

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G707397

CHARLES M. SCHATZ, Employee	CLAIMANT
CENTERTON WATER & SEWER, Employer	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, Insurance Carrier/TPA	RESPONDENT

OPINION FILED JUNE 1, 2018

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

Claimant represented by JASON M. HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by KATIE BODENHAMER, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 6, 2018, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 31, 2018, and a pre-hearing order was filed on that same date. 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 all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury on December 29, 2016 to his low back and left shoulder.
4. The claimant's weekly compensation rates are \$357.00 for temporary total disability and \$268.00 for permanent partial disability.

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

1. Whether claimant is entitled to additional medical treatment to his low back.

2. Whether claimant is entitled to temporary total disability benefits from December 11, 2017 to a date yet to be determined.

3. Whether claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

"Claimant sustained a compensable injury while working for Respondent on or about December 29, 2016. At that time, he was involved in a motor vehicle accident while in the course and scope of employment.

Dr. Blankenship, the authorized treating physician on 12/11/17 recommended an updated MRI of the lumbar spine which been controverted by the Respondents with no reasoning given."

The respondents' contentions are as follows:

"Respondents contend that it has paid all appropriated medical and indemnity benefits and that the Claimant reached MMI on August 22, 2017. Respondents reserve the right to file an Amended Response to the Prehearing Questionnaire."

The claimant in this matter is 34-year-old year old male who suffered compensable injuries to his low back and left shoulder on December 29, 2016 when he was involved in a motor vehicle accident. According to Mercy Northwest Arkansas records from the day of the claimant's accident, he did not initially complain of lower back pain, but reported the next day to the Arkansas Occupational Health Clinic. At that time, the claimant complained of multiple problems, including low back pain. His complaints of lower back pain since that time have been ongoing. On January 6, 2017, the claimant was seen by P.A. Daniel Nicholas at Arkansas Occupational Health Clinic and reported his primary pain to be in his lower back. The claimant was placed on work restrictions and referred to physical therapy at that time.

The claimant underwent several physical therapy treatments and then returned to see P.A. Nicholas on January 25, 2017. The claimant continued to complain of back pain, but had improved until his last physical therapy appointment where he suffered a flare-up. The claimant was instructed to avoid the exercise that caused his flare-up and given a

steroid injection. The claimant was continued on work restrictions. The claimant continued his complaints of back pain and continued to see P.A. Nicholas for conservative care. On March 17, 2017, P.A. Nicholas recommended an MRI of the claimant's lumbar spine and discussed future treatment, including surgery and injections. On March 23, 2017, the claimant underwent an MRI of the lumbar spine at Arkansas Medical Imaging. Following are the impressions from that diagnostic report found at Claimant's Exhibit 1, Page 38:

IMPRESSION:

1. Mild degenerative changes involving the lumbar spine with a 7mm left paracentral disc protrusion involving the L4/5 level.
2. No high-grade central canal or neural foraminal stenosis is identified.

On March 31, 2017, the claimant was again seen by P.A. Nicholas. The record from that visit in part states the following found at Claimant's Exhibit 1, Page 42:

DISCUSSION

Charles has no change since his last visit. His MRI shows significant degenerative disease. It also shows an annular tear which may be caused by his car wreck. We discussed treatment options. Despite his statements at his last visit, he has decided that he is willing to try surgery. We elected to trial epidural steroid injections. He will be referred to pain management for this. We will also trial gabapentin for his pain. He will contact us if e has any side effects.

The claimant was continued on work restrictions and referred to pain management.

On April 7, 2017, the claimant was seen at Ozark Orthopedics by Dr. Chuck Nalley. Following is a portion of that medical record found at Claimant's Exhibit 1, Pages 44 to 45:

HISTORY OF PRESENT ILLNESS: Mr. Schatz is a 33-year-old male that was involved in an automobile accident on 12/29/2016. He describes himself as an unrestrained driver involved in an accident. The air bags deployed. He was taken by EMS to the hospital for evaluation and discharged. He states that his head hit the windshield. He had contusions of the knee, wrist and shoulder and says initially had a little bit of neck and head pain, but basically all he has been left with is low back pain. He describes the back pain as low and bilaterally. It radiates to the buttocks and he has some tingling sensations in the posterior and anterior thighs. He does not

report bowel or bladder disturbance. The patient does have a confounder of an emergency room visit 04/06/2017 for a chief complaint of low back pain. He states the flare resolved after a few days and he was back to his normal baseline status at work. He does not report to me a history of a complaint of back pain at work, but I would defer to his employer about that.

PLAN:

1. The tenets of good spine health including aerobic conditioning, core strengthening and weight optimization were discussed with the patient.
2. The patient has now failed 5 months of conservative care plus 10 sessions of therapy. I do not think that surgery is the right option for him at this time. I have recommended he initiate interventional pain management with physiatry to help him control his axial back pain. I also stressed to him the importance of continuing a home exercise program. The patient understands and agrees with the treatment plan.

On May 26, 2017, the claimant was again seen by P.A. Nicholas. Following is a portion of that medical record found at Claimant's Exhibit 1, Page 66:

DISCUSSION

Charles is doing worse today. The request for steroid injections was declined and he was sent to Dr. Nalley for a surgical evaluation. He was then sent to Dr. Deimel for back injections. These records were reviewed. He has had two injections now and they are not improving his symptoms. As he is currently under Dr. Deimel's care, he will be released from any further treatment here.

The claimant was continued on work restrictions at that time.

On July 20, 2017, the claimant was seen at Ozark Orthopedics by Dr. George Deimel. Following is a portion of that medical record found at Claimant's Exhibit 1, Pages 73 to 74:

Chief Complaint: Back and bilateral leg pain.
History of present illness: Mr. Schatz returns to the clinic today for followup. We had initially seen him for a work-related injury from December 29, 2016. He was last seen in our office on June 1, 2017. We performed a series of injections which did not assist in his pain. He was also noted to have significant post-procedural anxiety/pain exacerbation. We decided to send him to Dr. Robert Baker of Pain Treatment Centers of America. Mr. Schatz returns to the clinic today. He states that Dr. Baker had decided to pursue further interventional

injections into his low back. He describes what sounds like medial branch blocks and radiofrequency ablation. Mr. Schatz has returned back to work full duty. He does not feel that he is able to tolerate this level of work due to his ongoing pain issues.

Review of systems, past medical/surgical history, medications/allergies and pertinent details of social history/family history were reviewed and discussed as relevant to their current presentation.

Assessment/Plan: Mr. Schatz returns to the clinic today for followup. When we last saw him, we elected to refer him to pain management. He has visited with Dr. Robert Baker of Pain Treatment Centers of America. They are undergoing further evaluation with what sounds like medial branch blocks and possibly proceeding towards radiofrequency ablation. Mr. Schatz tells me that he did not find these injections to be particularly helpful. He is set to see Dr. Baker in followup to discuss next step in treatment options. Mr. Schatz states he is a bit confused about who is covering what medical care. He states he is not sure if work comp is covering his ongoing back complaints any further. He has returned back to work to full duty. He feels that his job is looking for a reason to let him go because he is unable to maintain the work pace due to his ongoing back pain complaints. He has contemplated changing jobs to a less intensive line of work. He is not sure what he can sustain. We talked about ways to assess so that we can provide appropriate recommendations to his workplace. In this setting, I think a functional capacity evaluation would be helpful. Once he completes this, then we can declare maximal medical improvement depending on where things ultimately are with his ongoing care with Dr. Baker.

All questions and concerns were addressed. The patient endorsed understanding and was agreeable to proceed.

The claimant underwent an FCE at the Functional Testing Centers, Inc. in Mountain Home, Arkansas on August 10, 2017. The claimant put forth a consistent effort, "with 55/55 consistency measures within expected limits." Following is a portion of the claimant's FCE report found at Claimant's Exhibit, Page 76:

FUNCTIONAL LIMITATIONS

Mr. Schatz demonstrated the ability to lift/carry up to 40 lbs. on an Occasional basis. Mr. Schatz demonstrated limited lumbar

flexion and demonstrated poor tolerance to repetitive and sustained Stooping and performed these activities at the Occasional frequency level. He also demonstrated functional limitations with Crouching and Kneeling as he performed these activities only at the Occasional level when taking into account a normal workday. He does not require occasional changes in postural position throughout a workday as he completed sitting and standing at the Frequent level. He performed all other activities at a level consistent with that of an average worker.

CONCLUSIONS

Mr. Schatz completed functional testing on this date with reliable results.

Overall, Mr. Schatz demonstrated the ability to perform work in the MEDIUM classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal workday with limitations as noted above.

On August 22, 2017, the claimant was again seen by Dr. Deimel. Following is a portion of the medical record from that visit found at Claimant's Exhibit 1, Pages 94 to 95:

History of Present Illness: Mr. Schatz returns to the clinic today for followup. When we last saw him, we elected to pursue functional capacity evaluation. He is here today to review the results and discuss next step in treatment options. He states over the past few weeks, his pain has been better. He feels like this has to do with him changing jobs. He has moved back into electrical work. He did not feel that his previous jobs had treated him appropriately. He still has some pain. He was seen by Dr. Baker and started on a Butrans patch. He presents to the emergency department feeling loopy. The patch was stopped and the altered mental status resolved. He is now waiting on referral to Mercy Pain Management.

Review of systems, past medical/surgical history, medications/allergies and pertinent details of social history/family history were reviewed and discussed as relevant to their current presentation

Diagnoses:

1. Back, buttock, and left greater than right radiating leg pain, lumbosacral radicular syndrome.
2. Axial back pain, suspect facetogenic mediated.
3. Work-related injury, December 29, 2016.

Assessment/Plan: Mr. Schatz returns to the clinic today for followup. We discussed his clinical course. I reviewed functional capacity evaluation. He has since changed jobs. He

feels like the change in vocational activities has helped his back. Overall, he has been doing relatively well over the past couple of weeks. He does feel that some of it has to do with the fact that he is no longer doing those activities and removed himself from that work environment. He states he has also parted ways with Dr. Baker. He was not comfortable with the way they handled the administration of medications. He is awaiting on referral to Mercy Pain Management which was coordinated by his primary care provider. At this point, I think he has reached maximum medical improvement for this specific work-related injury. I still think there is some underlying mood/anxiety issues that are likely playing a role. Mr. Schatz seems to be in a better place today and somewhat accepting that he is unlikely to have some ongoing back pain complaints. I told him I would be more than happy to continue to participate in his care. All of this was discussed in detail with the patient. He verbally endorsed understanding of the plan and was agreeable to proceed. All questions and concerns were addressed.

The claimant underwent a change of physician and was able to see Dr. James Blankenship on December 11, 2017 at the Neurosurgery Spine Center in Fayetteville, Arkansas. Following is a portion of that medical record found at Claimant's Exhibit 1, Pages 100 to 104:

HPI:

Mr. Schatz has been seeing Dr. Deimel and then he also saw Dr. Nalley. Both ordered LESI's. He also has done physical therapy with Russ PT with only 8-10 visits in January of this year. He was injured in December of last year and continued to work but eventually quit his job. He was driving when he rear-ended another car. He was not wearing a seatbelt and hit his head with a flexion-extension injury. The patient had the acute onset of lower back pain at that time.

Diagnosis:

M51.26	Other intervertebral disc displacement, lumbar region
M54.5	Low back pain

Impression:

The patient's MRI is nine months old and his Workers' Compensation carrier would not allow us to get a new MRI prior to seeing him. He actually quit that job to start working a better job or him, but unfortunately four weeks into this, he got rhabdomyositis presumably from dehydration working out in the heat. He is finally getting over that but he has lost that job.

The patient saw Dr. Nalley and Dr. Nalley placed him on what sounds like a fentanyl patch. The gentleman was having lot of trouble with it because he sweated outside and was getting sick on it and did not go back to see him after his first follow-up visit. The patient had a functional capacity evaluation in August, which showed 5/55 consistency measures. As far as I am concerned, the gentleman is not in maximum medical improvement so the only information going from that is that the gentleman did give a full effort, which means there is not in my opinion any inappropriate illness behavior in this current situation. I have reviewed his MRI in its entirety. He has a gross annular fissure at L4-L5, which is the region of where he is hurting. Unfortunately this MRI is 11 months old.

Recommendations:

I have told the gentleman that we have two options. If he would like to pursue possible surgical considerations, then I have told him I would recommend that we get a new MRI and get him into see me. The gentleman has failed routine and usual conservative measures over the last year. He has had a year's worth of pain. He has had a month's worth of active physical therapy and three ESI's. I have told him if he would like for us to retool a conservative treatment plan, we could do that also. After a lengthy discussion, the gentleman does want to proceed on with a new MRI. He is in a real quandary right now about where to go from here with his back given the fact he is only trained to do construction work. He likes his work. He wants to get back to doing it and he had actually switched jobs and continued to work throughout the year until the accident, which has really set him back. I told him we would get the MRI and evaluate it and then I can give him some better ideas of what I would recommend and where we go from here.

Dr. Blankenship also authored a letter regarding the claimant's work restrictions on January 3, 2018. Following is the body of that letter found at Claimant's Exhibit 1, Page 105:

To Whom It May Concern:

Please be advised that the above patient has been a regular patient of this office and has been treated at our office on Dec 11, 2017.

Patient can return to work with light duty restrictions of no lifting over 25 pounds, no twisting, bending or stooping.

If you require any information, please feel free to contact our office.

The claimant was employed by the respondent in the water department. The claimant was initially employed as a "water operator", checking and reading water meters. The claimant advanced in his employment with the respondent and was placed in charge of the "valve program." On direct examination the claimant described his job duties with the "valve program" as follows:

Q Okay. And from water operator, what was your next job with the city?

A I was in charge of locating in the valve program.

Q And describe a little bit about the job duties in the valve program.

A The valve program you go out -- and we had a map of the city's water system -- you go out and you replace the valve pads, which are pre-manufactured cement rings that weigh around 80 pounds. With the crack busted, we pull them off, dig them up, dig the valves up, bending, you know, I was crawling around. And we would have to dig them up and sometimes they would be two or three feet deep. Fix them, replace them.

Then we, you know, load up concrete bags, Quikrete, which weighs around 80 pounds. And we mix the mud up, the concrete up, and then we fix them and make them look real nice and pretty for the city.

Q Okay. Before December 29, 2016, did you have any problems or inability of doing that type of work?

A No, I didn't.

Q I guess that work, you routinely lifted 80-pound bags of concrete and 80-pound concrete rings?

A Yes, sir.

Q It involved mixing concrete?

A Yes. We had to -- we had to mix the concrete in a five-gallon bucket and sometimes, I mean, out in Centerton it is rural, so some of our valves would be inside of fences. We would have to climb the fence and get in there. We mix the concrete to put in between the collars of the valve -- or the valve collar and the valve pad to keep them from shifting and moving.

Q And when you were replacing these 80-pound concrete rings, what did you do with the ones that were broken and being replaced?

A We had to carry them, all the trash and materials back to the truck and haul it back to the shop and discard it in a trash dumpster.

Q So sometimes this work might be right on the road and other times it might be out in the middle of a pasture?

A That's right.

The claimant testified on direct examination that the respondent did not change his job duties during the time period in which he was to be working with restrictions. Following is a portion of the claimant's direct examination testimony:

Q And in Dr. Deimel's record of July 20, 2017, he says you told him you felt like they were trying to fire you at work. What did you mean by that?

A Because my supervisor kept saying: You need to pick up the pace at work. You need to produce more work. You are not getting as many valves done, you know, in the program. He just kept on me every day saying stuff like that: You need to pick up the pace. You need to pick up the pace.

Q And after the accident December 29 --

A Yes.

Q -- were you slower?

A Yes, I was.

Q Now, the FCE that you took, that is in Claimant's, Page 75, did you give full effort?

A I did give full effort.

Q Fifty-five out of 55 on consistency?

A Yes, sir.

Q And did it give you some permanent restrictions?

A Yes.

Q And was one of those no more than 40 pounds of occasional lifting?

A No more than 40 pounds of occasional lifting and I believe it was a 20-pound something or another.

Q And how much does the wrench weigh?

A Our valve wrench weighs 20 pounds.

Q And on Page 80, it looks like you have much difficulty lifting 50 pounds?

A Yes.

Q And much difficulty climbing?

A Yes.

Q Much difficulty stooping and bending?

A Yes, sir.

Q Okay. And those are all permanent?

A That's permanent.

Q Okay. And did they change your workload up at the city?

A No, they did not.

Q On August 17th, did you quit?

A Yes, I did.

Q Okay. Why?

A I sought easier work.

The claimant testified that he obtained new employment, but due to his compensable injury and unrelated circumstances, did not maintain that employment. The claimant has not performed any employment activities since December 11, 2017.

The respondent in this matter has introduced evidence of the claimant's issues with addiction. Testimony was given by the claimant and it appears the claimant has had addiction issues. Those issues appear to be recent, although the claimant denies

problems with addiction since 2010. However, on review of the medical records, I do not believe or find addiction issues to be affecting his medical diagnoses or treatment. The claimant has also had prior back complaints. The respondent introduced a medical record dated November 24, 2016 regarding back complaints from hauling wood or brush. It appears the claimant has recovered from those complaints as he was able to perform heavy labor for the respondent after his pre-compensable injury back complaints.

The claimant has asked the Commission to determine if the recommendations made by Dr. Blankenship in his December 11, 2017 report are reasonable and necessary medical treatment for his compensable low back injury. Upon review of the testimony and medical records submitted into evidence, I find the recommendations, including an MRI by Dr. Blankenship, to be reasonable and necessary medical treatment for the claimant's compensable low back injury.

The claimant has also asked the Commission to determine if he is entitled to temporary total disability benefits from December 11, 2017 to a date yet to be determined. The claimant remains in his healing period for an unscheduled back injury for which he has been placed on work restrictions by Dr. Blankenship of "no lifting over 25 lbs, no twisting, bending or stooping." The claimant is currently unemployed and has not been returned to work or offered work by the respondent in a position that meets his restrictions. Given the Arkansas Supreme Court's decision in *Tyson v. Narvaiz*, 2012 Ark. 118, the claimant is entitled to temporary total disability benefits beginning December 11, 2017 to a date yet to be determined.

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 31, 2018, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment to his low back, which include the recommendations of Dr. Blankenship in his December 11, 2017 medical report.

3. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from December 11, 2017 to a date yet to be determined.

4. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

The respondents shall pay for the reasonable and necessary medical treatment recommended by Dr. Blankenship for treatment of the claimant's compensable low back injury.

The respondent shall pay the claimant temporary total disability benefits from December 11, 2017 to a date yet to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE