

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F810027

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| MICHAEL BROWN, EMPLOYEE | CLAIMANT |
| CARROLL COUNTY, EMPLOYER | RESPONDENT |
| ASSOCIATION OF ARKANSAS COUNTIES, WCT INSURANCE, CARRIER/TPA | RESPONDENT |

OPINION FILED MAY 28, 2010

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

Claimant represented by the HONORABLE MARK FREEMAN, Attorney at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed October 30, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the claim.
2. On November 20, 2006, the relationship of employee/self-insured employer/third-party administrator existed between the parties.

3. On November 20, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$280.00 for total disability and \$210.00 for permanent partial disability.
4. On November 20, 2006, the claimant sustained compensable injuries to his neck, lower back, and right knee.
5. The claimant has failed to prove by the greater weight of the credible evidence that he also sustained compensable injuries to both of his shoulders on November 20, 2006. Specifically, the claimant has failed to establish by medical evidence, which is supported by objective findings, the actual existence of any physical injury or damage to either of his shoulders, as required by Ark. Code Ann. §11-9-102(4)(D). He has further failed to prove by the greater weight of the credible evidence that, on November 20, 2006, he sustained physical injuries to either of his shoulders that arose out of and occurred in the course of his employment with the respondent, that were caused by a specific incident, and that are identifiable by time and place of occurrence.
6. There is no dispute, at the present time, over medical services attributable to the compensable injuries to the claimant's neck, lower, back, and right knee.
7. There is no dispute over the claimant's entitlement to temporary total disability benefits accruing through May 6, 2009.
8. The claimant has failed to prove by the greater weight of the credible evidence that he was rendered temporarily totally disabled as a result of the effects of his compensable injuries, on and after May 7, 2009.

Specifically, the claimant has failed to prove by the greater weight of the credible evidence that he continued within his healing period from the effects of these compensable injuries on and after May 7, 2009.

9. The respondents have controverted the claimant's entitlement to any benefits attributable to the alleged employment-related injuries to his shoulders and his entitlement to any temporary total disability benefits on and after May 7, 2009.

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.

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

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that the claimant proved by a preponderance of the evidence that he sustained compensable injuries to his right and left shoulders at the time of his work-related injury on November 20, 2006, and that he is entitled to additional medical and indemnity benefits for this injury. I also find that the claimant is entitled to temporary total disability benefits from May 2, 2006 to a date yet to be determined.

For the claimant to establish a compensable injury as a result of a specific incident, 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).

On November 20, 2006, the claimant sustained compensable injuries to his neck, lower back, and right knee in a work-related incident when he tackled a fleeing convict. There was no dispute over medical services for these compensable injuries or over temporary disability benefits attributable to these compensable injuries through May 6, 2009. The claimant sought benefits for injuries to his shoulders arising out of this incident. There is no question that the incident arose out of and in the course of his employment or that this was a specific incident, identifiable by time and place of occurrence. The issue was

whether the claimant's shoulder problems were causally related to that incident and whether there were objective findings to support the existence of internal harm.

On November 20, 2006, the emergency room noted lumbar pain, although he testified that he "hurt all over." The claimant was not seen again from the date of the incident until February 19, 2007, when he was treated by Dr. Malone for his workers' compensation injuries. At that time, the claimant reported that his pain improved, "but it has since worsened in both his low back and his right shoulder going into his arm." Dr. Malone observed positive spasm in the paraspinous muscles of his neck and lumbar spine and assessed persistent lumbar and cervical spine pain, with a history of fall and injury. The claimant reported shoulder pain and was assessed with a neck injury at the same time he reported his lumbar problems which were accepted by the carrier. The claimant's testimony was that he experienced increasing shoulder pain after the incident, and even without that testimony the medical records show that his first complaint of shoulder pain was concurrent with his complaints of lower back pain in February 2007.

In March 2007, Dr. Malone discussed the symptoms the claimant had radiating into his left upper extremity from his neck. The records show that the claimant's neck pain and his upper extremity and shoulder pain were all interrelated. His first complaint of shoulder pain resulted in a diagnosis of cervical pain, and the following month, in March, Dr. Malone focused on cervical radiculopathy. In July, the claimant reported pain coming from his neck into his arm. I find that the claimant's complaints of shoulder pain are interchangeable with his complaints of cervical radiculopathy and upper extremity pain and numbness. The claimant is not a physician and is not charged with diagnosis. He consistently complained about neck pain, low back pain, shoulder pain and upper extremity pain, and to find otherwise is to purposefully impose a level of medical specificity upon the claimant outside the requirements of the Arkansas Workers' Compensation Act. In June 2008, Dr. Pak noted that the claimant had been complaining about the same problems "all along since that 2006 injury," so he related the problems to the 2006 injury. I find that the claimant's consistent complaints of pain in his neck and upper extremities, as well as his complaints of shoulder

pain since February 2007 are sufficient to link his shoulder problems to his compensable event of November 2006.

