

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304297

JOSE RAYA, EMPLOYEE	CLAIMANT
TURNER INDUSTRIES, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO.;	
AIG CLAIM SERVICE (TPA), CARRIER	RESPONDENT

OPINION FILED AUGUST 30, 2005

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

Claimant represented by HONORABLE STEVEN R. McNEELY, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed October 27, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. Claimant has failed to meet his burden of proving entitlement to additional benefits.
2. Respondents are entitled to a credit for overpayment of temporary total disability benefits for sixteen and one-half weeks, totaling \$8,294.00.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is affirming and adopting an Administrative Law Judge's decision to deny the claimant temporary total disability benefits. Because I believe this decision was in error, I respectfully dissent from this decision.

The claimant appears to be requesting additional TTD benefits from September 5, 2003 through April 15, 2004. The respondent controverted this claim but had asserted that, if any TTD benefits were awarded, they would be entitled to a credit for an overpayment and for any unemployment benefits the claimant may have received. The Judge ruled in the respondent's favor and held that the claimant had not established his entitlement to any temporary total disability benefits.

The ALJ did not state a clear reason as to why she was denying the claimant additional TTD benefits. She noted in her opinion that the claimant had seen several doctors, one of which, Dr. Edward Saer, a Little Rock orthopedist, had released the claimant to return to work on May 24, 2003.

She also noted that the claimant had apparently stated in a deposition that his treatment from Dr. Mocek had not improved his condition. She then held that the claimant had not established his entitlement to any additional medical or disability benefits. My review of the record convinces me the Judge did not correctly assess the evidence and should not have denied this claim.

The claimant suffered an injury to his lower back in the late 1980's and underwent surgical correction (apparently a lumbar fusion at L5-S1) in 1991. Before and after that surgery, the claimant had been engaged in manual labor jobs primarily involving welding and construction. At the time of his admittedly compensable injury, he was working for the respondent's construction company.

After sustaining the present injury, the claimant was initially treated by Dr. Lester Alexander, a general practitioner in Pine Bluff, Arkansas. Dr. Alexander directed the claimant to undergo an MRI scan and also later referred the claimant to Dr. Saer for additional treatment and evaluation. Dr. Saer also had the claimant undergo additional diagnostic testing of his lumbar spine in the

form of additional MRI and CT scans with contrast. In summary, Dr. Saer and later Dr. Anthony Russell, a Little Rock neurosurgeon, noted the claimant had disc bulges at L2-L3 and L3-L4 and that evidence of a lumbar fusion at L5-S1 was also apparent. Neither doctor thought the claimant was a candidate for surgery. Eventually, Dr. Saer referred the claimant to Dr. Safman for epidural steroid injections.

Dr. Safman performed a series of these injections beginning in March 2003 and continuing to May 14, 2003. In a medical report of that date, Dr. Safman stated that he did not have any further treatments he could provide the claimant and further opined that the claimant had no permanent disability as a result of his injury. Shortly thereafter, Dr. Saer authored a brief handwritten note indicating the claimant was released to return to work on May 24, 2003.

The claimant testified that he continued to suffer pain in his back and legs following his release and treatment by Drs. Saer and Safman. In order to obtain some relief from his condition, he sought treatment from Dr. Tracy Phillips who was his personal physician. Dr. Phillips apparently saw the claimant on May 14, 2003 and directed

that he remain off work. He also referred the claimant to Dr. Christopher Mocek for pain management treatment.

Dr. Mocek performed a number of treatment modalities on the claimant. Most notably, Dr. Mocek performed an RACZ procedure on the claimant in the late summer or fall of 2003 (this procedure apparently used a catheter to remove adhesive tissues in and around the claimant's L5 nerve root).

By the time of the hearing, the claimant testified that he had substantially improved as a result of his treatment. In fact, the claimant testified that he had returned to work as a welder in April 2004. During cross examination, respondent's attorney noted that in a prior deposition the claimant had indicated that he was no better than he had before Dr. Mocek's procedure. However, the claimant pointed out that the deposition had been in February 2004 and, at that time, his condition had not substantially changed. However, by the time of the hearing, which was in July 2004, his condition had dramatically improved.

I believe the medical record establishes the claimant was still within his healing period and still under

active medical treatment on and after May 2003. While there may be some dispute over whether Dr. Phillips and Dr. Mocek were authorized physicians, a lack of authorization does not effect the weight or credibility which should be given to their medical opinions. Dr. Phillips was of the opinion that the claimant was disabled from his injury and he referred the claimant to Dr. Mocek for more specialized treatment. Dr. Mocek began treating the claimant with medication, therapy, and the RACZ procedure. These treatments were successful in their aim of restoring the claimant to his former functionality as evidenced by his return to heavy manual labor work in April 2004. On that basis, I believe the claimant has clearly established his entitlement to additional TTD benefits.

I believe the record establishes that the claimant is entitled to temporary total disability benefits on and after May 24, 2003 and continuing through April 15, 2004, subject to a credit for any overpayments. For that reason, I respectfully dissent from the Majority's decision.

SHELBY W. TURNER, Commissioner