

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306205

CARL HALE, EMPLOYEE	CLAIMANT
GATOR FREIGHTWAYS, INC., EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 17, 2004

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

Claimant represented by HONORABLE DONALD S. RYAN, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE CAROL L. WORLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
order and opinion filed February 6, 2004. The
administrative law judge found that the claimant proved he
remained within his healing period and was unable to earn
wages from September 11, 2003 through November 18, 2003.
After reviewing the entire record *de novo*, the Full
Commission affirms the opinion of the administrative law
judge.

I. HISTORY

The parties stipulated that there was a specific-incident injury on May 12, 2003. The claimant testified that while pulling a transmission, "it slammed to the ground, and I smacked my head on the side of the frame." The claimant testified that a treating surgeon subsequently "drilled holes in both sides of my head - because there was a vast pocket of blood on my brain - and drained all the blood off. And I had major headaches with it." The claimant testified that he still had a "knot" on top of his head.

Dr. Reginald J. Rutherford noted on August 22, 2003:

Mr. Hale is seen in clinical follow up. His lab work and spinal fluid proved abnormal....The abnormalities on CSF indicate that the changes noted on MRI imaging pertaining to white matter disease is an immunologically active process. Multiple sclerosis is considered most probable. Lyme disease is possible but less likely. Serology for Lyme disease will be helpful referable to differentiation. Mr. Hale will require follow up MRI imaging of the brain for comparative purposes. This will further aid in evaluation of possible multiple sclerosis. There is nothing specific to do at this point in advance of additional diagnostic information. Mr. Hale will be contacted with the results of his Lyme disease titer when available. Follow up MRI imaging will be required in two to three months. Mr. Hale will be contacted with further instructions when his outstanding blood work is received.

Dr. Reza Shahim noted on September 2, 2003:

Mr. Hale was involved in a work related injury resulting in bilateral subdural hematomas. He is status post drainage of subdural hematomas. We obtained an MRI of his brain and I reviewed that today. He has multifocal signal changes in the deep white matter. There is minimal subdural fluid collection on the right side of the brain. I don't have a spinal fluid report to assess, which he had recently as a workup for multiple sclerosis.

DECISION MAKING: In the face of recent head trauma with subdural hematomas, I think he would be a difficult clinical diagnosis to make based on the MRI finding of multifocal white matter disease. Certainly, he could have multiple sclerosis and I would leave that diagnosis to the judgment of our neurology colleague, Dr. Rutherford. My recommendation for him would be to return to light duty in a week, with no lifting greater than 30 lbs., and no twisting or bending. At this point, I would like to release him back to his primary care physician, Dr. Zelk. Dr. Zelk can decide when over the next month or 2 he is able to return to regular duty. As a general rule, patients that are involved in a brain injury should avoid activities that could cause a second brain injury for at least a 6 months period after the closed head injury. So, I have recommended to him to avoid riding motorcycles or being involved in contact sports. In the next 2-3 months he should be able to resume his full work duties. I will be glad to re-evaluate him if he has new neurological symptoms.

Dr. Rutherford wrote to a registered nurse with Crawford & Company on September 4, 2003:

This letter is in response to your request pertaining to whether or not the changes noted on MRI imaging pertaining to white matter disease and the abnormalities identified on spinal fluid analysis are causally related to Mr. Hale's industrial head injury. The above abnormalities

are independent of this incident. This most likely represents multiple sclerosis. This is not a confirmed diagnosis at present and will be subject to further follow up and possible treatment but this is independent of Mr. Hale's workman's compensation claim.

The claimant testified that he eventually returned to work at light duty. The claimant also testified, however:

Q. What happened on September 11, 2003, which I take it to be the day that you were asked to leave, or whatever happened?

A. They relieved me of my duties - of all light duty work....They said they was not going to provide me with light-duty work because there was too many people hurt in the company. They were no longer able to do that.

Dr. Rutherford noted on October 27, 2003:

Mr. Hale's outstanding lab work has been received and reviewed. Outstanding lab work was Lyme titer which is normal. At this juncture follow up MRI study of the brain with contrast enhancement is recommended. Mr. Hale advised that he was not in a position to pursue this independently. This does remain an open recommendation.

I have received a letter from Mr. Ryan pertaining to Mr. Hale's workplace restrictions. All restrictions to date have been issued by Dr. Shahim. It is recommended that Dr. Shahim be contacted for further input pertaining to his prior recommendations. At this juncture it is not possible to proceed further referable to the diagnosis of possible multiple sclerosis. Mr. Hale will require a follow up appointment if his MRI study of the brain with contrast enhancement is repeated.

Finally, Dr. Shahim reported on November 18, 2003:

Mr. Hale has had a significant brain injury with subdural hematoma formation. His MRI does show diffuse white matter changes. Certainly, a portion of these white matter changes are related to the brain injury, but the question of multiple sclerosis was raised and it is going to be very difficult to answer that after a significant brain injury. He has had an EEG which was essentially normal in July of this year. I am going to release him to full duty. He is at MMI currently. I cannot give him an impairment rating until he has a neuropsychiatric evaluation to detect any underlying significant psychiatric or memory problems. My recommendation would be for him to obtain an MRI of his brain in 4-6 months for followup of these lesions which could represent a diffuse axonal injury. Ultimately, he may require further neurological workup of these lesions.

Mr. Hale claimed entitlement to additional worker's compensation, and a pre-hearing order was filed on December 2, 2003. The claimant contended that he was entitled to additional temporary total disability compensation from September 11, 2003 through November 18, 2003. The respondents contended that the claimant was not entitled to additional temporary total disability. The respondents contended that the claimant's need for treatment was for "an unrelated health problem that was diagnosed by Dr. Rutherford." The administrative law judge found, "The claimant has proven by a preponderance of the evidence that he remained in his healing period because of his compensable injury and unable to earn wages from September 11, 2003

through November 18, 2003." The respondents appeal to the Full Commission.

II. ADJUDICATION

An injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and is totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The administrative law judge in the present matter found that the claimant proved he was entitled to temporary total disability compensation from September 11, 2003 through November 18, 2003. The Full Commission affirms this finding. The parties stipulated that there was a compensable injury on May 12, 2003. The claimant credibly testified that he sustained a traumatic head injury on that date. On September 2, 2003, Dr. Shahim reported that the claimant had sustained "bilateral subdural hematomas" as a result of the compensable injury. Dr. Shahim recommended that the claimant return to work at light duty. The claimant testified that he initially returned to work performing light duty, but that the respondents informed him on September 11, 2003 that they would no longer provide him with light-duty work.

The respondents argue that if the claimant was unable to work during the time he is seeking temporary total disability compensation, then the claimant's incapacity to earn wages was because of multiple sclerosis, not the compensable injury. The Full Commission recognizes that Dr. Rutherford first considered what he termed a "probability" of multiple sclerosis after diagnostic testing in August 2003. We again note, however, that Dr. Shahim reported that the claimant had sustained "bilateral subdural hematomas" as a result of the compensable injury. Dr. Shahim noted that MRI imaging of the claimant showed "multifocal signal changes in the deep white matter." Dr. Shahim placed the claimant on light work duty, and the claimant credibly testified that the respondent-employer provided such duty until September 11, 2003.

The Full Commission recognizes Dr. Shahim's statement that the claimant "could have multiple sclerosis and I would leave that diagnosis to the judgment of Dr. Rutherford." Dr. Rutherford subsequently opined that the abnormalities seen on MRI were "independent of this incident. This most likely represents multiple sclerosis. This is not a confirmed diagnosis at present and will be subject to further follow up and possible treatment but this is

independent of Mr. Hale's workman's compensation claim." However, we also note Dr. Shahim's November 18, 2003 report, "His MRI does show diffuse white matter changes. Certainly, *a portion of these white matter changes are related to the brain injury*, but the question of multiple sclerosis was raised and it is going to be very difficult to answer that after a significant brain injury." The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999). In the present matter, the Full Commission places significant weight on Dr. Shahim's expert opinion that at least a portion of the white matter changes seen on MRI were related to the claimant's compensable brain injury. Even if Dr. Rutherford was correct in diagnosing multiple sclerosis, such a diagnosis does not alter the significant weight the Commission places on Dr. Shahim's causation opinion. We find that the claimant proved he was within his healing period and totally incapacitated to earn wages from September 11, 2003 through November 18, 2003, as a result of the claimant's compensable injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he remained

within his healing period and was totally incapacitated to earn wages, as a result of his compensable injury, from September 11, 2003 through November 18, 2003. We therefore affirm the administrative law judge's award of temporary total disability compensation from September 11, 2003 through November 18, 2003. The claimant's attorney is entitled to fees on the claimant's indemnity benefits, pursuant to Ark. Code Ann. §11-9-715(a)(2)(B) (Repl. 2002). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.