

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110789

BOBBY LAMB, EMPLOYEE	CLAIMANT
DOLLARWAY SCHOOL DISTRICT, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED MARCH 14, 2006

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

Claimant is not represented by counsel, but appears *pro se*.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that the respondents were liable for continuing medical treatment of the claimant's compensable aggravation of a pre-existing knee condition, that the respondents did not adequately instruct the claimant about their workers' compensation policy and were estopped from denying authorization of the treatment of Dr. Davis, that the respondents are liable for a psychiatric examination, that the respondents were liable for treatment

of the claimant's hypertension which was aggravated by the extraordinary exertion involved in the compensable incident of September 5, 2001, and a finding that the respondents were required to pay additional temporary total disability benefits for the period December 8, 2001, through March 22, 2002. Based upon our de novo review of the record, we hereby reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as a Seventh Grade Geography teacher. The claimant also drove a bus for the respondent employer and was a pastor. He had been employed by the respondent employer since 1979. On September 5, 2001, the claimant was intervening in a student fight when he sustained an injury to his ribs. At the time of the incident, the claimant was also recovering from right knee surgery which the incident aggravated. The claimant had undergone arthroscopic knee surgery on June 12, 2001. The claimant was being treated for his knee condition by Dr. James Mulhollan who stated that the surgery was necessary because of a botched knee surgery several months prior. The claimant's knee problems had

previously been diagnosed as osteoarthritis on January 31, 2001. The claimant, however, testified that he had been involved in several incidents at the school and he had never reported these as work related injuries. He also testified that the school did not provide its employees with any instructions for filing claims. However, we note that the claimant filled out a Form N on September 13, 2001, which clearly contains instructions concerning the manner in which medical care should be presented for approval and the process for obtaining a change of physician.

The medical evidence demonstrates that prior to his compensable injury the claimant has been treated for cancer, depression, high blood pressure, and arthritis in his right knee. The claimant now contends that he is entitled to additional benefits with regard to his right knee, that the treatment rendered by Dr. Davis is authorized medical treatment, that he is entitled to medical benefits for his high blood pressure as well as psychological benefits for his depression. The respondents contend that the claimant has received all the benefits with regard to

his right knee that he is entitled to, that the treatment by Dr. Davis was not authorized, that the claimant's high blood pressure was not related to his work related injury, and that the claimant was not entitled to compensation for his depression. After conducting our de novo review of the record, we agree with the respondents.

RIGHT KNEE INJURY

The claimant contends that while he was trying to restrain a student on September 5, 2001, he injured his right knee. At the time of that incident, the claimant was still on crutches from having arthroscopic knee surgery for a torn meniscus and osteoarthritis on June 12, 2001.

The evidence demonstrates that after the 2001 incident, the claimant's examining physicians found no new injury and related all of his problems to his pre-existing knee problem. Specifically, Dr. Mulhollan opined that the claimant had not suffered any new injury as a result of that incident. Dr. Mulhollan noted:

On clinical examination, there is little interval change. The patient is using crutches, which was one of my earlier recommendations. I really do not think

he has sustained any serious injury here. I think it is simply a set back and that the discomfort associated with the injury will suppress strength.

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.

The evidence demonstrates that the respondent carrier paid for the claimant's visits to Dr. Mulhollan's office after this incident, as well as for the emergency room visit. Simply put, we cannot find that the claimant is entitled to any additional medical treatment for his knee. All of the current treatment the claimant is receiving is related to the pre-existing knee condition. Accordingly, we hereby reverse the decision of the Administrative Law Judge.

DR. DAVIS'S TREATMENT

Pursuant to Ark. Code Ann. §11-9-508, respondents are not responsible for any unauthorized medical treatment. After the incident on September 5, 2001, the claimant went to the office to report an incident and was told that he needed to speak to a specific individual at the school regarding the proper method for beginning the paperwork on his workers' compensation claim. Instead, the claimant unilaterally made the decision to go to the emergency room at Jefferson Regional. The claimant specifically told someone in the office at the respondent employer, "I don't

know. All I know is I need to go for treatment and I can't wait until you tell me to fill out forms."

At the emergency room, the claimant was examined and told to follow up with his personal physician. The claimant contacted Dr. Paul Davis, his personal physician, and set up an appointment before leaving the hospital. The claimant never contacted the respondent employer to report this injury until he filled out a Form AR-N on September 13, 2001. By that time, the claimant had already undergone treatment with Dr. Davis. The Form AR-N specifically sets forth the proper method in which any medical treatment should be handled and the proper way a request for a change of physician should be handled by the claimant. However, the claimant chose to ignore those instructions. The claimant continued with unauthorized treatment and never broached the subject with the respondent employer or the respondent carrier.

The claimant asserts an estoppel argument because the claimant allegedly spoke with the adjuster, Charlotte Flanagan, after he treated with Dr. Davis. Southern

Hospitalities v. Britain, 54 Ark. App. 318, 925

S.W.2d 81(1996) provides the necessary elements of estoppel are:

(1) the party to be estopped must know the facts; (2) he or she must intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended; (3) the party asserting the estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the other party's conduct to his or her injury.

The claimant cannot satisfy the 1st and 2nd elements of estoppel. He cannot prove that the adjustor knew he was treating with Dr. Davis or that Ms. Flanagan intended for the claimant to continue treatment with Dr. Davis. Simply because the claimant spoke with the adjuster after he had treated with Dr. Davis does not equate to a finding that the respondents authorized continued treatment by Dr. Davis. The claimant is responsible for properly initiating a workers' compensation claim and the claimant's failure to do so should not be rewarded. We find that the claimant failed to comply with the workers' compensation act and cannot satisfy

the elements of estoppel. Therefore, the unauthorized treatment by Dr. Davis is not the responsibility of the respondents.

HIGH BLOOD PRESSURE

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). Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body... 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 time and place of occurrence." Wal-Mart Stores, Inc. v.

Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

The respondents are required to pay for any medical treatment that is reasonably necessary in connection with the claimant's compensable injury. However, the claimant in this case cannot prove that his high blood pressure arose from his work related incident. The medical evidence demonstrates that the claimant has been treated for high blood pressure since 1998. He has been taking medication to control his blood pressure. All of the evidence demonstrates that the claimant had high blood

pressure before the incident and he continues to have high blood pressure. There is absolutely no objective medical evidence in the record linking the claimant's hypertension to his knee aggravation. The claimant's own opinion that the two are linked is simply insufficient. However, no matter how sincere a claimant's beliefs are that a medical problem is related to a compensable injury, such belief is not sufficient to meet the claimant's burden of proof.

Killenberger v. Big D Liquor, Full Commission Opinion

August 29, 1995 (E408248 & E408249). Therefore, we find that the claimant has failed to prove by a preponderance of the evidence that his high blood pressure problems are the result of his compensable right knee aggravation of September 5, 2001.

DEPRESSION

The claimant asserts that he is entitled to treatment for depression that he has as a result of the September 5, 2001, incident. However, the medical evidence demonstrates that the claimant has been treated for depression well before September 5, 2001. The claimant

stated at the hearing, "I think everybody has times when they can be said to be depressed, but when you go through a tremendous trauma of seeing somebody forty years old die..." This was the response the claimant gave when he was asked if he had been suffering from depression since 1999. The trauma that the claimant is referring to is the claimant's principal, Jerry Lovelace, who died as a result of a heart attack after intervening in an altercation between two students at the same school. Mr. Lovelace's heart attack was found to be a compensable injury. Dollarway School District v. Lovelace, ___ Ark. App. ___, ___ S.W.3d ___ (2005). Mr. Lovelace died in 2001. The medical records demonstrate that the claimant was showing symptoms of depression as early as November 1, 1999. This statement by the claimant of seeing his principal die was not even a factor when the claimant was first diagnosed with depression.

Moreover, Ark. Code Ann. §11-9-113 provides that a mental injury is not compensable unless it is caused by a physical injury to the employee's body. Although the claimant did suffer a physical injury in the form of a

compensable aggravation to his right knee, the depression that the claimant is experiencing is not directly related to that physical injury. It was noted that the claimant had altercations with the students, the death of his principal, a conflict with the superintendent, and the carrier's decision to controvert this claim were factors which contributed to the claimant's depression. What's missing is the requisite causal connection between the claimant's depression and his physical injury. Amlease, Inc. v. Kuligowski, 59 Ark. App. 261, 957 S.W.2d 715 (1997).

Furthermore, there is no evidence that the claimant was the victim of any act of violence. The claimant was attempting to prevent an act of violence but there was no violence directed toward him. Therefore, we cannot find that the claimant's depression is directly related to the claimant's compensable injury. Accordingly, we reverse the decision of the Administrative Law Judge. The claimant is not entitled to a psychological evaluation at the respondent's expense. Although the claimant may need a

psychological evaluation, it is due to factors completely unrelated to the claimant's compensable injury.

TEMPORARY TOTAL DISABILITY BENEFITS

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. Id. The healing period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. V. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. Crabtree, supra. The question of when the healing period has ended is a factual determination for the Commission.

The healing period is defined as that period for healing of the injury that continues until the employee is as far restored as the permanent character of the injury will permit. Arkansas Highway & Transp. Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The persistence of pain may not in and of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. Id.; Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. McWilliams, supra; J.A. Riggs Tractor v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990). The determination of when the healing period ends is a factual determination to be made by the Commission. McWilliams, Parker, supra. In Pallazollo v. Nelms Chevrolet, 46 Ark. App. 130, 877 S.W.2d 938 (1994), the Court of Appeals stated that in order to be

entitled to temporary total disability compensation for an unscheduled injury, a claimant must prove that he remained within his healing period and that he suffered a total incapacity to earn wages (citing Arkansas State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981)).

A review of the evidence demonstrates that the claimant returned to work on September 19, 2001. He was taken off work by Dr. Mulhollan and Dr. Davis for approximately one month, then Dr. Mulhollan released him to return to work. In a letter dated January of 2002, Dr. Mulhollan made it perfectly clear that any time the claimant missed from work after October 2001, should not be attributed to the claimant's knee injury. Dr. Mulhollan released the claimant to return to full duty on March 25, 2002.

It appears, that the claimant's off work status after December 8, 2001, was due to the claimant's state of depression, which is not work related. There is nothing with

respect to the claimant's knee problems that required him to remain off work after October 8, 2001.

The claimant's testimony and the exhibits he introduced at the hearing show the claimant's instability with respect to his work environment. The claimant made his desire known to remain off work and away from the school on numerous occasions. In an e-mail dated December 7, 2001, the claimant stated, "I've always been able to defend myself. I've had to physically subdue students who later murdered someone for a honeybun. Two of my former students are waiting on death row to be executed. Two are serving life without parole for murdering teachers. I could go on." The unpleasant work environment that the claimant apparently has does not warrant a finding that the claimant is entitled to temporary total disability benefits. In our opinion, awarding the claimant benefits during this period is essentially rewarding him for staying away from an unpleasant work environment. This is clearly not the intent of the law. The respondents are only responsible for work related injuries and the period of time that a claimant is

off work due to that injury. Therefore, we find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits for the period December 8, 2001, through March 22, 2002. Accordingly, we reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion reversing the Administrative Law Judge's March 18, 2005 opinion.

The case is presently before us based upon the respondent's appeal of the Administrative Law Judge's decision. After my de novo review of the testimony presented

at the hearing and the documentary evidence made a part of the record, it is my opinion that the Administrative Law Judge's decision is entirely correct and should be affirmed and adopted.

_____The claimant suffered an admittedly compensable physical injury on September 5, 2001. The claimant, who taught 7th grade Social Studies at Dollarway Junior High School, injured his ribs and knee while attempting to stop an assault on one student by two other students. Apparently, the claimant's knee was originally injured while breaking up another fight in January of the same year, but that incident was never reported as a separate workers' compensation claim. In any event, the respondent accepted liability for payment of the claimant's medical expenses in connection with the incident of September 5, 2001. These benefits included some temporary disability benefits as well as medical expenses.

The dispute in this case presently centers upon the claimant's entitlement to additional medical and disability benefits based upon depression and a spike in the

claimant's blood pressure, both of which he contends was the result of problems emanating from the September 5, 2001 incident, and conditions present at his place of employment. After a hearing, an Administrative Law Judge held that the claimant had established that he suffered a compensable cardiovascular accident in the September 5, 2001 incident, and that he was entitled to appropriate benefits for treatment of that condition. She further found that he was the victim of a crime of violence and that any depression the claimant was suffering from also resulted from his compensable injury. However, since the claimant had not received any treatment for depression, the respondent was ordered to provide a psychiatric evaluation as well as payment for anti-depressive drugs prescribed by the claimant's physician. Finally, the Judge held that the respondent was liable for providing the medical expenses the claimant had incurred as a result of his treatment with Dr. Paul Davis, a general practitioner in Pine Bluff, Arkansas who had provided the claimant medical treatment for his blood pressure and depression.

In my opinion, the Administrative Law Judge made the correct decision in holding respondent liable for the continuing medical treatment of claimant's right knee injury. The Administrative Law Judge held in her March 18, 2005 opinion:

With regard to the knee injury, this aggravation of a preexisting condition is similar to the case of Williams v. L&W Janitorial, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The claimant's injury has combined with his preexisting condition to produce disability. Based on this precedent, I find the respondents are liable for the claimant's continuing medical treatment with Dr. Bryan and payment of his expenses, including the initial visit of \$186.00.

The respondents have denied liability for Dr. Davis' treatment on the basis that he was not an authorized physician. However, the Administrative Law Judge found that the respondent was liable for this treatment and in my opinion that decision was entirely correct.

Neither the respondent employer nor their administration company authorized a doctor to follow-up the claimant's treatment following the September 5, 2001 injury.

Obviously, since the claimant sustained broken ribs, in addition to a re-injury to his knee, such follow-up medical treatment was needed. While Dr. Mulhollan, the doctor who had been treating him for his knee injury, could follow-up with that condition, the claimant clearly needed additional medical treatment because of his broken ribs and his elevated blood pressure. Further, the claimant provided a recorded statement to an adjuster for the respondent on September 26, 2001. At that time, the claimant advised her that he was seeing Dr. Davis for treatment of injuries sustained in the September 5, 2001 accident. The adjuster did not advise the claimant at that time that Dr. Davis was unauthorized nor did she designate another doctor for him to see. Further, the record indicates that some of Dr. Davis' bills were paid by the respondent for treatment occurring after the September 5, 2001 accident. Since the claimant reasonably assumed that the respondent was agreeing to authorize Dr. Davis to treat him, in my opinion the respondents should be estopped from denying authorization for the claimant's treatment from Dr. Davis.

It is also my opinion, that the respondents are liable for Dr. Davis' treatment because they have controverted the claimant's entitlement to treatment for his blood pressure condition and for any chronic depression he may have sustained as a result of the events which are the subject of this claim. It is a well settled rule that where a respondent controverts a claimant's entitlement to medical treatment, the claimant may seek treatment from a physician of his or her choice and, if the claim is found to be compensable, the respondent would be liable for all reasonable and necessary treatment the claimant receives. In the present case, the respondent has controverted the claimant's entitlement to the medical treatment he is seeking and, therefore, he would have been free to seek treatment from a doctor of his choice. The doctor he chose was Dr. Davis, and I believe that the respondents should be liable for this medical treatment.

Another issue is the claimant's entitlement to medical benefits based upon his blood pressure problem. Since this condition is in the nature of a cardiovascular

injury, it would be governed by Ark. Code Ann. §11-9-114. That section provides that a claimant is only entitled to benefits if the condition is caused by an accident and that the exertion causing the condition was extraordinary and unusual in comparison with the employee's usual work.

From reviewing the claimant's testimony as well other documents in the Commission's file, it is apparent that breaking up fights is not an uncommon task for teachers at Dollarway Junior High. However, the altercation on September 5, 2001 was unusual in that the claimant was by himself and was trying to prevent two students from assaulting a younger and smaller student. Also, the claimant was attempting to do this, while he was still on crutches because of knee injuries relating to an earlier incident when he had been injured for breaking up another fight in January 2001.

The facts in this case are very similar to those of Dollarway School District v. Lovelace, ___ Ark. App. ___, ___ S. W. 3d ___ (February 23, 2005). In that case, the claimant suffered a fatal heart attack shortly after

breaking up a fight between two students in February 2001. (This claimant was the Principal at the school in which the present claimant was teaching). The Court of Appeals affirmed a Commission finding that breaking up a fight where the claimant was unassisted was sufficiently unusual and stressful to have been the precipitating factor in that claimant's heart attack.

In the case at bar, the claimant testified that this incident occurred after school had been dismissed and there were not other teachers present to assist him. Further, he was handicapped by the fact that he was still recovering from a prior knee injury and, in his struggle with one of the attackers, he sustained broken ribs. I do not think that it can be questioned that this was an unusual situation which exposed the claimant to an extraordinary exertion.

I also note that there is a definite temporal relationship between the spike in the claimant's blood pressure and the events in question. On the afternoon following the altercation at school, the claimant, who was

suffering from chest pain, visited a hospital emergency room. As it turned out, the chest pain was the result of his broken ribs. However, while in the emergency room, his blood pressure readings fluctuated between 137/97 and 141/101. Following this emergency room visit, when the respondent did not designate a doctor to treat the claimant, he began seeing Dr. Paul Davis, his family physician. Dr. Davis' progress notes over the following weeks indicate that the claimant's blood pressure continued to remain very high, and at one time being measured at 180/102, as set out in Dr. Davis' progress note of September 17, 2001. The claimant's blood pressure problems were such that Dr. Davis, in his letter of December 6, 2001, directed that the claimant remain offwork for a period of one month because of his blood pressure and related problems. The doctor later extended the claimant's return to work date to March 25, 2002.

In my opinion, the claimant has established that he suffered a compensable cardiovascular accident on September 5, 2001. I further find that the medical treatment

he received for this blood pressure increase, in the form of medication, doctor visits, and cardiac monitoring were reasonable and necessary treatment of that condition and should be the responsibility of the respondent. Likewise, I find that the doctor's direction that he remain off work from December 2001 through March 25, 2002, was directly the result of the claimant's condition and that this should entitle him to receive temporary total disability benefits during this period of time.

The respondent has also contested the claimant's request for medical benefits resulting from chronic depression. Claims based upon this type of injury are governed by Ark. Code Ann. §11-9-113. That section provides that a mental injury or illness is not compensable unless it was caused by a physical injury (or the claimant was a victim of a crime of violence, and that the mental injury or illness must be diagnosed by a licensed psychiatrist or psychologist. In the present case, the claimant was the victim of a violent crime and suffered a physical injury. Consequently, he has satisfied that portion of the statute.

However, his depression has not been diagnosed by a licensed psychiatrist or psychologist. Given that Dr. Davis has diagnosed chronic depression and since the claimant has suffered physical manifestations of psychological stress and depression, such as high blood pressure and related symptoms, an evaluation by a licensed psychiatrist or psychologist would seem to be in order. For that reason, it is my opinion that the Administrative Law Judge's order that the respondent provide the claimant such an evaluation by an appropriate provider is both equitable and reasonable. I would therefore affirm this portion of the Administrative Law Judge's finding and direct the respondent to provide the claimant a psychological evaluation with an appropriate medical provider in the mental illness field.

In my opinion, the Administrative Law Judge's decisions in this case are entirely correct. I find that the claimant has established that he suffered a cardiovascular injury on September 5, 2001, and that he should be entitled to all benefits arising from that injury, including medical treatment and a period of temporary disability from

December 8, 2001 through March 25, 2002. Further, I find that the claimant appears to have sustained a mental injury in the form of chronic depression as a result of the accident and that the respondent should be ordered to provide him an evaluation to determine the nature and extent of this condition. Lastly, I also find that the respondent should be ordered to pay for the medical treatment the claimant received by, and at the direction of, Dr. Paul Davis.

For the foregoing reasons, I must respectfully dissent from the majority's opinion reversing the Administrative Law Judge's decision. In my opinion, the Administrative Law Judge's decision was correct and should be affirmed and adopted.

SHELBY W. TURNER, Commissioner