

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607247

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| RONNIE ELLIS, EMPLOYEE | CLAIMANT |
| J.D. & BILLY HINES TRUCKING, INC., EMPLOYER | RESPONDENT |
| CYPRESS INSURANCE COMPANY, INSURANCE CARRIER | RESPONDENT |

OPINION FILED MARCH 11, 2009

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

This matter is currently before the Full Commission on remand from the Arkansas Court of Appeals. In an opinion delivered December 10, 2008, the Arkansas Court of Appeals reversed and remanded the decision of the Full Commission which had affirmed and adopted the decision of the Administrative Law Judge. The Court specifically found that the claimant had met the objective-findings requirement of Ark. Code Ann. §11-9-102(4)(D) for his left knee and left

shoulder injuries. The Court also instructed the Full Commission to consider all of the medical evidence of record when re-visiting the issue of compensability.

Pursuant to the Court's remand, and based on our de novo review of the entire record, the Full Commission finds that the claimant proved he sustained compensable left shoulder and left knee injuries in the June 24, 2006 motor vehicle accident, and is entitled to reasonably necessary medical treatment, specifically the left shoulder MRI recommended by the claimant's treating physician, and is entitled to temporary total disability benefits from July 25, 2006 until October 18, 2006.

I. HISTORY

The claimant worked for the respondent as a truck driver, hauling three loads of pine chips to the paper mill per day. On June 24, 2006, the claimant testified that he was tailing another driver at approximately 6:00 or 6:30 a.m. when he locked up the brakes causing his truck to skid off the road.

The claimant testified that the truck flipped on its side, slid into a field and stopped when it hit a tree. The claimant testified that his knee hit the dashboard. The claimant testified that he believes it was the jerking

action of the truck hitting the trees and the tightening of the seatbelt that injured his neck and shoulder. The claimant testified that he was unable to get out of the truck by himself and had to be helped out of the truck by a police officer and some people from a nearby house. The claimant testified that he could not get out of the truck because the seatbelt had locked up. The claimant testified that when the people attempted to get him out of the truck, he felt pain in his neck, his left knee, a little bit in his left elbow and his left shoulder.

The medical records show that the claimant went to the Medical Park Hospital Emergency Room on June 24, 2006. The Emergency Physician Record indicates left shoulder, left leg and neck injuries. The second page of this report indicates that X-rays of the C-spine, D-spine and LS-Spine were without fracture and in normal alignment, but that the claimant had soft tissue swelling. Under the "clinical impression" section, sprain/strain and neck have been circled and left shoulder has been written in. The claimant was recommended 800 mg Ibuprofen and released to follow-up with his primary care physician. The Emergency Nursing Record of this same date, also indicates a left shoulder injury, with an arrow drawn on a body diagram from the left

shoulder to the neck, with "radiates" written on the arrow. Under "Initial Assessment" the nurse checked tenderness/swelling and limited ROM and wrote in "left shoulder." The claimant was given a left shoulder immobilizer. The Emergency Room orders also show that the claimant had been given Toradol through an intravenous pump.

The medical records show that on June 29, 2006, the claimant reported to the Christus St. Michael Health System ER in Texarkana, Texas, with a chief complaint of left shoulder pain. The Emergency Department form indicates that the claimant was still using the left shoulder immobilizer. The claimant's left shoulder was again X-rayed and was found to be essentially normal. The claimant was treated with a shot of Demerol and Phenergan.

The medical records show that also on June 29, 2006, the claimant presented to Dr. Nix at The Family Medical Group in Texarkana. The doctor's history states:

The patient is a 37 year old male who presents with a complaint of shoulder pain. The onset of the shoulder pain has been gradual and has been occurring in a persistent pattern for 5 days. The course has been constant. The shoulder pain is moderate. The shoulder pain is characterized as a sharp stabbing. Associated features include:

painful ROM, but not warmth or erythema.

Dr. Nix indicated that left shoulder movements were painful and that the left shoulder was "tender." Under "Assessment & Plan" the doctor wrote "sprain of shoulder and upper arm. Plans: Lortab 5 (Hydrocodone); Flexeril, and follow up in one week as needed." Dr. Nix also filled out a "Texas Workers' Compensation Work Status Report" taking the claimant off of work from June 24, 2006 until July 6, 2006. Also on this report, under "Work Injury Diagnosis Information" Dr. Nix wrote "contusion left shoulder and left knee."

The claimant returned to Dr. Nix on July 6, 2006.

The doctor's history states:

The patient is a 37 year old male who presents with a complaint of shoulder pain. The onset of the shoulder pain has been gradual and has been occurring in a persistent pattern for 12 days. The course has been constant. The shoulder pain is moderate. The shoulder pain is characterized as a dull aching. The shoulder pain is aggravated by physical activity. Associated features include: painful ROM.

Dr. Nix indicated that the left shoulder movements

were painful and that the shoulder was "tender." Under "Assessment & Plan" the doctor wrote sprain of other specified sites of shoulder and upper arm. The claimant was prescribed Lodine 500 mg. The doctor also indicated that the claimant has cervicalgia. Dr. Nix also filled out a "Texas Workers' Compensation Work Status Report" taking the claimant off of work for an additional two weeks. Under "Work Injury Diagnosis Information" the report indicates: left shoulder strain and cervicalgia.

The claimant returned to Dr. Nix on July 20, 2006. The Medication history indicates that the claimant was taking Lodine, Lortab and Flexeril, and was to continue to take the medications and to follow-up if there was no improvement or if his symptoms worsened. A return to work slip from this date released the claimant to return to work at full duty with no restrictions on July 24, 2006.

The medical records show that the claimant went to the Christus St. Michael Health System ER on July 22, 2006. The "triage assessment" of this report states: "Injured his left shoulder a month ago. He has seen his doctor and has been released to go back to work. Patient was reaching up above his head to lift a box." The claimant was given an off-work slip until July 25, 2006 and advised to continue

wearing his immobilizer.

The medical records indicate that the claimant went to the Texarkana Spinal Rehabilitation Center (TSRC) on July 24, 2006. The intake questionnaire shows that the claimant checked boxes for pain in neck, pinched nerve in neck, pain in shoulder joint, cannot raise left arm, pinched nerve in left shoulder and mid-back pain. The treatment notes indicate, under the heading "objective findings", that the claimant was suffering from cervical and lumbar muscle spasms. The claimant treated at TSRC, receiving various treatments including hot & cold packs, traction, and chiropractic manipulations until August 4, 2006.

The medical record shows that the claimant returned to Dr. Nix on August 7, 2006. Dr. Nix stated:

The patient is a 37 year old male who presents with a complaint of shoulder pain. The onset of the shoulder pain has been gradual and has been occurring in a persistent pattern for 1 month. The course has been constant. The shoulder pain is moderate. The shoulder pain is characterized as a dull aching. The shoulder pain is aggravated by physical activity. Associated features include: painful ROM.

Dr. Nix recommended a left shoulder MRI and instructed the claimant to make a follow-up appointment for

an office visit following the MRI. Dr. Nix also filled out a "Texas Workers' Compensation Work Status Report" indicating that the claimant was suffering from left shoulder strain, taking the claimant off work from August 7, 2006 until "after MRI."

II. ADJUDICATION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

First, the claimant has presented evidence of left

shoulder and left knee injuries which caused physical harm to the body, requiring medical services, supported by objective findings. Specifically, the Court of Appeals has found that the "contusion" noted in the June 29, 2006 Texas Workers' Compensation Work Status Report completed by Dr. Nix satisfies the objective finding requirement for the claimant's left shoulder and left knee injury. Arkansas Courts have held that contusions are objective medical findings. Meister v. Safety Kleen, 339 Ark. 91, 3 S.W. 3d 320 (1999). However, it should be noted that the claimant has also presented other objective medical evidence of record. The Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro. Transportation, Inc., 97 Ark. App. 338 (2007). Specifically, the Emergency Physician Record dated June 24, 2006 indicates that there was soft tissue swelling, within the areas of the posterior neck and anterior shoulder. The claimant's physician, Dr. Nix, prescribed Flexeril, a drug used to treat spasms, on two separate occasions, June 29, 2006 and August 7, 2006. Furthermore, the claimant's chiropractor notes, dated between July 24, 2006 and August 7, 2006, under the heading "objective findings" indicate that the claimant was experiencing spasms in the cervical

and lumbar region. Considering all of the above evidence, the claimant has clearly met the "objective findings" requirement of Ark. Code Ann. §11-9-102(16).

Second, the claimant proved by a preponderance of the evidence that he sustained a specific incident left shoulder injury arising out of and in the course of his employment on June 24, 2006. The claimant testified that the truck slid into a field and stopped when it hit a tree. The claimant testified that his knee hit the dashboard. The claimant testified that he believes it was the jerking action of the truck hitting the trees and the tightening of the seatbelt that injured his neck and shoulder. The claimant testified that he was unable to get out of the truck by himself and had to be helped out of the truck by a police officer and some people from a nearby house. The claimant testified that he could not get out of the truck because the seatbelt had locked up. The claimant testified that when the people attempted to get him out of the truck he felt pain in his neck, his left knee, a little bit in his left elbow and his left shoulder. The claimant's testimony as to the occurrence of the accident is not in question as the claimant's neck injury, which arose out of the same incident, has been deemed compensable.

In addition to the claimant's credible testimony, the medical records clearly show that the claimant complained of, and was treated for, a left shoulder injury beginning from the moment he arrived at the Emergency Room on June 24, 2006, through the last medical report in evidence, the August 7, 2006 report of Dr. Nix recommending that the claimant undergo a left shoulder MRI. Although the respondent has asserted an independent intervening cause defense relating to a shoe-box lifting incident on July 22, 2006, we find no merit in this defense. Benefits are not payable for a condition which results from a non-work related independent intervening cause following a compensable injury which causes or prolongs disability or need for treatment. Ark. Code Ann. §11-9-102(4)(F)(iii)(Repl. 2002). There is no independent intervening cause unless the subsequent disability is caused by activity on the part of the claimant that is unreasonable under the circumstances. Davis v. Old Dominion Freight Line, 341 Ark. 751, 205 S.W. 3d 326 (2000). Here, the claimant credibly testified that he was asked by his wife to retrieve a shoebox from his closet. There is no evidence of record that would indicate that there is anything unreasonable about the claimant's actions in attempting to

retrieve a shoebox in his closet, therefore, the defense of independent intervening cause cannot act as a bar to the claimant's receipt of benefits.

Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The claimant does not have to provide objective medical evidence of his continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus. Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997). Here, the claimant has testified that his knee injury has resolved. However, the claimant's testimony and the medical record clearly show that his shoulder injury has not resolved. On August 7, 2006, the claimant's treating physician recommended an MRI

of the left shoulder for diagnostic purposes. As such, the MRI requested by the claimant's treating physician represents reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Here, the claimant testified that he was unable to return to work due to his left shoulder injury until October 18, 2006. The medical record shows that although the claimant was released to return to work by Dr. Nix starting July 24, 2006, the medical record also shows that the claimant was taken back off of work by the Christus St. Michael Emergency Room doctor starting July 25, 2006. The medical record shows that the claimant received chiropractic treatment on July 24, 2006, July 26, 2006, July 31, 2006, August 1, 2006, August 2, 2006 and August 4, 2006. On August 7, 2006, Dr.

Nix took the claimant completely off work pending the MRI awarded herein. Based on the claimant's credible testimony and the medical record, the Full Commission finds that the claimant was totally incapacitated from work as per Breshears, supra, from July 25, 2006 until the date he returned to work, October 18, 2006, and is entitled to temporary total disability benefits for that time period.

III. CONCLUSION

Pursuant to the Court's remand, and based on our de novo review of the entire record, the Full Commission finds that the claimant proved he sustained compensable left shoulder and left knee injuries in the June 24, 2006 motor vehicle accident, and is entitled to reasonably necessary medical treatment, specifically the MRI recommended by the claimant's treating physician, and temporary total disability benefits from July 25, 2006 until October 18, 2006.

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 on this appeal before the Full Commission, in addition to the maximum attorney fee allowable on disability benefits awarded herein, 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.

A. WATSON BELL, Chairman

KAREN A. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner