

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407748

WESLEY T. EDDLEMON, EMPLOYEE	CLAIMANT
ADVOCAT DIVERSICARE, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 5, 2005

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

Claimant represented by the HONORABLE DONALD C. PULLEN,
Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE MELISSA ROSS
CRINER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals from an opinion filed by the
administrative law judge on May 13, 2005. The
administrative law judge found, "The claimant has proven by
a preponderance of the evidence that he sustained a
compensable specific incident injury on June 21, 2004. The
claimant has proven by a preponderance of the evidence that
he remained in his healing period and was totally unable to
earn wages from July 14, 2004 through September 8, 2004 and

from November 3, 2004 through February 7, 2005." After reviewing the entire record *de novo*, the Full Commission affirms the decision of the administrative law judge. We also find that the respondent is liable for all reasonable and necessary medical treatment that the claimant has pursued for his back injury.

I. HISTORY

The claimant, age 44 (10-26-60), had worked for the respondent approximately four years performing maintenance-related job duties at its Garland Nursing and Rehab location, which is part of Diversicare. His most recent job was that of maintenance director wherein he was required to troubleshoot for all of the homes in Arkansas. The claimant maintains that on June 21, 2004, he injured his back while performing maintenance-related job duties for the respondent at Garland Nursing and Rehab. According to the claimant, while shoveling rock, he twisted wrong or just picked up too big a load, which caused his back to pop, thereby causing him to buckle. A coworker, Tony Morris, was walking by when this happened. He asked what was wrong and the claimant told him. Mr. Morris instructed the claimant to go in and tell Ms. Gilmore, the administrator, about his injury.

According to the claimant, this incident happened between 8:00 a.m. and 9:00 a.m.

Shortly thereafter, the claimant went into Ms. Gilmore's office and told her he had injured his back and was unable to complete the job because of this. Thereafter, the claimant went to his office and did some paperwork for a couple of hours, but was very uncomfortable. Therefore, the claimant went back to Ms. Gilmore's office and told her he needed to go home because his back was hurting.

The claimant first sought treatment for his injury on June 30, 2004 at the emergency room of St. Joseph's Mercy Health Center. It is noted that the claimant gave a history of chronic back problems and prior surgery in 1997; and it also noted that the claimant presented with an exacerbation of chronic back pain that had been present during the last four days. The claimant was assessed as having, "acute on chronic lower back pain," which was treated with pain medication. The claimant was encouraged to follow-up with his primary care physician, as he was discharged home.

Pursuant to orders from Dr. Ferdinand Roda, an MRI of the lumbar was taken on July 8, 2004, with revealed, "central HNP at L5-S1."

The claimant was seen on July 13, 2004, by Dr. Roda for follow-up care of his back pain. Dr. Roda recorded a history of the claimant having injured his back at work while shoveling rock and scraping floor tile.

On July 23, 2004, the claimant underwent, "lumbar laminotomy, medial fasciectomy, and foraminotomy with discectomy at L4-5 and L5-S1 right," which was performed by Dr. John Robert Pace. On August 2, 2004, Dr. Pace reported that the claimant continued under his care. As a result, he directed the claimant to remain off work until he could be re-evaluated on August 24, 2004.

On August 30, 2004, Dr. Pace wrote:

Please be advised that Mr. Eddlemon underwent surgery on July 23, 2004 for a symptomatic disc herniation at L,5 S,1 and L4,5. He had previous disc herniation at L4,5 and had recurrent symptoms due to recurrent disc herniation and also had exacerbation of the previously protruding disc at L,5S,1. This time it was herniated and required a discectomy to decompress the S,1 nerve root with surgery.

I believe that Mr. Eddlemon's disc herniation at L,5 S1 and the recurrent disc herniation at L4,5 were a result of his on the job injury June 21, 2004 within a reasonable degree of medical certainty.

Dr. Roda reported in a letter dated August 30, 2004, that the claimant had been a patient of his since March

1998. He further reported that the claimant had a prior work-related injury in February 1999, which required lumbar discectomy at L4, L5 with removal of foraminal fragment. According to Dr. Roda, the claimant had no further complaints of pain, numbness, or sciatica except for occasional muscle spasms and low back pains which were treated with steroids, muscle relaxant and physical therapy. He also reported that over the last two years the claimant had done extremely well until the beginning of July 2004, when he reinjured his back at work. Dr. Roda concluded his letter by stating, "We have known since having MRI of lumbosacral spine in February 1999 that he has degenerative disc from L3-4 through L5-S1. I believe that he had a work-related injury of L4-5 and L5-S1."

On August 31, 2004, Dr. Pace reported that he was releasing the claimant to return to work on September 8, 2004, with limitations of no lifting anything over 40 pounds and no repetitive bending or stooping.

The claimant returned to work on September 17, 2004 and worked until October 26, 2004. On October 29, 2004, the claimant was seen at the emergency room of National Park Medical Center (NPMC) due to complaints of left side pain,

which radiated to left groin, and he had difficulty urinating. An MRI at that time showed multilevel disc bulging in L3-L4, L4-5, L5-S1, but there was no nerve root compression or spinal stenosis.

The claimant presented again to the emergency room of NPMC on November 3, 2004, with complaints of intractable back and left groin pain that had a duration of two weeks. As a result, the claimant was admitted to the hospital for pain control. He was assessed as having back, groin, and left thigh pain, and status post lumbar laminectomy in July 2004 and February 1999. While hospitalized at NPMC, the claimant underwent several diagnostic testings and a successful epidural steroid injection. The claimant was also treated conservatively with physical therapy, narcotics, and muscle relaxant, but his condition continued to worsen. Therefore, it was decided to proceed with the lumbar laminectomy, for evaluation of an epidural hematoma at L3-4 left. This procedure was performed by Dr. Pace on November 15, 2004. Postoperatively the claimant's condition improved, and on November 16, 2004, the claimant was discharged home in stable condition.

Subsequently, on December 16, 2004, Dr. Roda referred the claimant for physical therapy treatment, which was for a duration of six weeks. Dr. Roda reported in a letter dated February 3, 2005 that the claimant was released to return to work February 7, 2005, with no restrictions.

A hearing was held in this matter on April 15, 2005. During the hearing, the claimant gave testimony. The claimant testified that prior to this claim, he had never filed a workers' compensation claim with the respondent. However, the claimant admitted to having filed two work-related claims while working for Lakewood Nursing Home. The claimant testified that he filed his first claim in '78 due to his left eye being put out, and he filed the second claim in '99 due to a herniated disc, which resulted in back surgery being performed by Dr. Gocio. According to the claimant, after a period of convalescence from his surgery, he returned to work at Lakewood performing the same maintenance-type job duties. The claimant testified that after his surgery, he saw Dr. Roda maybe once a year for muscle tightness and a muscle relaxer to loosen the muscles of his back up. However, he denied being on any medication at the time of his injury in June of '04.

The claimant admitted he did not see a doctor or have any type of medical care until approximately 10 days after his injury. According to the claimant, during this period of time, he attempted to make an appointment with Dr. Roda, but was unable to do so because he was on vacation that week. The claimant further testified that although Dr. Stecker was filling in for Dr. Roda, he did wish to see Dr. Stecker. Therefore, he made an the appointment with Dr. Roda. However, the claimant's pain worsened; as a result, a couple of days later, he sought treatment from the emergency room of St. Joseph's Mercy Health Center. According to the claimant, he was later examined by Dr. Roda, who put him in the hospital for pain management. The claimant testified that he eventually underwent surgery with Dr. Pace on July 23, 2004. According to the claimant, he felt stress and pressured about going back to work; therefore, he was released to return to work on September 17, 2004. The claimant testified he returned to his old routine without any limitations from his doctor. The claimant testified he did well for about three weeks and after that he started experiencing pain in his buttocks. According to the claimant, on October 26, 2004, he pinched a nerve and at

that point he could not walk, and had to have this repaired by way of surgery. The claimant further testified that he suffered an epidural hematoma, which also required surgery. According to the claimant, he also underwent physical therapy treatment and regime of pain medications. After his last surgery, the claimant testified that he was released to return to work on February 7, 2005, without any restrictions. According to the claimant, he returned to work at Garland performing his same duties as before. However, the claimant testified that on the 1st of April, he resigned his job because he was unable to perform his job duties. The claimant testified that he has applied for and been approved for Social Security Disability benefits. The claimant testified that currently he has problems with his low back, as he has numbness in his left leg and is unable to do a lot of bending and stooping without his muscles knotting up.

On cross-examination, the claimant denied having told anyone at Garland that he hurt his back at home as opposed to at work.

Troy Morris, who previously worked for the respondent as director of nursing also gave testimony during the

hearing. Mr. Morris testified that he now works as the administrative/executive director for Beverly Health Care. According to Mr. Morris, he left employment with the respondent strictly for advancement. Mr. Morris testified:

Q. And just relate to us what you recall that happened that day.

A. What I recall is that he was out back shoveling some rock. He had leaned over - stooped over - his shovel, kind of grimacing. And I asked Wesley what was wrong. Wesley at that time asked me if I heard it pop, and I said, "No, I didn't." But he said his back had popped and was hurting him pretty good.

Q. And then what happened?

A. At that time I told him, you know, that he needed to go let Barbara Gilmore know because you're supposed to support [sic] it to your supervisor and that would be his immediate supervisor. And from there he went and reported it to Barbara Gilmore.

Q. Did you overhear any conversation between Ms. Gilmore and Wesley?

A. In fact, I was in Barbara's office. She and I were having a conversation about issues that were going on in the building. And Wesley come into the room at that time, and he was standing over by her desk. And he had mentioned to her that he had hurt his back.

Barbara Gilmore, the administrator for the respondent, testified during the hearing. Ms. Gilmore testified that she did not recall the claimant telling her on June 21, 2004

that he had hurt his back. According to Ms. Gilmore, the claimant did not report a work-related injury to her until July 15, 2004, at which point, she completed the proper paperwork. Ms. Gilmore testified that she had a good working relationship with the claimant, and she also stated that he had performed his work to her satisfaction. Ms. Gilmore testified that although after June 21, 2004, the claimant or his wife called in several days to advise that he would not be coming to work because his back was hurting, she never knew the cause of his back problems, nor did she ask. Ms. Gilmore also testified that she recalled the claimant telling her to have Kelly come pick up the mule, but she could not recall that conversation as far as him saying he could not finish the job.

Darlene Hilton, the Director of Nurses at the respondent's Pines Nursing and Rehab in Hot Springs, gave testimony during the hearing. Ms. Hilton testified that she knows the claimant on a professional level, as he worked as a maintenance man at the respondent's Garland Nursing and Rehab facility, which is next door to their facility. According to Ms. Hilton, she would occasionally see the claimant when he would come up to their building to speak

with her maintenance man, Gary. She testified that on one occasion, she noticed that the claimant walking "a little bit oddly and he looked like he was in pain." According to Mr. Hilton, she asked the claimant what had happened to him and he told her he had hurt his back "at home," pushing or pulling, but he did not remember exactly. Although Ms. Hilton did not recall the exact date of this conversation, she recalled that it had occurred during the third week of June. She also testified that they had talked about Dr. Roda and him being on vacation and of Dr. Stecker's refusal to give the claimant an injection, which had previously helped with the pain. According to Ms. Hilton, she specifically recalled this conversation having taken place during the third week of June because Dr. Roda is their medical director and her physician, and he was in fact on vacation that week.

A Prehearing Conference was held in this claim on January 26, 2005, and as a result, a Prehearing Order was entered in the claim on that date. The following stipulations were submitted by the parties and accepted by the administrative law judge:

- 1). There was an employer-employee relationship on June 21, 2004.
- 2). The compensation rates will be agreed to before the hearing. At the hearing, the parties agreed that the weekly compensation rates are \$345.00 for temporary total disability (TTD) benefits and \$259.00 for permanent partial disability (PPD) benefits.

By agreement of the parties the issues to be litigated were limited to the following:

- 1). Compensability of a June 21, 2004, specific incident injury.
- 2). Entitlement to medical benefits.
- 3). The claimant'S entitlement to TTD benefits from June 28, 2004, through July 5, 2004; July 8, 2004 through September 17, 2004; and again from October 26, 2004 through February 8, 2005.
- 4). Entitlement to attorney's fees.

The claimant contended that he sustained a compensable incident injury on June 21, 2004 and is entitled to medical benefits. The claimant also contended that he is entitled to temporary total disability benefits from June 28, 2004 through July 5, 2004, from July 8, 2004 through September 17, 2004, and from October 26, 2004 through February 8, 2005, and attorney's fees.

In contrast, the respondent contended that there was no specific incident in the course and scope of the employment.

Respondents contended that the claimant had a pre-existing condition from which the current problem stems and there are no objective findings of a new injury. Respondents also contended there was no compensable gradual onset injury. Respondents further assert the notice defense and contend the first notice was July 15, 2004. The claim has been controverted.

After a hearing before the Commission, the administrative law judge found, that "The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 21, 2004. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages from July 14, 2004 through September 8, 2004 and from November 3, 2004 through February 7, 2005."

The respondent appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

The claimant contends that he sustained a compensable specific incident injury to his back on June 21, 2004, while performing job duties for the respondent. Ark. Code Ann. §11-9-102(4) (A) defines compensable injury as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E) (i).

The administrative law judge found that the instant claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 21, 2004. The Full Commission affirms this finding. The claimant credibly testified that on the morning of June 21, 2004, while shoveling gravel, he heard his back "pop," which caused him to buckle. According to the claimant, he either twisted wrong or just picked up too big a load. The Full Commission finds that the claimant gave a credible account of the incident and of his prompt reporting of the matter to his supervisor Ms. Gilmore; although she denies any

knowledge of the injury until July 15, 2004. However, as pointed out by the administrative law judge, we find it is quite puzzling that although the claimant and his wife called in several days after June 21, 2004 to report he would be absent due to his back hurting, she never asked the claimant or his wife what the cause of his back problem might be. We find that the claimant gave a credible account of having reported the incident to Ms. Gilmore on June 21, 2004, which was corroborated by Mr. Morris, who testified he was in Ms. Gilmore's office when the claimant reported this incident. We find that the claimant's account of the incident is corroborated by the medicals and Mr. Morris, who credibly testified that he observed the claimant leaned over/stooped over his shovel, kind of grimacing on the day of the incident. While we realize that Ms. Hilton testified that the claimant told her he hurt his back at home, the claimant denies having told anyone at Garland that he hurt his back at home, or having injured his back at home. In addition to this, both Drs. Roda and Pace have essentially opined that the claimant's current back problems and need for surgery resulted from his work-related injury, the Full Commission attaches significant to these two opinions since

their clinical impression of the claimant's back injury is consistent with his report of the incident, and considering that they are the treating physicians and there being no medical opinions to the contrary. Moreover, we think it should be noted that although the claimant had prior back problems, which included a protruded disc at L5-S1, a herniated disc at L4-5 (which was repaired in 1999), and degenerative disc from L3-4 through L5-S1, his pain and related symptoms were not of a debilitating nature until after the June 21, 2004 incident, which exacerbated these preexisting conditions, as is evidenced by subsequent objective medical findings of a herniated disc at L5-S1 and a recurrent disc herniation at L4-L5. The Full Commission affirms the administrative law judge's finding that the claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 21, 2004.

B. Medical treatment

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508 (a). The claimant

bears the burden of proving that he is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

The administrative law judge found in the present matter, "Respondents are liable for all reasonable and necessary medical treatment the claimant has pursued for treatment of his back." The Full Commission affirms this finding. We find that the claimant proved by a preponderance of the evidence that all the medical treatment of record pertaining to his low back injury was reasonably necessary in connection with his compensable injury, pursuant to Ark. Code § 11-9-508 (a).

C. Temporary total disability

An injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and 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 found in the present matter that the claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages from July 14, 2004 through September 8, 2004 and from November 3, 2004 through February 7, 2005." Here, we find that the preponderance of the evidence shows that the claimant remained totally incapacitated from earning wages from July 14, 2004, the date he was hospitalized for pain management until September 8, 2004, the date that Dr. Pace released him to return to work with restrictions. We further find that the administrative law judge was correct in finding that the claimant thereafter again became totally incapacitated from earning wages on November 3, 2004, when he was hospitalized for pain management, through February 7, 2005, the date that Dr. Pace released him to work without any restrictions.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission affirms all of the findings of the administrative law judge. We find that the claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury on June 21, 2004.

Respondent is liable for all reasonable and necessary medical the claimant has pursued for his back injury. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages from July 14, 2004 through September 8, 2004 and from November 3, 2004 through February 7, 2005.

The claimant's attorney is entitled to maximum fees for legal services as provided by Ark. Code § 11-9-715 (Repl. 2002).

For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500.00), pursuant to Ark. Code Ann. §11-9-715 (Repl. 2002).

_____ IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.