

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611714

LEONARD STALLWORTH, EMPLOYEE	CLAIMANT
HAYES MECHANICAL, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE CO. c/o AIG CLAIM SERVICES (TPA), INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 5, 2010

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

Claimant appeared *pro se*.

Respondents represented by the HONORABLE MELISSA WOOD, 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 September 23, 2009.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on August 17, 2006, when claimant sustained compensable injuries to his lower extremities.

3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$388.00 for temporary total disability benefits.
4. The claimant received a change of physician to Dr. D'Orsay Bryant on March 27, 2007.
5. The claimant was released to return to work without limitations on December 14, 2006.
6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits associated with his compensable injuries.
7. The claimant has failed to prove that his depression is a compensable consequence of his compensable injuries.
8. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.
9. Claimant has failed to prove by a preponderance of the evidence that his need for additional medical treatment is reasonable and necessary and causally related to his compensable work-related injury in August of 2006.

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

I must respectfully dissent from the majority opinion. I would remand the claim to the Administrative Law Judge to take additional evidence pursuant to Ark. Code Ann. Sec. 11-9-704(b) (7).

The claimant filed his appeal, attaching two documents which were not otherwise in the record. While it is obvious that these documents were not in the record

before the Administrative Law Judge and not presented in a timely fashion, it is equally as obvious that the documents are crucial to the claim made by this pro se claimant. The Commission is well within its powers to remand to the Administrative Law Judge for the purpose of taking additional evidence pursuant to Ark. Code Ann. Sec. 11-9-704(b)(7), particularly in light of the fact that the order of the Administrative Law Judge and the Commission has not in fact been carried out by the respondents.

The first document presented by the claimant on appeal is a letter from Dr. Bryant, dated September 3, 2009, which states:

I am writing this letter regarding my patient, Leonard Stallworth whom I initially saw on April 30, 2007 for a work related injury. The patient at the time of the injury on August 17, 2006 was employed at Hays Mechanical Incorporated as an iron worker in a manual labor job. He stated that an iron beam fell from the top with 12-14 feet. As a part of the workup, plain x-rays of the lumbar spine and left hip have been recommended. An MRI of the lumbar spine has been recommended. However, funds for performance of the plain radiographs and MRI have not been approved by the Workers' Compensation Carrier. When the funds are made available the x-rays of the lumbar spine and left hip as well as the MRI of the lumbar spine will be ordered immediately.

This document is evidence that the claimant has not received the treatment ordered in the December 10, 2007

order of the Administrative Law Judge, which was affirmed and adopted by the Full Commission in May 2008. This document is also evidence that the claimant has not reached the end of his healing period as more diagnostic testing is required. While this letter is dated September 3, 2009, a few weeks prior to the hearing, there is no indication that the claimant had access to it at that time. The evidence is certainly not cumulative and certainly could change the result of his claim. In light of the fact that the respondents have failed to comply with a prior order of the Commission, I would submit that the only prejudice to them would be that the respondents have been caught in that failure. The respondents cannot be surprised that they failed to pay for the treatment ordered by the Commission.

The second document is dated October 8, 2009, and is a return to work form, which indicates not that the claimant is released to work, but that an MRI of the claimant's lumbar spine and left hip has been recommended. This evidence could not have been presented at the hearing, it is not cumulative, and it could change the outcome of the claim, as it is indicative that the claimant was actually within his healing period and unable to work.

I note that the claimant is pro se and that it appears that the respondents have taken full advantage of that fact. I would remand this claim to the Administrative Law Judge for the purpose of taking additional evidence, including but not limited to these two documents presented by the claimant on appeal.

For the foregoing reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner