BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E209797

RICHARD ANGELL,
EMPLOYEE CLAIMANT

COOPER TIRE & RUBBER CO.,
SELF-INSURED EMPLOYER RESPONDENT

OPINION FILED NOVEMBER 25, 2003

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE CAROLYN L. WHITEFIELD, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE WILLIAM G. BULLOCK, Attorney at Law, Texarkana, Texas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent appeals an Administrative Law Judge's opinion filed October 17, 2002. The Administrative Law Judge found that the respondent was in contempt of the Workers' Compensation Commission. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the Administrative Law Judge.

I. HISTORY

The parties stipulated that the claimant sustained "multiple injuries" on June 8, 1992. The respondent paid temporary total disability compensation through May 31, 1993. The parties stipulated that the claimant had reached the end of his healing period for the left leg injury, and

that the respondent paid a 23% impairment to the left lower extremity.

In an opinion filed February 9, 1996, an Administrative Law Judge found that the claimant was entitled to an independent medical evaluation by Dr. John L. Wilson. Dr. Wilson subsequently wrote:

> This gentleman was seen in our office on May 9, 1996, for an independent evaluation of the current status of injuries sustained on June 8, 1992. The patient relates that he was well until that time, at which time he was caught in a conveyor while gainfully employed by Cooper Tire and Rubber Co. He sustained injuries to both upper extremities, his back, and both knees....
>
> Examination reveals a morbidly obese gentleman that walks with a rather slow antalgic gait....Examination of his left knee reveals a well healed scar medially....Examination of the right knee reveals mild loss of extension, tenderness medially and laterally....X-ray examination of the back reveals mild degenerative disc disease at the L-4-5 and L-5 S-1 levels. There is no large disc. There is no impingement on the nerve roots by MRI. Plain films of the right knee are normal. Plain x-rays of his back reveal very early degenerative changes.
>
> This gentleman sustained by history a crush injury to both knees, injured his back and upper extremities. He's undergone a carpal tunnel release on the right. He is well as far as I can discern. He's had an arthroscopy of the left knee and this knee does not give him a great deal of problems. The problem is primarily in the right lower extremity and his back.
>
> FINAL DIAGNOSIS:
> 1. History of lumbosacral strain.
> 2. Mild degenerative disc disease, no evidence of sciatica or nerve root damage. I have no recommendations as far as his back.
> 3. Morbid obesity. This needs to be addressed by Mr. Angell.

> 4. By MRI, torn cartilage, medial meniscus, possible torn cartilage right lateral compartment, right knee.

Dr. Wilson recommended, “If he is able to show the trend of losing weight, it would be appropriate to do an arthroscopy of his right knee and address the intra-articular problem.”

Another Administrative Law Judge filed an opinion on October 29, 1997. The Administrative Law Judge found that the claimant’s physical problems involving his right leg and back were causally related to the June 8, 1992 compensable injury. The Administrative Law Judge found, in pertinent part:

> 8. Respondents are responsible for continued reasonably necessary medical and related treatment provided by Dr. William S. Bundrick as well as any legitimate referrals made by Dr. Bundrick.
> 9. Dr. Bundrick is recognized as claimant’s primary medical provider....
> 11. The nature and extent of claimant’s disability, as well as claimant’s entitlement to further indemnity benefits requires additional development of the medical evidence, and, is by necessity specifically reserved.

The Administrative Law Judge stated in the <u>Discussion</u> section of his October 1997 opinion:

> I find that claimant has shown, by a preponderance of the credible evidence, that there is a causal connection between the claimant’s leg and back complaints and the June 8, 1992, admitted injury. Accordingly, it is hereby determined that respondent, Cooper Tire and Rubber Company, should be held responsible for all past medical and related expenses, together with continued reasonable and necessary treatment as outlined by Dr. Wilson in his May 9, 1996, report. It must be

> noted that Dr. Wilson's final diagnosis of the back was a lumbosacral strain which has long since resolved and no recommendations for treatment were made as related to the back. It must further be noted that Dr. Wilson's recommendations concerning treatment for the right knee were for continued conservative treatment and to avoid surgery until and unless claimant overcomes his weight problem....
>
> I find that the original and primary treating physician, Dr. William S. Bundrick, is authorized to provide the additional treatment recommended by Dr. Wilson. Accordingly, respondents would be responsible for outstanding medical and related expenses from all authorized treating physicians, including, but not limited to the treatment by Dr. Bundrick, as well as continued reasonably necessary treatment provided by Dr. Bundrick and/or through his valid referrals.
>
> In a related matter, I specifically find that any treatment provided by Dr. Roshan Sharma is unauthorized, outside the chain of valid referrals, unreasonable, and unnecessary....Rather than conduct an exhaustive analysis of Dr. Sharma's testimony, suffice it to say that his medical opinion lacks credibility because it is inconsistent with the medical opinion as a whole, and, further, reflect (sic) genuine animosity against the within employer.

In his <u>Award</u>, the Administrative Law Judge directed the respondent "to pay outstanding medical and related expenses consistent with the foregoing Findings and Conclusions, and, respondent remains responsible for continued reasonably necessary medical and related treatment."

Neither party appealed the Administrative Law Judge's October 29, 1997 opinion.

The present Administrative Law Judge filed an opinion on May 19, 2000. The Administrative Law Judge found that

the respondent had willfully and intentionally failed to pay for treatment provided by Dr. Bundrick subsequent to February 10, 1998, so that "a thirty-six percent (36%) penalty is payable to the claimant on said incurred unpaid bills pursuant to Ark. Code Ann. §11-9-802(d) and (e)." The Administrative Law Judge found that the respondent had refused to comply with the October 29, 1997 order of the Administrative Law Judge, and that the respondent was in contempt of the Commission. The Administrative Law Judge ordered the respondent to pay a $10,000 fine.

The Full Commission affirmed, as modified, the Administrative Law Judge's decision in an opinion filed October 13, 2000. The Full Commission affirmed the Administrative Law Judge's finding that the statute of limitations did not bar additional compensation. We found that the respondent had willfully and intentionally failed to pay for medical treatment received by the claimant from Dr. Bundrick, so that "the respondent must pay a 36% penalty on incurred unpaid medical bills pursuant to Ark. Code Ann. §11-9-802(d) and (e)." We affirmed the finding that the respondent had refused to comply with the Administrative Law Judge's October 29, 1997 order, and that the respondent was in contempt of the Commission. "However," the Full Commission found, "we suspend and hold in abeyance payment of the fine imposed by the Administrative Law Judge,

contingent on the respondent’s compliance with past and prospective Commission orders in this matter. The Full Commission thus affirms, as modified, the decision of the Administrative Law Judge.”

The Court of Appeals affirmed the Commission in an opinion delivered October 24, 2001. Cooper Tire & Rubber Company v. Angell, 75 Ark. App. 325, 58 S.W.3d 396 (2001). The Court held that the statute of limitations was tolled “as a result of appellant’s refusal to provide treatment by Dr. Cavanaugh after appellee was referred to him, and treatments by Dr. Mitchell Young from May 5, 1999, though (sic) December 25, 1999.” The Court noted the respondent’s argument that the $10,000 fine was excessive and violated constitutional due process. However, “We do not reach the merits of appellant’s argument as the Commission suspended and held in abeyance the fine, conditioned on appellant’s future compliance with its past and prospective orders. A suspension of a punishment for contempt is in effect a complete remission. Warren v. Robinson, 288 Ark. 249, 704 S.W.2d 614 (1986). This renders the issue moot....We do not decide cases that are moot, or render advisory opinions, or answer academic questions.”

According to a pre-hearing order filed with the Commission on June 12, 2002, the Administrative Law Judge scheduled another hearing on the following issues:

(1) Contempt pursuant to Ark. Code Ann. §11-9-706;
(2) Enforcement of prior Commission orders and rulings;
(3) Penalty pursuant to Ark. Code Ann. §11-9-802(e); and
(4) Attorney's fees.

Another hearing was held before the Commission on July 19, 2002. The respondent called the claimant as a witness. The claimant testified that he could not recall being referred by Dr. Sharma to Dr. Otero, a psychologist. The claimant did recall Dr. Sharma referring him to Wadley Regional Medical Center for various diagnostic testing. The respondent's attorney examined the claimant:

> Q. Is it a fact that your contention in this claim is that what Cooper Tire & Rubber Company has failed or should have paid or is in contempt of the Commission for not paying is something to do with is in this paragraph 1 that I'm reading, which is reimburse Medicare for bills from Dr. Mitchell Young for the following dates: May 5, 1998, September 23, 1998; January 13, 1999; April 20, 1999; May 25, 1999; June 9, 1999; June 28, 1999; September 15, 1999; and October 25, 1999. Is that the correct dates?
>
> A. That's the correct dates there.
>
> Q. And those are what claimant is saying that Cooper Tire & Rubber Company is in contempt for failing to pay?
>
> A. I presume that is correct.

The claimant testified that he did not know what the May 5, 1998 treatment was for. The respondent went on:

> Q. With the other items, other dates of service mentioned in here, which begins with September 23 and I'll skip to the through (sic) the end and say the last one appears to be October 25, 1999, with regard to any of the dates of service that are

referenced in Mrs. Whitefield’s March 4, 2002 letter as being allegedly unpaid by Cooper Tire & Rubber Company and the subject of this contempt hearing, was there any documentation provided specifying the amount that Cooper Tire was supposed to pay with regard to any of those visits?

A. I would hope that there had been. I would think that there had been.

Q. Well, do you know specifically whether there was or not?

A. I didn’t work on it totally by myself. No, I don’t know.

Ricky Norton, manager of benefits and security for Cooper Tire, testified for the respondent:

Q. Have you ever seen an order by either Judge Greenbaum, Judge Blood, or the full Commission or the Court of Appeals specifically saying that Cooper Tire & Rubber Company is ordered to pay the billing of Dr. Rafael Otero?

A. No.

Q. With regard to the other items on page 1 of claimant’s March 4, 2002, letter, actually Mrs. Whitefield’s letter of March 4, 2002, there are a series of items, 2 through 8, that she contends are payable to Wadley Regional Medical Center in varying amounts. Have you researched those items to see whether those are payable or not?

A. Extensively. It’s been very difficult to get the required information to make a determination exactly what those billings were for. The claimant has not helped us out very much in providing information but what we have gleaned from previous submissions, requests from the provider, all of those dates of service were referred at the request of Dr. Roshan Sharma and therefore, once again, our interpretation of Judge Greenbaum’s order is that that was not payable.

Mr. Norton testified with regard to treatment from Dr. Mitchell Young:

> Q. Has Mr. Richard Angell or anyone on his behalf ever submitted to you any billing or invoice that would show the amount of money that Cooper Tire & Rubber Company was supposed to pay for instance the May 5, 1998 visit?
>
> A. I've never received any billing for any of these dates of service for reimbursement through worker's comp.
>
> Q. Based upon the information available to Cooper Tire & Rubber Company, is there any way to determine the amounts of money that would be payable if there was any payable?
>
> A. It was difficult, at best, and realistically, in preparing for this hearing we very liberally guessed at what Dr. Bundrick had ordered. He had mentioned in one of his dictations that it would be okay for Richard to receive cortisone shots in his knee by his local physician, his family physician in Texarkana, to prevent him from traveling back and forth to Shreveport. Based on that we went back and we desperately tried to find records. Unfortunately before Mr. Angell would give us the authorizations to release medical information, Dr. Young's office had closed and he had retired from practice so we were not able to get any records in that regard.
>
> Q. What did you do then, Mr. Norton, to try to resolve the controversy over these bills that don't have amounts that go with them?
>
> A. We went back into our group health electronic system and tried to match up dates of service that coordinated with these dates of service and we did find some that had been submitted through our group health plan and found a few that had dollar amounts.
>
> Q. And did you pay those?
>
> A. Yes.

Q. As soon as that information was able to be located, did you pay them promptly?

A. Yes....

Q. Since the last hearing, has Mr. Angell sought additional medical care?

A. Yes.

Q. Under the workers' comp program?

A. Yes.

Q. And has Cooper Tire & Rubber Company continued to take care of those things?

A. We have paid all of them.

Q. Has Mr. Angell's (sic) submitted any bill since the last court ruling that Cooper Tire & Rubber has not processed and paid?

A. No.

Q. Everything has been paid?

A. Correct.

Q. Have you intentionally tried to avoid any ruling of any Administrative Law Judge in this Commission in regard to Mr. Angell?

A. Never.

In the current opinion filed October 17, 2002, the Administrative Law Judge found, among other things:

11. The respondent has failed to comply with the prior rulings of the Arkansas Workers' Compensation Commission and the Arkansas Court of Appeals, in that respondent has failed to pay attorney's fees and medical bills, as directed in the October 29, 1997, final order of the Administrative Law Judge; respondent has failed to pay medical bills and attorney's fees and penalty on all the unpaid incurred bills per the May 19, 2000, Opinion and Order of the Administrative Law Judge, the October 13, 2000, opinion of the Full

Commission and the October 24, 2001, decision of the Arkansas Court of Appeals.

The Administrative Law Judge determined in his Award, "The respondent having been found in contempt of the October 13, 2000, prior ruling of the Arkansas Workers' Compensation Commission, pursuant to Ark. Code Ann. §11-9-706(b), is herein ordered to pay a fine in the amount of $10,000.00 to the Clerk of the Arkansas Workers' Compensation Commission, for deposit into the Commission's administrative account."

The respondent appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-706 provides:

> (b) If any person or party in proceedings before the commission disobeys or resists any lawful order or process, ... or refuses to comply with any final order of an Administrative Law Judge or the commission, or willfully refuses to pay an uncontroverted medical or related expense within forty-five (45) days after the respondent has received the statement, then the person or party, at the discretion of the Administrative Law Judge or the commission, may be found to be in contempt of the commission and may be subject to a fine not to exceed ten thousand dollars ($10,000).

1. Bills from Dr. Otero and Wadley Regional Medical Center

In the present matter, the claimant asserts that the respondent should be held in contempt for failing to pay bills from Dr. Otero and Wadley Regional Medical Center. The claimant asserts that these bills were submitted into the record at the time of the original 1997 hearing before

the Administrative Law Judge. The respondent has not paid these bills. The general rule is that before a person may be held in contempt for violating a court order, that order must be in definite terms as to the duties imposed on the person, and the command must be expressed rather than implied. Warren v. Robinson, 288 Ark. 249, 704 S.W.2d 614 (1986), citing Wood v. Goodson, Judge, 253 Ark. 196, 485 S.W.2d 213 (1972). The respondent argues that it was not ordered to pay for the bills from Dr. Otero and Wadley Regional, so that it cannot be held in contempt for not paying these bills. We agree with the respondent. A reasonable interpretation of the Administrative Law Judge's October 1997 opinion is that the bills from Dr. Otero and Wadley Regional were not reasonably necessary. The record shows that the bills were accrued as a result of referrals from Dr. Roshan Sharma. The Administrative Law Judge expressly found that Dr. Sharma's treatment and referrals were not reasonably necessary.

The claimant argues that since the Otero and Wadley medical bills were submitted of record in 1997, then the respondent is liable for these bills and should be held in contempt for failing to pay. Again, the general rule is that before a person can be held in contempt for violating a court order, the order must be in definite terms as to the duties thereby imposed, and the command must be express.

Taylor v. State, 76 Ark. App. 279, 64 S.W.3d 278 (2001). There was no express command in the present matter for the respondent to pay Dr. Otero and Wadley Regional. In fact, the record shows just the opposite - since Dr. Otero and Wadley Regional were referrals from Dr. Sharma, who the Commission (Administrative Law Judge) expressly determined was an unauthorized physician, the respondent was under an implicit directive *not* to pay these bills. The Full Commission reverses the Administrative Law Judge's finding that the respondent is in contempt of the Commission.

2. Bills for treatment and referrals from Dr. Bundrick

Clearly, the Commission has expressly ordered the respondent to pay for medical treatment provided by Dr. Bundrick and his referrals. The respondents were slow to comply with this order from the Commission, and they were subsequently penalized and held in contempt (the contempt finding was suspended.) Based on our review of the record, the respondent is now in compliance with the orders of the Commission, and the respondent continues to provide reasonably necessary medical treatment in connection with the claimant's 1992 injury. The Administrative Law Judge held the respondent in contempt for failing to immediately and in full provide blanket payment for any and all medical statements submitted to it by the claimant. The respondent notes that many of the documents provided by the claimant

contain no date of service, type of service, or even an identity of the provider. A respondent's delay of payment while conducting a reasonable attempt to investigate the extent of the claimant's disability, does not even necessarily constitute controversion, much less contempt. Barnard v. TTC Illinois, Workers' Compensation Commission E912333 (Jan. 30, 2002). See also, Walter v. Southwestern Bell, Tel. Co., 17 Ark. App. 43, 702 S.W.2d 822 (1986); Turner v. Trade Winds Inn, 267 Ark. 861, 592 S.W.2d 451 (Ark. App. 1979).

The respondent contends that it has not acted in bad faith, and that it has paid everything the Commission ordered it to pay. The respondent has not paid for items such as a bill for an "open air MRI" with no accompanying documentation showing what the procedure was for; the record even shows that the medical provider subsequently opted not to charge payment for this service. Based on our review of the voluminous record before us, the Full Commission is unable to find any contemptuous behavior on the respondent's part. The claimant at hearing was unsure which medical bills had allegedly not been paid. Mr. Norton on the other hand credibly testified that the respondent paid everything it knew had been ordered or referred by Dr. Bundrick, and which bills had actually been submitted by the claimant.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove the respondent was in contempt of the Commission. We therefore reverse the Administrative Law Judge's finding of contempt and the imposition of a $10,000 fine pursuant to Ark. Code Ann. §11-9-706. We reiterate that the respondent must continue to promptly provide reasonably necessary medical treatment pursuant to the Administrative Law Judge's October 29, 1997 opinion, including treatment and referrals from Dr. Bundrick. The respondent is not liable for any treatment from Dr. Sharma, nor is the respondent responsible for any treatment from Dr. Otero or Wadley Regional Medical Center. The claim for contempt is otherwise denied and dismissed.

IT IS SO ORDERED.

____
OLAN W. REEVES, Chairman

____
KAREN H. McKINNEY, Commissioner

Special Commissioner Olsen dissents.

DISSENTING OPINION

I must respectfully dissent from the opinion of the majority finding that the employer is not in contempt of the Commission. I believe the employer's behavior in this case is egregious and contemptible. The employer's cavalier attitude toward its obligation to promptly and timely pay appropriate benefits to legitimately injured workers is

irresponsible and offensive. The majority's leniency in this case is sorely misplaced.

It is particularly disturbing that the employer repeatedly argues that it has never willfully and intentionally refused to pay benefits in a timely manner or comply with awards made by the Commission. I simply point out that in May 2000, the Commission found that the employer had, in fact, willfully and intentionally failed to pay benefits awarded in an October 1997 opinion and was in contempt of the Commission. In other words, the employer refused without justification to comply with prior orders of the Commission. The Commission's decision to suspend the imposition of the fine for contempt was conditioned on respondent "promptly" paying those benefits. It took the employer over eight months (the summer of 2002) to pay the accrued benefits after a final decision was rendered by the Arkansas Court of Appeals. The order to "promptly" pay benefits was mandatory and the only way for the employer to avoid sanctions for contempt was to do what the Commission ordered it to do. The employer cannot avoid this responsibility by trying to shift the blame to claimant. Implicit in the May 2000 finding that the employer willfully and intentionally refused and failed to pay benefits is the finding that there were medical bills properly and timely submitted to the employer for payment. The employer should

not be allowed to escape sanctions by sitting on its hands and blaming claimant.

Granted, it seems that the employer had paid accrued benefits as of the time of the last hearing. However, that is not good enough. The employer has willfully and intentionally refused to pay benefits and has willfully and intentionally refused to promptly comply with the orders of this Commission. Accordingly, this employer is in contempt of the Commission and should be fined.

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KENNETH A. OLSEN, Special Commissioner