

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413437

BRETT STAGGS,  
EMPLOYEE

CLAIMANT

USA TRUCKS, INC.,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED MARCH 10, 2006

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

Claimant represented by the HONORABLE EMILY PAUL, Attorney  
at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. RODNEY MILLS,  
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals an administrative law judge's  
opinion filed July 29, 2005. The administrative law judge  
found, among other things, that the claimant proved he was  
entitled to temporary total disability compensation  
"beginning December 23, 2004 to a date yet to be  
determined." Based on our *de novo* review of the entire  
record, the Full Commission affirms the opinion of the  
administrative law judge.

I. HISTORY

Brett Staggs, age 33, testified that he was an over-the-road truck driver for the respondent-employer. Mr. Staggs testified that he lived in Orange, Texas.

The parties stipulated that the claimant sustained a compensable injury to his low back on December 22, 2004. The claimant testified that he was injured as a result of "trying to slide the tandems to distribute the weight of the trailer....When I was pulling to slide the tandems it was like somebody stabbed me right in the spine, and I fell to my knees and I haven't been able to stand up straight ever since."

The claimant testified that he was sent to the company physician, Dr. Montet. The claimant was examined at Montet's Occupational Medicine Service on December 22, 2004. The claimant was diagnosed at that time as having "left sacroiliac strain."

The claimant was returned to modified work on December 22, 2004, "sedentary duty only." The parties stipulated that some medical expenses had been paid.

The claimant testified that he sought a second opinion from his family doctor. The record indicates that the

claimant began treating with Dr. Servet Satir, an osteopathic physician, on December 23, 2004.

Dr. Satir gave the following impression on December 27, 2004: "1. Acute lumbar radiculopathy secondary to his injury on 12/22/04 with intractable low back pain. 2. Bilateral leg pain with numbness to the left lateral aspect of the foot." Dr. Satir admitted the claimant to Renaissance Hospital for diagnostic treatment and a determination whether or not to consult a neurosurgeon.

An MRI of the claimant's lumbar spine was taken on December 28, 2004, with the following impression:

1. Degenerative disc disease at L4-5 with 3 mm posterior bulge of the disc.
2. Degenerative disc disease at L5-S1 with moderate size, 4 mm posterior bulge of the disc producing pressure on the thecal sac.

The claimant consulted at Renaissance Hospital with Dr. Tamerla Chavis, apparently a neurosurgeon, on December 29, 2004. Dr. Chavis reported:

MRI of the lumbar spine is remarkable for degenerative disk disease at L4-5 and L5-S1. There is evidence of disk bulge at the lower two levels. The bulge is slightly more prominent at the L5-S1 level. There is no obvious nerve root impingement or significant compromise of the spinal canal.

IMPRESSION:

A 32-year old with severe low back pain, which is localized just to the right and the lower sacral area. The patient does not have consistent radicular findings. Would recommend conservative management. The pain is likely related to discogenic pain, but possible disruption in the annulus....Would also recommend instituting physical therapy with modalities to see if this can eliminate some of his discomfort. Presently would not recommend surgical intervention....

The claimant was discharged from Renaissance Hospital on December 30, 2004. Dr. Satir stated at that time, "The morning of his discharge the patient states he did still have some pain; however, there was nothing further that we would be able to do for him at the hospital, and it was necessary to get him started on more vigorous physical therapy. The patient was discharged from the hospital in medically stable condition with no complaints."

The claimant continued to follow up with Dr. Satir, and Dr. Satir kept the claimant off work as of January 3, 2005.

The claimant returned to Montet's Occupational Medicine Service on January 4, 2005. The claimant was assigned a Work Status of "no work".

The record indicates that the claimant signed a Form AR-N, Employee's Notice Of Injury, on January 6, 2005.

The claimant testified that Dr. Montet referred him to Dr. Marco T. Silva. Dr. Silva, a neurosurgeon, informed Dr.

Satir on January 26, 2005, "Review of an MRI from 12/28/04 demonstrates degenerative disc disease at L4-5 with an annular tear. At L5-S1 there is also degenerative disc disease. There is no obvious significant disc herniation; however, the axial views of this study are of limited quality. His plain films demonstrate no fractures or dislocations." Dr. Silva's impression was "Lumbago with degenerative disc disease." Dr. Silva recommended use of a TENS unit and physical therapy. Dr. Silva copied his correspondence to Dr. Montet.

A pre-hearing order was filed on March 24, 2005. The claimant contended that he was entitled to "additional reasonable and necessary medical treatment. Claimant contends that he is in his healing period and totally disabled from work and entitled to temporary total disability benefits. Claimant contends that the respondents have controverted this claim in its entirety and the claimant's attorney is entitled to a controverted attorney fee."

The respondent contended that "all benefits due and owing the claimant as a result of his compensable injury have been, or are being, paid. The claimant has been

released to return to light duty work, and light duty work has been made available to the claimant within the limitations or restrictions imposed by his authorized treating physician, yet the claimant has refused to return to work. No compensable event is the major cause of the claimant's current condition or alleged need for medical treatment. The claimant's current complaints did not arise out of or in the course or scope of his employment with the respondent. The claimant's current complaints are the result of an independent intervening cause for which the respondent has no liability or responsibility. The additional medical treatment sought by the claimant is not authorized, reasonable or necessary as a result of a compensable event."

The parties agreed to litigate the following issues: "1. Additional medical. 2. Temporary total disability from December 22, 2004, to a date to be determined. 3. Attorney's fees."

Dr. Silva noted on March 30, 2005, "At this point, I think it is still early to recommend any surgical intervention. Given his persistent back and right greater than left leg pain, would also recommend he proceed with

lumbar epidural steroid injections....I also told him that if these conservative modalities do not help him, then we would want to order an MRI of the lumbar spine of better quality to assess what his surgical options could be if he does not improve."

On April 11, 2005, Dr. Silva signed a Certificate For Return To Work. Dr. Silva indicated, "Bret Staggs has been under my care from 1-26-05 to 4-18-05 and is able to return to work on 4-18-05. May do office work if tolerated."

A representative of the respondent-employer wrote to the claimant on April 14, 2005:

Enclosed please find an offer of light duty work at the USA Truck, Inc.' corporate office in Van Buren, AR. You will need to accept or decline the offer being made to you and return the completed, signed, and dated form back to USA Truck, Inc. within seven (7) days from the date of this letter.

You will be allowed to travel back to Texas to keep any necessary follow-up appointments with Dr. Silva and/or any authorized treating physician. If you are still undergoing physical therapy, we will make arrangements with a local therapy group to take over that aspect of your treatment.

Please be advised if you choose to drive your own vehicle we will reimburse mileage at \$0.31 per mile. If you choose not to drive we will make transportation arrangements for you. Hotel accommodations will be provided at the Baymont Inn in Fort Smith, AR, while you are working light duty.

Should any emergency arise while you are here, we have two excellent hospital facilities that will be happy to facilitate your care....

Dr. Silva noted after an April 27, 2005 follow-up visit:

In the past I was asked to consider sending him for light duty which I think he may very well be able to do. However, his employer requested in a letter dated April 14, 2005 that he go to Arkansas to work. The patient is concerned that given the continued severity of the pain that he will not be able to tolerate driving back and forth. He also requires to lie down intermittently throughout the day. Based on my discussion with the patient, at this point I do not think that he will be able to tolerate light duty given the concerns of the patient....

At this point, we will continue with conservative therapy and will request that he be put back in therapy....As I mentioned above, given the patient's complaints and symptoms, I would discharge him from having light duty since he has to lay down intermittently because of back pain.

The claimant underwent an epidural steroid injection on April 28, 2005. The claimant testified that he underwent six steroid injections.

A hearing was held on May 12, 2005. The claimant testified:

Q. Well, let's talk about the light-duty position that they offered you and why you think it wasn't reasonable for you to do it. And from my understanding, and I think from your understanding, they offered you a light-duty job back in Fort Smith and you were to ride a bus or

drive yourself and then they would provide you physical therapy in Fort Smith and transport you or let you drive and pay you mileage back and forth from Orange, Texas to Fort Smith?

A. Uh-huh.

Q. And how long of a drive is it from Orange to Fort Smith?

A. It's, I think, 450 miles, so nine to 10 hours.

Q. And at the time you received this light-duty offer, what medical treatment were you undergoing?

A. Epidural injections. I had just started them.

Q. And what physically, you know, made you think that you could not do this offer?

A. Pain. Right now I cannot feel my right leg. I have numbness down both legs and my tailbone is constantly hurting....

Q. How did you get here today?

A. I had to take a plane.

Q. And how did that work out?

A. Not well....The turbulence - every bounce - I was in a smaller - you know, a smaller plane - and just sitting in the same spot for an hour at a time. I had to switch flights in Dallas. I just - it's killing me.

Q. Do you think that they - if they were to offer you a job, a light-duty position that you believe you could do due to your medical restrictions, would you take it?

A. If I could do it.

The administrative law judge found, in pertinent part:

6. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his compensable injury from December 22, 2004 to a date yet to be determined but to exclude the treatment by Dr. Satir as well as his stay at the Renaissance Hospital, both of which were unauthorized....

7. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability beginning December 23, 2004 to a date yet to be determined....

The respondent appeals to the Full Commission. The claimant does not appeal that portion of the opinion concerning unauthorized medical treatment.

## II. ADJUDICATION

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). The determination of when the healing period has ended is a question of fact for the Commission. *Mad Butcher, Inc. v. Parker*, 4 Ark. App 124, 628 S.W.2d 582 (1982).

The respondent submits in the present matter that the claimant did not prove he was entitled to temporary total disability compensation subsequent to April 18, 2005. The

respondent cites Ark. Code Ann. §11-9-526, and asserts that the claimant refused employment suitable to his capacity.

The Full Commission first finds, based on the evidence before us, that the claimant has remained within a healing period for his compensable injury. The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. 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. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J. A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The parties stipulated in the present matter that the claimant sustained a compensable injury to his low back on December 22, 2004. Company physician Dr. Montet diagnosed "left sacroiliac strain." A subsequent MRI essentially showed degenerative disc disease in the claimant's lumbar spine. Dr. Chavis stated in December 2004 that the

claimant's condition was non-surgical. Dr. Satir kept the claimant off work as of January 3, 2005. But Dr. Montet also assigned "no work" on January 4, 2005. We note that Dr. Silva, referred to the claimant from Dr. Montet, described an "annular tear" in January 2005. As of March 2005, Dr. Silva continued to recommend various treatment and diagnostic options. The record therefore indicates that treatment was still being administered for the healing and alleviation of the claimant's condition.

The respondent asserts that it offered suitable work for the claimant beginning April 18, 2005. The respondent implicitly concedes that it should be liable for temporary total disability compensation from December 22, 2004 until April 18, 2005. The respondent cites Ark. Code Ann. §11-9-526:

If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

The respondent argues that appropriate light duty was offered the claimant beginning April 18, 2005.

Nevertheless, we must point out the April 27, 2005 note from

authorized physician Dr. Silva, to wit: "at this point I do not think that he will be able to tolerate light duty given the concerns of the patient." The respondent argues that the Commission should minimize this note, because it was based on "the concerns of the patient." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Since the evidence in the present matter demonstrates that the claimant remained within a healing period as of April 2005, the Full Commission is unable to minimize this language from a treating physician. There is otherwise at this time no medical evidence before the Commission indicating that the claimant has reached the end of his healing period. Nor is there any evidence to support the respondent's argument that there was an "independent intervening cause" which ends the respondent's liability.

Based on our *de novo* review of the record currently before us, the Full Commission finds that the claimant proved he was entitled to temporary total disability compensation from December 22, 2004 to a date yet to be determined. The Full Commission therefore affirms the

decision of the administrative law judge. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(a) (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), pursuant to Ark. Code Ann. §11-99-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs, in part, and dissents, in part.

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CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part with, and dissent, in part, from the majority's opinion. Specifically, I must respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment for his December 22, 2004, compensable injury, as well as finding that the claimant had proven by a preponderance of the

evidence that he is entitled to additional temporary total disability benefits beginning December 23, 2004, to a date yet to be determined. However, I concur with the finding that the claimant failed to prove by a preponderance of the evidence that he was entitled to payment of the medical services provided to the claimant by Dr. Satir as well as the claimant's stay at the Renaissance Hospital as both of these treatments are unauthorized treatments.

The respondents sent the claimant a letter in April offering him a light duty position at the respondents' office in Fort Smith, Arkansas. The claimant took this letter to Dr. Silva and Dr. Silva wrote a letter saying that he was not able to return to work. The respondent offered to buy the claimant a bus ticket or he could drive himself to Fort Smith and that they would provide physical therapy in the Fort Smith area for the claimant's treatment. The claimant testified that it is 450 miles between Orange, Texas, and Fort Smith, which is about a nine to ten hour drive. The claimant testified that when he received this letter from the respondent, he was in the process of taking his epidural steroid injections and he was still experiencing pain as well as numbness in both of his legs

and that his tail bone was constantly hurting. However, the claimant flew in for the hearing. The claimant testified that if the respondent would offer him a light duty position doing work within his medical restrictions he would take it. The claimant failed to sign the letter or return to work for the respondent employer. The claimant testified that he could not work light duty because he needed to lay down every hour or so.

The evidence reflects that the claimant was initially treated by Dr. Montet after the incident. The claimant told Dr. Montet what happened and how and where he was hurt. The claimant told Dr. Montet that he had low back pain, with radiation. After examining the claimant, Dr. Montet diagnosed him with a left sacroiliac strain and released him to return to light duty work performing sedentary activities. The following day, the claimant saw Dr. Satir, his family doctor, on his own. The claimant reported to Dr. Satir that he had back pain, radiation into his legs and numbness in his left toes. According to the claimant, he had experienced those symptoms for two days. The claimant was scheduled for a follow-up with Dr. Satir on January 5, 2005, however the claimant returned to see

Dr. Satir the following Monday, December 27, 2004, due to "severe pain" in his low back and both legs. The medical report of that visit reflects that the claimant was complaining that his "pain is worse" and he was having additional pain extending into his left knee. Although the claimant denies that he engaged in any activity or was involved in any incident that caused his condition to worsen, the evidence reflects that the claimant "fell and went numb" over the weekend. According to Dr. Satir's note regarding the December 27, 2004, visit, the claimant told Dr. Satir that he "stood up and felt severe pain and shocking feeling to back." Dr. Satir's note of December 27, 2004, also reflects, "the patient was at home this weekend. He stated that he went to get up and felt a pop in his back and that is when the increasing numbness occurred. He stated that the pain basically dropped him to the floor and he could not get up for a period of time without assistance." It is undisputed that the claimant was not performing employment services for the respondent at the time of the incident described in Dr. Satir's notes. The records also reflects that it was due to the claimant's complaints of

increased pain that he was admitted to Renaissance Hospital on December 27, 2004.

The record reflects that Dr. Montet released the claimant to return to sedentary duty on December 22, 2004. To the extent the claimant was involved in an incident on December 26, 2004, that made his condition worse and/or caused him to become wholly unable to work, this can represent an independent intervening cause for which the respondent has no liability. In short, there is no causal connection between the treatment the claimant received subsequent to December 27, 2004, and his compensable injury of December 22, 2004. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment. Further, I find that the treatment the claimant received from Dr. Satir and the Renaissance Hospital is unauthorized. The claimant admitted that he sought treatment on his own and that the respondents did not authorize that treatment.

Additionally, although Dr. Montet noted in his report of January 4, 2005, that the claimant was "off work" and "says there's no way he can work. Dr. Satir took him off work," there is no indication in the record that the

claimant made Dr. Montet aware of the incident of December 27, 2004. Therefore, Dr. Montet did not have the opportunity to consider the effect that incident had in changing the claimant's medical status from one that would allow the claimant to do sedentary work as stated in Dr. Montet's note of December 22, 2004, to one that required him to be completely off work as stated by Dr. Satir after the December 26, 2004, incident. Likewise, the record is devoid of any evidence that the claimant advised Dr. Silva of the incident that occurred while the claimant was at home on December 26, 2004, or that Dr. Silva was otherwise aware of that incident when assessing whether the claimant's alleged inability to work was due to a work-related injury or some other non-compensable event. Therefore, after conducting a de novo review of the record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to any additional medical treatment.

The claimant is also not entitled to any additional temporary total disability benefits from December 22, 2004, through a date yet to be determined. On April 11, 2005, Dr. Silva, the claimant's authorized treating

physician, issued a certificate for the claimant to return to work on April 18, 2005, stating that the claimant could do office work as tolerated. Clearly, at that time, the claimant was medically capable of performing work within the limitations set forth by Dr. Silva. It is undisputed that the respondent sent the claimant a letter offering the claimant employment within the limitations imposed by Dr. Silva. The respondent also offered to provide the claimant with transportation to the job, as well as accommodations and transportation to and from his scheduled medical appointments. The claimant failed to respond to the respondent's job offer and, instead, he immediately contacted Dr. Silva and complained that he was incapable of traveling to Arkansas to work in the light duty position offered.

The majority relies upon Dr. Silva's note dated April 27, 2005, to support its position that the claimant could not perform the light duty job offered by the respondents. In that note, Dr. Silva confirmed that he had released the claimant to a light duty position and that the claimant was capable of performing the job offered. Although Dr. Silva noted the claimant's "concern" that "he will not

be able to tolerate driving back and forth," Dr. Silva did not opine that the claimant was medically incapable of performing the job offered. This simply does not constitute medical evidence that the claimant was physically unable to do the job.

The claimant's contention that he could not "tolerate driving back and forth" also does not constitute a justifiable basis for his refusal to return to work. The respondent employer was more than willing to provide the claimant's transportation needs he required.

The evidence also demonstrates that the claimant lacks motivation to return to work in the light duty position the respondent employer offered. The claimant made absolutely no effort to return to work for the respondent employer, even though the job offered was within the medical limitations set forth by Dr. Silva. Nor did the claimant contact the respondent employer about the position. It is also of note that the claimant was fully capable of traveling to Fort Smith, Arkansas, for the hearing in this matter only fifteen days after telling Dr. Silva that he was unable to make the same trip in order to return to work. The record is clear that the claimant is medically capable of

performing the light duty position offered by the respondent employer. Therefore, the claimant is not entitled to temporary total disability benefits.

Furthermore, the evidence reflects that the claimant was offered a light duty job within his medical limitations, and the claimant refused, without reasonable justification, to even try to perform the job offered. It is well settled that a claimant is not entitled to temporary total disability benefits if he refuses employment suitable to his capacity offered to or procured for him, during the continuance of the refusal. Ark. Code Ann. §11-9-526 provides:

If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

An offer of suitable employment is a condition precedent to applying for benefits pursuant to Ark. Code Ann. §11-9-526. Webb v. Webb, Full Workers' Compensation Commission Opinion filed June 29, 2000 (Claim No. E906144). Work must be available within the employee's physical

restrictions. McCuller v. Democrat Printing & Lithographic Co., Full Workers' Compensation Commission Opinion filed April 28, 1998 (Claim No. E608050). The claimant must also unjustifiably refuse employment which is suitable to his/her capacity. Barnette v. Allen Canning Company, 49 Ark. App. 61, 896 S.W.2d 444 (1995). In my opinion, a review of the evidence indicates that suitable employment was available to the claimant. The respondents offered to transport the claimant to and from their place of business in Fort Smith, Arkansas, from the claimant's home in Bridge City, Texas. The claimant's refusal to take this job is not justifiable. Therefore, the respondents should not be responsible for temporary total disability benefits even if the claimant were to prove by a preponderance of the evidence that the back problems he had subsequent to December 23, 2004, were related to any compensable incident that may have happened on December 22, 2004. Therefore, for the reasons stated herein, I concur, in part with, and dissent, in part from the majority's opinion.

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KAREN H. MCKINNEY, Commissioner