

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F114351

RICHARD PHELPS,  
EMPLOYEE

CLAIMANT

USA TRUCK, INC.,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED NOVEMBER 9, 2005

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

Claimant represented by the HONORABLE STEPHEN SHARUM,  
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE J. RODNEY  
MILLS, Attorney at Law, Van Buren, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals and respondents cross appeal an  
opinion and order of the Administrative Law Judge filed  
February 4, 2005. In said order, the Administrative Law  
Judge made the following findings of fact and  
conclusions of law:

1. The Arkansas Workers' Compensation  
Commission has jurisdiction of this claim.
2. All prior opinions are res judicata  
and the law of this case.
3. The claimant has proven by a preponderance  
of the evidence that he is entitled to  
additional medical treatment and testing  
for his compensable injury.

4. The claimant has failed to prove that he is entitled to additional temporary total disability from April 1, 2004, to a date to be determined.

5. The respondents have controverted this claimant's entitlement to additional medical treatment.

6. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

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.

Therefore we affirm and adopt the February 4, 2005 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing in part on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

Commissioner Turner concurs and dissents.

CONCURRING AND DISSENTING OPINION

I concur with the Majority's decision awarding the claimant additional medical benefits. However, I must respectfully dissent without opinion as to the portion of the Majority decision denying the claimant additional temporary total disability benefits.

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, and dissent, in part, with the majority opinion affirming and adopting the February 4, 2005, decision of the Administrative Law Judge.

My carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from April 1, 2004, to a date yet to be determined. A preponderance of the evidence, specifically the medical evidence, fails to establish that the claimant re-entered his healing period, thus entitling him to additional temporary total disability benefits. In a previous Opinion dated November 17, 2003, it was found that the claimant had reached the end of his healing period for his compensable injury of December 21, 2001. The Administrative Law Judge was correct in her most recent conclusion that the record provides no indication of an intervening event which has caused the claimant to re-enter his healing period since

the November 17<sup>th</sup> Opinion was filed. Furthermore, there is no medical evidence contained within the record that supports a finding that the claimant has developed new or additional physical problems resulting from his compensable injury, or that he has re-entered his healing period. Therefore, I concur with the majority opinion that this portion of the Administrative Law Judge's findings, specifically that the claimant is not entitled to additional temporary total disability benefits, should be affirmed and adopted.

The preponderance of the evidence fails, however, to support a finding that the claimant has proven that he is entitled to additional medical benefits as awarded by the Administrative Law Judge in her February 4<sup>th</sup> Opinion. In her Opinion of November 17, 2003, the Administrative Law Judge found, in relevant part:

7. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury as provided for by Dr. David Miller. See discussion above.

In the "Discussion" portion of the Administrative Law Judge's November 17<sup>th</sup> Opinion, she writes:

After a review of this entire record, I find that the Claimant has proven by a preponderance of the evidence that he is entitled to and in need of additional medical treatment as provided by Dr. Miller **for the pain resulting from his compensable injury.** (Emphasis added)

The record reflects that the respondent has continued to pay all medical treatment reasonably necessary for the treatment of the claimant's compensable injury, including treatment by Dr. Miller. Furthermore, no evidence is contained within the record that supports the claimant's contention that the respondent has refused to pay for any medical treatment reasonably necessary for the treatment of his compensable injury. The medical treatment for which the respondent has refused to pay is for conditions which have not been proven to be causally related to the claimant's compensable neck injury. For example, the claimant has been treated for low back and lower extremity complaints, he has been prescribed a cane due to an alleged loss of balance, and he complains of stuttering problems. None of the aforementioned physical problems and complaints have been proven by objective medical evidence to be causally related to the claimant's compensable neck injury. Even the claimant

testified that he can not attribute these conditions to his compensable injury.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury. Under the relevant law, the respondent's objection to providing medical treatment and diagnostic evaluation for complaints that have not been proven to be reasonable, necessary, or causally related to the claimant's compensable cervical injury, can in no way be

viewed as an attempt by the respondent to "intentionally frustrate" Dr. Miller's treatment of the claimant. Moreover, an Administrative Law Judge's award of reasonable and necessary medical treatment for a claimant's compensable injury under the direction of an authorized physician should not be misconstrued by the claimant or his physician as an award, *carte blanche*, for payment by the respondent of any and all medical treatment provided to the claimant by his authorized treating physician. As the respondent so aptly stated during the hearing of November 19, 2004:

The Commission did not order us to write a blank check to Dr. Miller, ...

A causal connection must still be proven between the condition for which treatment is sought, and the claimant's compensable injury. In this case, the claimant has simply failed to meet his burden of proof that certain conditions for which he now seeks compensation are causally related to his compensable cervical injury of December 2001.

Therefore, and for the above stated reasons, I would respectfully concur with the majority opinion regarding denial of temporary total disability benefits, and I would dissent with the majority opinion wherein

the claimant is awarded medical treatment for conditions not specifically proven to be causally related to the claimant's compensable injury.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner