

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: G803929**

TAMARIUS ALLEN, Employee	CLAIMANT
EXPRESS SERVICES, INC., Employer	RESPONDENT
NEW HAMPSHIRE INSURANCE CO., Carrier	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, TPA	RESPONDENT

OPINION AND ORDER FILED FEBRUARY 9, 2021

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Craighead County, Arkansas.

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a hearing on December 11, 2020, before the undersigned Administrative Law Judge. A Pre-hearing Order was entered in this matter by the undersigned Administrative Law Judge on October 8, 2020, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/carrier relationship existed on May 17, 2018, on which date the Claimant sustained compensable injuries to his back and right shoulder for which certain benefits have been paid; and,
- (3) The Claimant's average weekly wage on the date of injury was \$329.58, an amount sufficient to entitle him to compensation rates of \$220.00 and \$165.00 for temporary total and permanent partial disability benefits, respectively.

The pre-hearing Order of October 8, 2020, also reflected the issues to be adjudicated, as

set forth below:

(1) Whether the Claimant is entitled to additional benefits in relation to compensable back and right shoulder injuries sustained on May 17, 2018; and,

(2) Whether the Claimant has sustained a compensable mental injury within the meaning of Ark. Code Ann. §11-9-113 in relation to his compensable injuries of May 17, 2018.

All other issues were reserved. During preliminary discussions, the Commission's Pre-hearing Order of October 8, 2020, was introduced into evidence without objection as Commission's Exhibit No.1. (TR 5-6) Respondents' Exhibit Nos. 1 and 2 were likewise introduced into evidence, although over the Claimant's objection. (TR 6-10) The Claimant failed to introduce any exhibits on his own behalf. (TR 10) Notably, following preliminary discussions and during his testimony, the Claimant participated in the following exchange with the undersigned Administrative Law Judge:

Q: JUDGE LUCY: Okay. But as we discussed off the record, you've brought no medical records with you here today to support that claim, correct?

A: Yes, Sir.

Q: JUDGE LUCY: All right. And you were made well aware during the last Pre-Hearing Conference that you were going to have to do that, weren't you?

A: Yes, Sir. (TR 21; see also TR 13)

Findings of Fact and Conclusions of Law

(1) The Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional benefits in relation to compensable back and right shoulder injuries sustained on May 17, 2018;

(2) The Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable mental injury within the meaning of Ark. Code Ann. §11-9-113 in relation to his

compensable injuries of May 17, 2018; and,
(3) All other issues are rendered moot.

Applicable Law

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3).

In addition, Ark. Code Ann. §11-9-508(a)(1) provides that:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

Further, Ark. Code Ann. §11-9-113(a) mandates that:

(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

Also, it is long-settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133 (2017)). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant's credibility. (See *Yates*,

supra. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant's testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

Testimony

Tamarius Allen

Upon examination by the undersigned Administrative Law Judge, the Claimant essentially testified that, on May 17, 2018, he was involved in a motor vehicle accident during the course of his delivery duties with Respondent Employer. (TR 14) According to the Claimant, "the seatbelt locked in on me and it kinda messed up my neck and my shoulder and my legs and my knee and body hit too much. I didn't hit my head or nothin' so that's a blessin'". (TR 15) The Claimant further testified that, at the time of the hearing, he was an employee of a different company (Environmental Filters) and earned "about the same" money as he did with Respondent Employer. (TR 16-17)

With respect to his alleged current (physical) symptoms, the Claimant essentially testified that his shoulder "burns," that he uses over-the-counter medications in relation to such after previously receiving physical therapy and injections, and that his doctors have recommended shoulder surgery. (TR 17-21) As for his alleged mental injury, the Claimant testified, *inter alia*, as follows:

JUDGE LUCY: What I'm asking you is: It there a specific mental injury that you're claiming in relation to this workers' compensation matter?

A: I can't sleep as much.

JUDGE LUCY: Well Sir, that's a medical condition, not a mental injury, okay?

A: Yes, Sir.

JUDGE LUCY: All right.

A: I still think about it a lot. It's -- damn -- Mr. Parrish said something about a wreck and I kinda --

JUDGE LUCY: Well, hold on.

A: (Unintelligible)

JUDGE LUCY: Hold up, Sir.

A: Yes, Sir.

JUDGE LUCY: I don't think you need to get into what Mr. Parrish has told you.

A: It's -- it -- it's just me thinkin' about it kinda messes me up and him sayin' -- talkin' about it -- but the irony of that is when I'm leavin' work or somewhere I'm goin' to, I can see a car wreck up the street from my job and it's -- it's just flashbacks of that. It's just -- yeah, it can be bad. It can be like just thinkin' about it and goin' through it and stuff, it kinda messed me up. (TR 22-23)

During cross-examination, *inter alia*, and with respect to his post-incident activities, the

Claimant testified as follows:

Q: So your testimony a moment ago, when I asked you about helping people move, when you said, "I'm just a driver," that's --

A: Just a --

Q: Let me finish --

A: It's not --

Q: -- the question, please.

A: That's -- that's --

Q: Let me finish the question, please.

A: Yes, Sir.

JUDGE LUCY: Both of you settle down.

MR. PARRISH: Yes, Sir.

Q: Was it not true when you said, "I'm just a driver?" That's not true?

A: It's not true. Okay, Sir? Okay. It's not true. But that's like you axin' (sic) me for somethin' else other than what I'm doin'. (TR 34-35)

In addition, the Claimant acknowledged that, post-incident, he has completed a degree in Health Management and has already received employment offers in relation to such. (TR 36)

Medical and Documentary Evidence

I have reviewed the entirety of the medical and documentary evidence submitted by the Respondents; however, discussion of such is not necessary with respect to the findings of fact made herein.

Adjudication

As an initial matter, I specifically find that the Claimant was simply not a credible witness, given his admission of having provided false testimony during the hearing itself as above-noted. Moreover, and most importantly, the Claimant has submitted no medical evidence to support his claim for additional medical treatment in relation to his initially compensable injuries of May 17, 2018, and has likewise failed to submit any medical evidence to support his claim of an alleged mental injury in relation to such -- despite his admission of having been expected and required to do so as also above-noted. Accordingly, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional reasonably necessary medical treatment in relation to his compensable injuries of May 17, 2018, and has likewise failed to prove, by a preponderance of the evidence, that he sustained a compensable mental injury in association

with such.

Order

Based on the foregoing discussion, including my observation of the witness and his testimony and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional reasonably necessary medical treatment in relation to his compensable injuries of May 17, 2018, and has likewise failed to prove, by a preponderance of the evidence, that he sustained a compensable mental injury in relation to such. All other issues are rendered moot and this claim is respectfully denied and dismissed.

The Respondents are ordered and directed to pay the Court Reporter's fee within thirty (30) days of billing pursuant to Rule 099.20 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge