

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F802833

JAMES GREER,
EMPLOYEE

CLAIMANT

TYSON SALES & DISTRIBUTION, INC.,
EMPLOYER

RESPONDENT

TYNET CORPORATION, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 18, 2010

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE E. DIANE
GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed November 30, 2009. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at
the prehearing conference conducted on
February 5, 2009, and contained in a pre-
hearing order filed February 5, 2009, are
hereby accepted as fact.
2. The claimant has proven by a preponderance of
the evidence that he has objective medical
findings of cervical difficulties.

3. The claimant has failed to prove by a preponderance of the evidence that his objective medical findings of cervical difficulties and his alleged work related injuries are causally connected.
4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable work related injury in this matter.
5. The claimant is not entitled to benefits in this matter.

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.

The claimant alleges that he sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the November 30, 2009 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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

After my de novo review of the entire record, I concur with the majority opinion that the claimant proved by a preponderance of the evidence the existence of objective findings of cervical difficulties. However, I must respectfully dissent from the majority opinion findings that the claimant failed to prove by a preponderance of the evidence that his objective medical findings of cervical difficulties and his alleged work-related injuries are causally connected, that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable work-related injury in this matter, and that the claimant is not

entitled to benefits in this matter. I would award the claimant medical benefits, temporary total disability benefits from December 27, 2007 to December 29, 2008, for his compensable cervical spine injury, and attorney's fees.

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).

The majority found that the claimant had objective findings of injury, with which I agree. The claimant had MRI findings, myelogram and post-myelogram

CT findings of cord compression and disc protrusions, as well as the physician's observations during surgery, and observations of spasms during his course of treatment.

I find that the claimant credibly testified that, on December 26, 2007, after struggling to "slide his tandems," he suffered a jolt which caused a twinge in his neck and into his arms when he backed his truck into his trailer. This activity arose out and in the course of his employment, as he was on duty for his employer, performing employment services. This activity also fulfills the specific incident requirement.

The claimant described the circumstances surrounding his injury credibly at the hearing. He also explained that, at the time, he did not think too much about it, but that the next morning, he had a "crick" in his neck which did not improve. The claimant did not initially draw a connection between the work incident and his problems. However, once he did make the connection, he reported the work-related injury to his fleet manager, Marge Harr, on January 4, and attempted to report it to Darlene Harris, the workers' compensation manager, during the week of January 4, 2008, but he was unable to reach Harris because she was out of the office. The following week, he did speak to

her, relating the work-related incident. He did not receive the workers' compensation forms until he made contact with Harris again after surgery. The claimant did not discuss causation with his surgeon until March 26, 2008; however, the history the claimant gave at that time was consistent with his description of the injury he has given throughout. Prior to this, the claimant's medical records show that the timeline of his problems is consistent with his description of injury. I find that the claimant has proven a causal connection between the work-related incident on December 26, 2007 and his need for medical treatment of his cervical spine.

I also find that the claimant did give notice to his employer of his injury, first to his fleet manager on January 4, and then to Harris the following week, and that the respondents are responsible for the medical treatment of his compensable injury, including his surgery. I do not credit Harris' testimony that she did not speak to the claimant before February 2008 or Harr's testimony that he never told her his injury was work-related.

Even though I specifically find in favor on the claimant on the issue of notice, if it was determined that notice did not occur until February 15,

2008, the respondents would still be responsible for the claimant's medical care and indemnity benefits, from that date through December 28, 2008.

The respondents provided evidence in the form of medical records from 1994 to 2006, showing that the claimant had some complaints of pain and treatment of his neck. However, the record is devoid of any evidence of cervical symptoms in 2007, and the claimant was successfully employed as a truck driver during that time. With his own medical insurance, workers' compensation coverage and the Veterans' Administration, the claimant had ample access to medical care, but the record indicates that such care was unnecessary in 2007, until the claimant suffered the jolt causing the twinge in his neck and arms and the subsequent neck and arm pain, numbness and tingling. Whether the man had pre-existing degenerative problems or not, he was able to function in a physically demanding job until after the incident of December 27, 2007. The medical records do not undermine the credibility of the claimant, and they do not prevent a finding of causal connection between the incident and the claimant's need for treatment. (I also note that with all of the access to medical treatment with his own insurance, his VA care, and the

short- and long-term disability coverage he had, there was no reason to claim a workers' compensation injury if he did not have one.)

Under Arkansas workers' compensation law, employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark Code Ann. Sec. 11-9-508(a) (Supp. 2005). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291).

The physicians in this case identified significant medical conditions in the claimant's cervical spine which demanded surgical treatment. This treatment was successful in alleviating the claimant's symptoms, leaving only axial cervical pain which was managed with home exercises and medication. The claimant was released to return to commercial truck driving with a fifty-pound lifting restriction on December 28, 2008. This is ample evidence of how reasonable and necessary the treatment was. The

respondents are responsible for this treatment, including the surgery.

Temporary total disability for unscheduled injuries is that period within the healing period in which a 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). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. Breshears, supra; J.A. Riggs Tractor Co. v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The claimant suffered his injury on December 27, 2008. He was instructed not to drive on December 31, 2007, and he was excused from work from that date until December 28, 2008, when Dr. Vohra determined that he was at maximum medical improvement and able to return to commercial driving. The claimant is entitled to temporary total disability benefits from December 31, 2007 to December 27, 2008.

The respondents controverted this claim in its entirety and, therefore, the claimant is entitled to an attorney's fee on the benefits awarded.

After my de novo review of the entire record, I concur with the majority opinion that the claimant proved by a preponderance of the evidence the existence of objective findings of cervical difficulties. However, I must respectfully dissent from the majority opinion findings that the claimant failed to prove by a preponderance of the evidence that his objective medical findings of cervical difficulties and his alleged work-related injuries are causally connected, that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable work-related injury in this matter, and that the claimant is not entitled to benefits in this matter. I would award the claimant medical benefits, temporary total disability benefits from December 27, 2007 to December 29, 2008, for his compensable cervical spine injury, and attorney's fees.

PHILIP A. HOOD, Commissioner