

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G005985

JONATHAN JACKSON, EMPLOYEE	CLAIMANT
WEST MEMPHIS STEEL AND PIPE, INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 10, 2011

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

Claimant represented by the HONORABLE MARC I BARETZ,  
Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE PHILLIP CUFFMAN,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed February 8, 2011. The administrative law judge found that the claimant was entitled to temporary total disability benefits beginning July 8, 2010 until a date yet to be determined. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved he was entitled to

temporary total disability benefits beginning August 5, 2010 until a date yet to be determined.

I. HISTORY

Jonathan Blake Jackson, age 29, testified that he became employed at West Memphis Steel & Pipe, Inc. in September 2008. Mr. Jackson testified that he was hired to be part of the respondent-employer's maintenance crew. The claimant described his job duties: "We would maintain the shop as well as repair heavy equipment on 18-wheelers, machines, such as, you know, saws, cutting steel, cranes, general maintenance of the building, painting....It was hard work."

The parties stipulated that the employment relationship existed at all pertinent times, including July 7, 2010. The claimant testified on direct examination:

Q. And about what time of day was that when you got hurt?

A. It was between 4:00 and 5:00 because I remember it was getting close and the last thing we were doing was an oil change on a big rig, an 18-wheeler truck....It was very hot. It was one of those weeks where it was like 120 degree heat index, and I remember the last thing we did was a truck that pulled up at like 4:00 and it needed an oil change on it....

Q. And did something happen where you fell or something or passed out or what happened?

A. I remember we had finished the oil change and I washed my hands, and I went back to continue to doing what I was doing, was drilling those rods, and my supervisor was standing right there and that's all that I remember, and I woke up and I was in an ambulance, and they told me that I'd had a seizure, and I had fallen, and that I had a seizure because I was - and I didn't know because I had blood in my mouth and I had blood all over me, and I didn't know - I was really - I didn't know what had happened. It was just like complete blackout.

Q. Okay. Had you ever blacked out before?

A. No, sir.

Q. Had you ever had what's been described as a seizure before this?

A. No, sir....

The claimant was admitted to Crittenden Regional Hospital on July 7, 2010. The emergency physician record on July 7, 2010 indicated that the claimant's chief complaint was first-time seizure. The clinical impression was epileptic seizure, along with "head/facial injury with lacerations." The admitting diagnosis was "New onset seizure, closed head injury, multi lac, benzodiazopine abuse."

The claimant was discharged home on July 8, 2010. The handwritten discharge diagnosis appeared to be Vasovagal Syncope, a Right Temporal scalp laceration, history of

opioid dependence, anxiety, and insomnia. Dr. Churchill A. Akhigbe reported on July 8, 2010:

CHIEF COMPLAINT: Loss of consciousness for one day.

PRESENT ILLNESS: Patient is a 28-year-old Caucasian male with past medical history significant for history of opioid dependence, anxiety disorder, and insomnia who presented as above. Patient reports that while at work yesterday he began to feel very hot and moments later, per information received by his mother, he fell down lacerating the left side of his scalp and losing consciousness for an unspecified period of time. When patient came to, he was apparently confused and tried to resist his transfer to this facility because, as he reports, he felt very uncomfortable and still very hot. There was some discussion, per chart review, of patient having a seizure episode, but further discussion per my interview with patient's mother does not seem to suggest this. Patient has no history of seizure disorder. He denied any other complaints at this time.

PAST MEDICAL HISTORY: History of opioid dependence, anxiety disorder, and insomnia.

PAST SURGICAL HISTORY: Repair of laceration to left temporal scalp during this hospitalization and right eyebrow during this hospitalization.

LABORATORY/IMAGING: CT maxillofacial and CT head significant only for soft tissue laceration underlying the left temporal area.

#### DISCHARGE SUMMARY

HOSPITAL COURSE: Patient is a 28-year-old Caucasian male with past medical history significant for opioid dependence, anxiety disorder, and insomnia who presented with a

vasovagal syncope and an associated laceration to his left temporal scalp. Patient was observed overnight. He reports being back to his baseline mental status. There was some questionable history of a seizure disorder, but upon further interview by me, this does not appear to be the case. Patient has no history of seizure disorder. No seizures were observed. During this hospitalization an electroencephalogram was performed, the results are pending.

Patient wishes to be discharged, and I will acquiesce with same. He is to follow up with his primary care physician in four days with review of the electroencephalogram report.

The discharge diagnoses were "1. Vasovagal syncope. 2. Laceration of the left temporal scalp which has since been repaired." The secondary diagnoses were "1. Opioid dependence. 2. Anxiety. 3. Insomnia." The claimant was instructed, "He is to follow up with his primary care physician within four days reference electroencephalogram review and removal of scalp staples."

The claimant testified, "I was sitting watching TV, me and my girlfriend, and I had another seizure on July 23<sup>rd</sup>....I just remember sitting and watching TV and then I just lost consciousness." The record indicates that a local fire department was dispatched to the claimant's residence on July 23, 2010: "28 yo male found disoriented in living room sitting in chair. Pt couldn't speak coherently and

family was obviously distraught and stated that he just had a seizure. Pt became combative and was restrained by hand by EMS and fire personnel for pt, staff and family safety...." The emergency responder's impression was "Seizure, Altered level of consciousness." The record indicates that the claimant was hospitalized from July 23, 2010 until July 26, 2010. The claimant testified that he received worker's compensation indemnity benefits until August 4, 2010.

The claimant's testimony indicated that the respondent-carrier referred him to a neurologist, Dr. Alan M. Nadel. Dr. Nadel first saw the claimant on August 25, 2010:

Mr. Jonathan Jackson is a 28-year-old steel worker maintenance driver who is here for an evaluation of a seizure which occurred possibly related to a fall at work. He had two seizures. The first one occurred on July 7. It was extremely warm in the plant. He passed out and evidently had a generalized seizure. He struck his head and also had some lacerations to his skull. He is not certain whether the seizure occurred before the fall but it was extremely hot when he passed out and he evidently had a generalized seizure....An EEG was done which is reported as normal. He has his lacerations treated. He also evidently suffered some type of injury to his jaw which was subsequently noted to be fractured and has required some wiring. He was stable until July 23 when he evidently was at home and had a second generalized seizure. This was witnessed by his mother and described as becoming stiff, generalized shaking with postictal confusion and

agitation. EMT's came and he was quite combative and subsequently after a little Valium, he was stable and taken to Methodist hospital where he was admitted for four days. An EEG at that time showed some right temporal slowing with sharp waves. He was evaluated by a neurologist who felt that he had a seizure disorder and placed him on Keppra. He is currently on Keppra 1 gm. b.i.d. and comes in now for further evaluation and the question of Workers' Compensation. He has done well although he is still having trouble with his jaw [which] is currently wired. He is not having that much problem with headaches except for the areas of laceration. He is experiencing some neck pain.

He has had a problem with opioid abuse over the years. He is now on a withdrawal medication which he has been tapering and taking for several years. Presently, he takes anywhere from one pill to zero and that has pretty much been the scenario for several months including the time around these two seizures. This is a drug called Suboxone. He is not really having a drug problem otherwise.

According to records, he was evidently taking his girlfriend's diet pills just prior to the second seizure. He admitted to taking these on occasion for energy. He had a positive benzodiazepene screen and alcohol at Crittenden as noted in the emergency room note....

ASSESSMENT: This gentleman appears to have a seizure disorder and has had two independent generalized seizures. He is currently on Keppra 1 gm. b.i.d. which I think is fine. At this point, I think we just need to continue to follow him for seizures and he needs to continue Keppra. I do not believe that he should be driving and that has evidently been explained to him. He needs to refrain from driving for the next six months according to Arkansas State law. I do think he can return to work but with significant restrictions. He should not be climbing ladders

or working at high places. He should not work around machinery that does not stop. He should also refrain from taking baths (unless people know he is in the bathtub in the house) and should take showers. He will try to work around these restrictions and return to work. I don't plan any other intervention and he will return to see me in two months.

I suspect that he did have a seizure, possibly precipitated by excessive heat exposure and possibly the head injury as well and now has had a second seizure. There is a possibility that this could be a primary seizure disorder but it is hard to be certain whether the heat exposure precipitated the seizures or the seizure came beforehand. My inclination at this point is to continue this as a heat exposure seizure which precipitated the problem.

The claimant testified that he had inquired with the respondent-employer regarding restricted work duties, but that the respondents had told him restricted work was not available.

A pre-hearing order was filed on October 25, 2010. The claimant contended that he "sustained an on-the-job injury resulting in TTD and PPD or PTD and seeks medical expenses and TTD and requests benefits and attorney's fees." The respondents contended that "although this claim was initially accepted, it was subsequently concluded that the claimant was injured as the consequence of an idiopathic fall and did not suffer a compensable injury."

The parties agreed to litigate the following issues:  
"compensability (temporary total disability from July 8, 2010 to a date to be determined/and medical benefits) and controverted attorney fees."

The claimant followed up with Dr. Nadel on October 26, 2010:

HISTORY: Jonathan Jackson is back in the office. He has had no seizures since starting Keppra and in fact, he has gone now for three months seizure-free. Unfortunately, he has lost his job, not working and not getting any compensation from Workers' Compensation which has become a problem. Because he can't drive, the company has put him on hold and now he is having a lot of what appear to be side effects from the medication. He is extremely lethargic, has no appetite and is always sleeping. Some of these symptoms may just be depression but it also could be some side effects of Keppra. I have discussed that with him and his family (mother and wife).

PLAN: I am going to change his medication to Keppra 750 mg. b.i.d. to see if it makes any difference in the other side effects. I may need to change his medication altogether but I hesitate to do so since he is doing so well at the present time. He will give me a progress report and we will also keep looking at these symptoms as possible depression.

Dr. Ryan Hagan reported on November 4, 2010:

Jonathan Jackson has been under the care of the department of oral and maxillofacial surgery for management of a mandibular right subcondylar fracture he sustained while at work secondary to a seizure event on 7/7/10.

We initially saw Jonathan on 7/27/10 and treated him surgically for his injuries on 7/29/10. However, upon reviewing his maxillofacial imaging obtained at an outside hospital on 7/7/10, it was apparent that he had sustained this injury prior to our initial consultation appointment on 7/27/10. It is our opinion he sustained the fracture on 7/7/10.

The parties deposed Dr. Nadel on November 8, 2010. The respondents' attorney questioned Dr. Nadel:

Q. I think your last visit with him was in late October, does that sound right?

A. Yes.

Q. Okay. Now, you restricted what you felt like he could do, and among other things said he should refrain from driving for the next six months according to Arkansas state law, tell me, what is that?

A. Arkansas has a very clear-cut law, as do all states, that a person who has a seizure can't drive for a designated amount of time, sometimes six months, sometimes a year. They can be on medication, but they have to be seizure free.... Arkansas is six months.

Q. Okay. So if you have a single seizure and are on medication you have to go six months seizure free before you can drive again?

A. That's right.

Q. And in his case you think he maybe had at least two seizures?

A. Well, yes, second one was on the 23<sup>rd</sup> of July.

Q. Okay. So are you then taking it from July 23<sup>rd</sup> -

A. Yes.

Q. - six months later?

A. Yes.

Q. All right. January then, if he remains seizure free he'll be okay to drive.

A. Yes.

Q. All right. You also imposed some limitations concerning what he could do at work, is that right?

A. Yes.

Q. And what, tell me about those?

A. Well, he had a seizure and if he's not controlled I've got to try to protect him and others, so he shouldn't be driving any motorized equipment, which he doesn't do anyhow, but he shouldn't be climbing ladders that aren't like in a bucket because if he would have a seizure he'd fall. If he's in a bucket he'd fall on the floor of the bucket, he wouldn't fall 10 feet or 20 feet, so he shouldn't climb high places. He shouldn't work around machinery like band saws and stuff that don't stop. He probably shouldn't work around band saws period, but shouldn't work around machinery that wouldn't stop.

Q. Okay. And again, if at the end of the six month period he remained seizure free, do you think he could go back to doing that kind of stuff?

A. Probably should, depends on his job. I'm always a little scared about that, but that's the law for driving. I'm just a very conservative guy. And it just depends on what his job

description is and what he would be working around.

Q. Would you -

A. But probably the answer to that would be yes.

Q. That he could go back to that?

A. Yes....

The claimant's attorney questioned Dr. Nadel:

Q. What I'm trying to find out, and I'm not going to try to belabor the point, but do you have an opinion as to whether or not he has a seizure condition at this point?

A. Yes, I do....I think he has a seizure disorder....

Q. And you have taken him not off work completely, but reduced him to, restricted him as you testified?

A. Yes....

Q. And do you expect that his condition is going to be permanent or do you know -

A. I don't know.

Q. - at this point?

A. I don't know.

Q. Has he reached maximum medical improvement at this point?

A. I think it's too early....

A hearing was held on November 18, 2010. The claimant testified that he did not return to work for the respondents

after July 7, 2010, and that the respondents had not offered light work duties. The claimant testified that he was attending school four nights a week from 6-10 p.m. The claimant testified that he was receiving career training at school in the area of heating, ventilation, and air conditioning.

An administrative law judge filed an opinion on February 8, 2011. The administrative law judge found that the claimant sustained injuries arising out of and in the course of his employment on July 7, 2010. The administrative law judge found that the claimant was entitled to reasonably necessary medical treatment, and that the claimant was entitled to temporary total disability benefits beginning July 8, 2010 until a date to be determined.

The respondents appeal to the Full Commission.

## II. ADJUDICATION

The respondents on appeal concede that the claimant sustained a compensable injury. The respondents argue that the evidence does not support the administrative law judge's award of temporary total disability benefits. Temporary total disability is that period within the healing period in

which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of his injury will permit, and the healing period ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The determination of when the healing period has ended is a question of fact for the Commission. *Id.*

In the present matter, an administrative law judge found that the claimant's compensable injury had "rendered him temporarily totally disabled for the period commencing July 8, 2010, and continuing through the end of his healing period." The Full Commission finds that the claimant proved he was entitled to temporary total disability benefits beginning August 5, 2010 until a date yet to be determined. The parties stipulated that an employment relationship existed on July 7, 2010. The claimant testified that he was

working in extremely hot conditions that day, and that he essentially "blacked out." The claimant was admitted to the hospital on July 7, 2010 and was diagnosed with new-onset seizure. It was noted that the claimant had sustained head and facial injuries with lacerations. The respondents on appeal to the Full Commission now concede that the claimant sustained a compensable injury on July 7, 2010.

The claimant was discharged from the hospital on July 8, 2010, at which time Dr. Akhigbe's diagnosis included "1. Vasovagal syncope. 2. Laceration of the left temporal scalp which has been repaired." The claimant testified that he "lost consciousness" while sitting at home on July 23, 2010. An emergency responder's impression was "Seizure" and the claimant was again hospitalized from July 23-26, 2010. The claimant's testimony indicated that he received indemnity benefits until August 4, 2010.

The respondent-carrier referred the claimant for neurological treatment with Dr. Nadel. Dr. Nadel began treating the claimant on August 25, 2010 and assessed seizure disorder. Dr. Nadel restricted the claimant from driving for six months. Dr. Nadel also assigned "significant work restrictions." The record indicates that

the claimant's employment with the respondents often required heavy manual labor and also entailed work around industrial machinery such as saws and cranes. The claimant testified that he was not allowed to return to work at light duty with the respondent-employer following the compensable injury. Dr. Nadel's deposition testimony on November 8, 2010 indicated that he had restricted the claimant from driving until at least January 23, 2011. Dr. Nadel testified that he continued to place work restrictions on the claimant, including a restriction from industrial machinery. Dr. Nadel testified that the claimant had not yet reached maximum medical improvement. The evidence therefore demonstrates that the claimant remained within a healing period for his compensable injury as of November 8, 2010.

The Full Commission recognizes the claimant's testimony on cross-examination that he had not attempted to return to work for another respondent-employer. The claimant testified that he was attending school four nights weekly, training in the career field of heating, ventilation and air conditioning. The claimant testified that he occasionally drove himself to school. Nevertheless, the evidence

demonstrates that the claimant remains in a healing period for his compensable injury. Dr. Nadel testified that the claimant was not physically able to perform his employment duties for the respondent-employer which required such activities as climbing ladders or working around bandsaws and similar equipment. The current record before us therefore indicates that the claimant remains within a healing period and is totally incapacitated from earning wages. We find that the claimant proved he was entitled to temporary total disability benefits beginning August 5, 2010 until a date to be determined.

Based on our *de novo* review of the entire record currently before us, the Full Commission finds that the claimant proved he was entitled to temporary total disability benefits beginning August 5, 2010 until a date yet to be determined. The claimant proved that all of the medical treatment currently of record was reasonably necessary in connection with his compensable injury. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five

hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I respectfully dissent from the majority's opinion finding that the claimant sustained a compensable injury and awarding temporary total disability benefits through the end of the claimant's healing period. Based upon my de novo of the record, I find that the claimant's healing period ended October 26, 2010.

The claimant sustained an admittedly compensable injury on July 7, 2010. Although the issue of compensability was an issue at the hearing, the respondents, on appeal, have conceded the claimant sustained a compensable injury. The only issue for determination is the period to which the claimant is entitled to temporary total

disability benefits. My review of the evidence demonstrates the claimant's healing period ended October 26, 2010.

The evidence demonstrates that the claimant has not worked since his work related incident on July 7, 2010. The claimant testified that he goes to school at night from 6:00 to 10:00. The claimant acknowledged that if the work did not involve machines or climbing that he would have no reason why he could not do the work. He has not looked for any work since his accident. He has not had another seizure since he had one at the end of July, 2010. Dr. Nadel released the claimant to return to work with restrictions on October 26, 2010.

When the claimant was questioned regarding what he did other than go to school he stated that he sat at home. When asked why he had not looked for work, he stated: "Well, I thought it would affect my workmen's comp. In my current condition I didn't think I would work. I didn't think I could do that." He also stated: "I thought that's illegal if you were trying to receive workmen's comp while your working." The claimant also stated that he was currently employed and there was no reason to look for another job.

Therefore, after considering the evidence of record, I find that the claimant reached the end of his healing period on October 26, 2010. As such, I must respectfully dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, COMMISSIONER