I note that both Dr. Lampert, who performed cervical steroid injections in 2007, and Dr. Knox, who evaluated the claimant in 2009, observed ulnar numbness. This is further evidence of the continued neurological issues the claimant was experiencing from close in time to the incident.

I also note that Dr. Heinzelmann's determination that the claimant's shoulder problems were not related to the 2006 incident was based upon less than all the information. The doctor felt that because the claimant did not have shoulder symptoms until shortly before his treatment of the claimant in February 2009, the shoulder problems and the incident were not related. However, the records show that the claimant reported shoulder pain on his first workers' compensation evaluation with Dr. Malone in February 2007. The records show that the claimant consistently complained of neck and upper extremity problems throughout his care, and in September 2008 his shoulder complaints were mentioned with his neck complaints. I do not credit Dr. Heinzelmann's opinion concerning the causal

relationship between the claimant's shoulder problems and the 2006 incident, because this doctor did not have all the facts.

The claimant has proven by a preponderance of the evidence that his shoulder complaints were causally related to the November 2006 incident.

I also find that the claimant presented objective findings to support the existence of internal harm. The objective MRI findings of cervical spondylosis and stenosis on both sets of nerve roots at C6 and C7 correspond to the distribution of symptoms in the claimant's shoulders and arms, symptoms the claimant did not have prior to the injury of November 20, 2006. Levels C5, C6 and C7 were affected by these conditions, and the first MRI, in March 2007, showed possible impingement of C6. The C5, C6 and C7 nerve roots innervate the muscles of the shoulder and arm. C5 and C6 also innervate this skin. The C6 nerve root motor groups are responsible for shoulder internal rotation and adduction, for elbow flexion and for forearm supination. The C7 root groups are responsible for elbow, forearm, wrist and phalanges movement.

(<http://www.assh.org/Public/HandAnatomy/Nerve/Pages/Cervical-Root-Innervation.aspx>, American Society for Surgery of the Hand, 2010). I find that the claimant's MRI scans are objective evidence of the injuries causing pain and numbness in his shoulders and upper extremities. The claimant has presented evidence of objective findings of injury sufficient to satisfy the Arkansas Workers' Compensation Act.

I find that the claimant has proven by a preponderance of the evidence that he sustained compensable bilateral shoulder injuries in the work-related incident on November 20, 2006. He is entitled to reasonable and necessary medical care for these injuries, including the care to date from Drs. Pak, Adametz, Heinzelmann. The treatment by Dr. Knox to date and his proposed course of treatment, including MRI and electrical studies, are reasonable and necessary treatment of the claimant's compensable injuries.

The claimant also sought temporary total disability benefits from May 7, 2009, to a date yet to be determined. On May 7, 2009, Dr. Knox took the claimant off work after noting the claimant's back and bilateral leg pain

and neck and bilateral shoulder pain. Dr. Knox wanted MRIs of the lumbar and cervical spine, noting that the scans from two years prior were insufficient for his current diagnostic purposes. Dr. Knox had ordered both an orthopedic and a neurological work-up and took the claimant off work until these were complete. The claimant remained off work through the rest of the medical records in which Dr. Knox noted that the MRI scans and electrical studies he had ordered were denied.

The claimant needed additional diagnostic testing to determine what treatment options were necessary, and those diagnostic tests have not yet been performed. The claimant continued to have consistent symptoms related to his work injury, and he remained in his healing period. The doctors who placed the claimant at maximum medical improvement did so in the face of continued symptoms, in the absence of full exploration of the claimant's neurological condition and of an orthopedic evaluation, and in Dr. Adametz's case with the suggestion of further diagnostic work. Dr. Knox however determined that the claimant required further testing to treat the symptoms preventing the claimant from safely working.

There is no question that the claimant remains within his healing period. Dr. Knox has stated that the claimant cannot work, and thus he is entitled to temporary total disability benefits from May 7, 2009 to a date yet to be determined.

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that the claimant proved by a preponderance of the evidence that he sustained compensable injuries to his right and left shoulders at the time of his work-related injury on November 20, 2006, and that he is entitled to additional medical and indemnity benefits for this injury. I also find that the claimant is entitled to temporary total disability benefits from May 2, 2006 to a date yet to be determined.

PHILIP A. HOOD, Commissioner