

Ramirez - F603156

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603156

RICARDO RAMIREZ, EMPLOYEE	CLAIMANT
TODD CHRISTEN CONST. CO., EMPLOYER	RESPONDENT NO. 1
COMMERCE AND INDUSTRY INS. CO., CARRIER/TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MARCH 3, 2009

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

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

Respondent represented by HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

The claimant appeals the Administrative Law Judge's Opinion filed August 27, 2008. The Administrative Law Judge found that the claimant failed to prove that he sustained an injury to his back which required medical services and that the claimant failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment. After reviewing the entire

record de novo, the Full Commission reverses the Administrative Law Judge's decision. The Full Commission finds that the claimant suffered compensable work-related bilateral hip, right arm, and back injuries which required medical services, and is entitled to reasonably necessary medical treatment for these injuries.

HISTORY

The claimant was a construction worker employed by the respondent. On March 13, 2006, the claimant fell 30 feet off the roof of one of the respondent's building projects, injuring his hips, right arm, and back. The respondent accepted all of the injuries as compensable except the back injury. The claimant was taken to the emergency room on the date of the injury and diagnosed with a right arm fracture. An x-ray of the claimant's right arm on March 13, 2006, showed a fractured arm. The claimant was taken to Dr. Syed Hasan at the University of Arkansas for Medical Sciences on March 17, 2006. Dr. Hasan's March 17 medical record notes the claimant was having "tailbone pain." Dr. Hasan ordered a CT scan and on March 22, 2006, the CT scan image was observed to show bilateral fractures of his hip at "the left acetabulum that appears to extend into the articular surface of the left hip", and a fracture

of the right side of the L-5 spine. In the March 22, 2006 radiology report, Dr. James Wise also notes:

fracture is seen through the right transverse process of L5. There is mild diastasis of the right sacroilliac joint with air vacuum phenomenon within the joint. There is approximately 2 mm of translation of the right sacrum anterior to the right iliac wing. [Emphasis added].

The L-5 level mentioned in the March 22, 2006 CT scan report is the part of the lumbar spine, which is also referred to as the "lower back." Guides to the Evaluation of Permanent Impairment 427 (5th ed., Am. Med. Assn. 2001).

Additionally, the CT scan report noted in the "Impression" section: 1. Bilateral fractures through the anterior columns of both acetabula [the concave areas of hip joints]... 3. Mild diastasis [separation of adjacent bones without fracture] of the right sacroiliac [hip] joint."

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 (4) (D), 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).

The Full Commission finds that the claimant has shown through a preponderance of the evidence that the right arm, bilateral hip, and back injuries arose out of and in the course of employment and that the right arm, bilateral hip, and back injuries arose out of a specific incident, identifiable by time and place of occurrence. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury

based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury.

Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). The claimant credibly testified that he was injured at work on March 13, 2006 when he fell 30 feet. The medical records confirm the claimant's testimony. The Full Commission finds that the claimant's right arm, hip, and back injuries are logically attributable to the March 13, 2006 employment incident.

Furthermore, the claimant has shown medical evidence supported by objective findings, establishing the right arm, hip, and back injuries. Objective findings are defined as findings that cannot come under the voluntary control of the claimant. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). An x-ray of the claimant's right arm on March 13, 2006, showed a fractured arm. The March 22, 2006 radiology report, interpreted by Dr. Wise, states "fracture is seen through the right transverse process of L5." The transverse process of the L-5 level is a natural protrusion of bone radiating from the spine. Additionally, the CT scan report noted

bilateral fractures through the anterior columns of both hip joints and mild diastasis of the right sacroiliac joint. The claimant has no voluntary control over the results of an x-ray or CT scan which showed these findings. Thus, objective medical findings demonstrate claimant suffered injuries to his right arm, hips, and back.

Lastly, the Full Commission finds that the claimant has shown by a preponderance of the evidence that his right arm, bilateral hip, and back injuries caused internal or external physical harm to the body which required medical services or resulted in disability or death. See Mikel, supra. It is clear from the medical records that the claimant's broken arm caused physical harm which required medical services. It is also clear from Dr. Hasan's medical records that the claimant's pelvic CT scan was ordered as a result of complaints of "tailbone pain." Given the inexact meaning of "tailbone", such an area of the body can be interpreted as either a part of the lower back or the hip/pelvis area of the body. The Act has never required the claimant to be able to diagnose themselves or to specify their injury with such a level of precision. The claimant must only explain their symptoms to the best of their ability to a medical professional. As such, the Full

Commission finds that the CT scan ordered for the claimant was for diagnostic purposes and was a "required" medical service. As such, the evidence of record clearly shows that the claimant required medical services related to the injury to his spine at the L-5 disk level. Therefore, the Full Commission finds that the claimant suffered compensable work-related right arm, bilateral hip, and back injuries which required medical services.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. §11-9-508; American Greeting Corp. v. Garey, 61 Ark. App. 18, 963 S.W. 2d 613 (1998). What constitutes reasonably necessary medical treatment under Ark. Code Ann. §11-9-508 is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W. 2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W. 3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W. 2d 845 (1983). Here, the claimant suffered compensable bilateral hip, right arm, and back injuries, and was treated

with diagnostic testing, prescription medication, and physical therapy which the medical record clearly shows was necessary to treat, stabilize, and maintain the claimant's status. Furthermore, the Full Commission finds that the claimant's mileage to and from these medical treatments is compensable. The Full Commission specifically finds that the medical treatment from Drs. Hasan and Gruenwald, for the claimant's hip injury including physical therapy and prescriptions for Celebrex and Naproxen, was reasonably necessary medical treatment, for which the respondent is liable.

For prevailing 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)(2).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner