced, as well as claimant's own testimony indicates that the claimant continued to work for some time following the incident and, in fact, was able to work overtime after he returned to work. The record further reflects that the

claimant complained about rib pain after February 21, 2005, similar to complaints voiced following a prior work-related injury with the employer herein which was subsequently settled by joint petition, and, that he made similar types of complaints going back to even before the prior work-related injury which occurred on or about June 11, 2003. Although the June 11, 2003, injury involved primarily the claimant's left knee, the medical records are replete with references that he made complaints of chest pain, more specifically left rib pain. (Cl. Ex. A, p.78)(Resp. Ex. A, pp.7, 14, 18)

During the extensive medical testing and treatment provided by respondents following the February 21, 2005, incident, it was eventually determined that the claimant's continued physical problems and complaints were causally related to a spinal syrinx. The claimant contended that the spinal syrinx was the result of the February 21, 2005, incident and offered medical opinions in support of his claim. Conversely, respondents contended that the claimant's spinal syrinx was pre-existing based upon the extensive history of prior complaints which is supported by the record as a whole.

Dorland's Illustrated Medical Dictionary, 30th Edition at p.1841 defines syringomyelia as a slowly progressive syndrome of cavitation in the central segments of the spinal cord, generally in the cervical region, but sometimes extending up into the medulla oblongata (syringobulbia) or down into the thoracic region; it may be of developmental origin, arise secondary to tumor, trauma, infarction, or hemorrhage, or be of unknown cause. It results in neurologic deficits, usually segmental muscular

weakness and atrophy with a dissociated sensory loss (loss of pain and temperature sensation, with preservation of the sense of touch), and thoracic scoliosis is often present....

The claimant introduced two hundred eight (208) pages of medical records, the majority of which were not relevant to the issue presented for determination, specifically, the cause of the claimant's spinal syrinx. Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that there are several medical opinions of record which attribute the claimant's spinal syrinx to the February 21, 2005, work-related incident and trauma. However, as previously pointed out, these medical opinions are based upon the claimant's self-serving and incomplete medical history. The claimant conceded on cross-examination, that none of the physicians at UAMS had his medical records prior to February 21, 2005.

A portion of the claimant's testimony on cross-examination is set out below:

BY MR. JONES:

Q And, in fact, as Mr. Burton has pointed out, and we've pointed out as well, these complaints of rib problems go all the way back to '98?

A Yes, sir.

Q Okay. And those are the same symptoms, the rib complaints, that the doctors focused on when they got into the syrinx issue, is that correct?

A They was worried about the swollen spinal cord.

Q Okay. But, in fact, most of your subjective –

A That's what they was thinking about the rib problem –

Q Correct. Most of your –

A – the last time, yes.

Q Most of your subjective complaints in this case involve the rib cage area, looks like, is that fair to say, or a lot of your complaints?

A I really don't understand what you mean.

Q When you went to Dr. Adada, and you went to Dr. Routsong, and some of the other doctors, their records note this same history of complaints of rib problems?

A Yes, sir.

Q And, in fact, that's the same exact area of your body, your ribs, that you had back in the 2003 situation, isn't it?

A Right here, yes, sir.

Q Okay. And, in fact, in your deposition you said it's in the exact same area of your body.

A Yes, sir.

Q Is that fair to say?

A Yes, sir.

Q So the spot – location of the pain in 2003 compared to 2005, same spot?

A That one spot, yes, it hurts, but it's not where the pain is located at.

Q And, in fact, back in 2001 your family doctor, Dr. Murrey, you were noting that you had several prior accidents to your rib cage before 2001, is that correct?

A Yes, sir, we have a lot of slipping and falling with our job.

Q Okay. And that's on page five of our exhibits. So it wasn't just the '98, you had several prior accidents –

A Yes, sir.

Q – to your rib cage?

A Yes, sir.

Q Okay.

A We wrote them up, but there was no – went to no doctor from them. There's a lot of stuff we do as far as falling.

Q Okay. Mr. Burton can follow up, if you want him to.

A Okay.

Q And, in fact, the complaints in that same area of your body that we're here about today –

A Yes, sir.

Q – that actually led the doctors doing a bone scan way back in 2001, is that correct?

A Now, do what now?

Q The doctors did a bone scan way back in 2001, is that correct, because of your complaints?

A I think so. I don't – I guess.

Q Well, page eight of our exhibits reflects you did have a bone scan –

A Okay.

Q – because of those complaints.

A Okay.

Q Does that sound right?

A That sounds about right. I think there was.

Q And they noted you had some increased uptake in your exam, and it was in your cervical area, is that correct?

A Yes, sir.

Q And at some point, Dr. Routsong actually indicated that he thought the problems you were having were from a rib head, is that correct?

A Yes, he – yes, sir.

Q And even though you had all these problems back in 2003, you actually settled that workers' comp claim, is that correct?

A Yes, sir. (Tr.53-56)

Again, it must be stated that the claimant failed to provide his long and extensive history of similar complaints and problems involving his chest area and ribs to the various physicians which evaluated him in the present claim. As previously noted, after extensive, prior testing, the parties mutually agreed to have the claimant examined and evaluated by Dr. John D. Brophy, a neurosurgeon in Memphis, Tennessee. Dr. Brophy was provided with substantially more medical history and diagnostic studies apparently not available to all of the claimant's medical providers as reflected in his five (5) page report dated July 13, 2006. (Resp. Ex. A, pp.76-80)

Dr. Brophy's final impression and recommendations are set out below:

IMPRESSION:

1. The thoracic MRI studies were reviewed with neuroradiology and are considered most consistent with a thoracic syrinx. In my opinion this finding is unrelated to the work injury described by Mr. Tipton 21 February, 2005.
2. Mr. Tipton has complained of anterior rib pain intermittently since 1998. Evaluation for this rib pain has included multiple bone scans and chest CT with no definitive etiology determined, it is possible that his rib pain could be related to his thoracic syrinx.
3. Chronic back pain which could be related to his syrinx or potentially myofascial in etiology.

RECOMMENDATIONS: This clinical situation and the results of the MRI studies were reviewed in detail with Mr. Tipton. With regard to his syrinx, I agree with previous other neurosurgical opinions that there is no definite evidence of tumor. However, given its atypical features follow-up studies are recommended through this [sic] his personal insurance. With regard to his work injury 21 February, 2005 I would consider him at maximum medical improvement with a PPI rating of 0%. It is possible that his symptoms could improve with a serious weight loss and gradual home

walking endurance exercise program. I agree with other neurosurgical opinions that he would not be considered an operative candidate unless he developed a progressive neurologic deficit or there was MRI evidence of possible tumor. We also discussed the fact that it is possible that chronic heavy lifting and Valsalva could increase the size of the syrinx over time resulting in a progressive neurologic deficit. This issue is considered somewhat controversial. Given his ongoing complaints with minimal strenuous activity, clearly alternative employment should be considered. From the standpoint of his work injury there is no objective reason why he could not return to his preinjury activity level. (Resp. Ex. A, p.80)

Respondents contend that Dr. Brophy's opinion should be controlling in this case because he was an independent medical examiner, agreed to by the parties. While I do not find Dr. Brophy's opinion to be controlling, and, in fact, find that his recommendation that the claimant be considered at maximum medical improvement with an impairment rating of 0% at the time of his evaluation to be inconsistent with the record as a whole, I am persuaded that his conclusion that the claimant's spinal syrinx is unrelated to the February 21, 2005, incident to be more credible than the other medical opinions of record. Again, the other medical opinions of record are based upon the claimant's incomplete medical history.

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).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that his spinal syrinx is causally related to the February 21, 2005, incident and injury. Rather, I find that a preponderance of the evidence reflects that the syrinx either pre-existed the February 21, 2005, event and/or was from unknown cause.

In view of the foregoing, I find that the claimant has failed to prove, by a preponderance of the credible evidence, that he is entitled to additional temporary total disability beyond the benefits previously paid.

The only remaining issue concerns respondents' responsibility for outstanding medical and related expenses, together with continued, reasonably necessary 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).

I do find that respondents should be held responsible for all medical treatment, including diagnostic testing, until such time that the agreed upon independent medical evaluator determined that the claimant's need for medical treatment was unrelated to the admitted accident. Accordingly, respondents are responsible for the medical treatment through July 3, 2006, at which time it was determined by Dr. Brophy that the claimant's physical condition and need for treatment was unrelated to a work-related injury.

I feel compelled to point out that while it is herein determined that the claimant's spinal syrinx is unrelated to his employment or a work-related injury, I find no merit to respondents' contention that the treatment provided was outside the chain of authorized treating physicians. The denial of additional medical treatment is based upon the causal relationship to the work-related injury rather than unauthorized treatment. Respondents should be held responsible for reasonably necessary diagnostic studies until such time that a definitive opinion on causation was made.

AWARD

Respondent, Federal Insurance Company, is hereby directed and ordered to pay reasonably necessary medicals incurred on and before July 3, 2006.

Respondents are not responsible for additional medical treatment, including, but not limited to, the surgery performed by Dr. Adada, it having been determined

herein that the claimant's spinal syrinx and need for surgery was unrelated to a work injury.

Because the claimant has failed to prove entitlement to indemnity benefits, no attorney's fee is owed pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge