

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G104506

JAMES BENTLEY BUHRMAN, EMPLOYEE	CLAIMANT
SCHLUMBERGER TECH. CORP., EMPLOYER	RESPONDENT
TRAVELERS INS. CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 30, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 22, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Amy Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 22, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on June 14, 2021. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. With the amendment of the second, and a fourth reached at the hearing, they are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on or about May 23, 2011, when Claimant sustained a compensable injury to his neck.
3. Respondents accepted the above injury and paid medical and temporary total disability benefits pursuant thereto.
4. Claimant's average weekly wage entitles him to compensation rates of \$575.00/\$431.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The following were litigated:

1. Whether Claimant is entitled to additional temporary total disability benefits.
2. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that admitted, compensable injuries were sustained on May 23, 2011.

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2. Claimant contends entitlement to additional temporary disability benefits beginning with the date of last payment of compensation and continuing to a date yet to be determined.
3. These benefits are controverted for purposes of attorney's fees.
4. All other issues are reserved.

Respondents:

1. Respondents contend the claimant reached maximum medical improvement on December 7, 2020.
2. Claimant is not entitled to additional temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

4. Claimant has not proven by a preponderance of the evidence that his counsel is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CASE IN CHIEF

Summary of Evidence

Claimant was the sole hearing witness.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of one (1) index page and forty-four (44) numbered pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of three (3) index pages and forty-four (44) numbered pages thereafter; and Respondents' Exhibit 2, the indemnity benefit payout history on the claim, consisting of two (2) index pages and one (1) numbered page thereafter.

Adjudication

A. Additional Temporary Total Disability

Introduction. Claimant, who was employed for Respondent Schlumberger Technology as a rig worker, sustained a compensable injury to his neck on May 23, 2011. Respondents accepted this injury as compensable and have continued to pay for his medical treatment in connection therewith. However, they have ceased paying him temporary total disability benefits. He has alleged that he is entitled to such benefits from the date last paid through a date to be determined. Respondents have denied

their responsibility for such additional benefits, contending that Claimant reached the end of his healing period as of December 7, 2020.

Standards. Claimant's compensable neck injury is unscheduled. See Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. 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). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id.* § 11-9-501(a)(1).

Claimant must prove his entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant

or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Evidence. Claimant, who is 60 years old, testified that he attended school for eleven and one-half (11 1/2) years. The description of his stipulated compensable injury came about in the hearing during the following exchange:

- Q. Tell us what happened to you on that day.
- A. They were stabbing pipe and a brace broke, and the thing they call a horse head, it swung down and hit me in the back and neck, caused a lot of problems, you know, migraine headaches, it just messed me up.
- Q. When you say you were “stabbing pipe,” we don’t know what that is, can you tell us what that means?
- A. Three pieces of machinery, they come together, and a piece of coil pipe two and three-inch round goes through [the] ejector, and the ejector is what is up in the air. When they were stabbing it, something happened, so they said the truck moved or something, I don’t really know, and the brace broke; that’s when everything happened. It’s just part of the procedure of us going down and how we drill at Schlumberger.
- Q. Okay. It sounds like some kind of hoist hit you in the back of the head, something like that?
- A. No. There’s two arms from the bottom of the frame; they go up to this deal that’s called a horse head, that’s where the pipe comes out of the coil to—goes through this, and it runs through the ejectors. Well, in the friction or whatever happened to the truck, the friction on the—the pressure on the horse head breaking the pin up top, and that’s when it come down and hit me.
- Q. And it hit you where?
- A. I really don’t know, it happened so fast, my back and neck, swing down and picked me up and knocked me off my feet.

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Q. Okay. You are showing us a motion that's to the front, did it hit you in the front or the back?

A. The back.

Q. Okay, the back, all right. So it hit you in the back of the head and neck area?

A. Yes, sir.

Q. Knocked you down?

A. Shattered my hard hat.

Thereafter, Claimant underwent treatment for an extended period. During this same time frame, he worked at times and was off work at others. Eventually, on November 2, 2018, he underwent a two-level cervical fusion. Claimant's testimony was that the last time he has worked anywhere was about a week before the operation. He has continued to follow up with Dr. Stylianos Rammos, his surgeon.

Currently, Claimant is also seeing Dr. Mohamed Tolba for pain management, at Respondents' expense, on a monthly basis. This treatment has included injections and rhizotomies, along with prescription oral medications, in an effort to control his headaches. The injections are administered in his neck; and the rhizotomies involve the numbing of his neck. In addition to a headache medication, he takes muscle relaxers and Hydrocodone. Asked to describe the pain that he is having, Claimant related: "[t]hey're stabbing pain in my temples. It pierces my brain and take my vision away and cause extreme headaches. Just seems—it's just getting worse to the point we're missing something." He added that the headache "ruins my day, every day," and

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causes him to spend much of his day in the dark. Despite these different types of pain treatment, Claimant is still experiencing unrelenting pain in his head.

Claimant began going to Tolba's clinic on January 19, 2021. However, since January 4, 2021, he has no longer been receiving temporary total disability benefits. This is despite the fact that neither Drs. Rammos nor Tolba have released him from treatment. He testified that the discontinuance of his benefits surprised him: "I don't know why [it happened]. I've done everything they've asked me to do. Everything."

He denied being in a motor vehicle collision, and stated that he was unaware of his medical records reflecting that he has degenerative disc disease. Although he has recently been diagnosed as having a right cerebellar unruptured cavernous malformation in his brain, Claimant stated that he has not been informed that this may be the source of his headaches instead of his cervical injury and condition; but he has been told that the malformation has not progressed to the extent to be a cause for concern.

When Claimant saw Dr. Victor Vargas for an independent medical evaluation, he told the doctor that the sensation in his head feels like his brain is bleeding. But to Claimant's knowledge, he is not actually experiencing bleeding in his brain.

The following exchange took place:

Q. Mr. Buhrman, did you have any problems with headaches before this May 23, 2011, accident?

A. Nothing like I do now, sir, that's for sure.

Q. Well, other than your everyday ordinary headache that a person might get, did you have any problems with headaches?

A. Nothing like this, no, sir.

Q. And have you had problems with headaches ever since this accident took place?

A. Oh, Lord.

Q. Yes?

A. Yes, sir.

While on the witness stand, Claimant leaned back so that his head could rest against the wall behind him. He did so in order to provide support for his neck. Also, while testifying, he demonstrated difficulty in turning his head from side to side and in reaching behind him to touch the portion of his neck where he has been receiving injections. Although he drove from his home in Greenbrier to Little Rock for the hearing, he added that driving is very hard for him.

The medical records in evidence reflect that Dr. Rammos on August 14, 2018, saw Claimant and wrote that he had been seeing Claimant “for the last 6 years for painful cervical spondylosis and stenosis and associated kyphosis . . . The pain has become progressively worse and the duration of relief from the steroid injections has become shorter and shorter.” Rammos recommended an anterior cervical discectomy and fusion at two levels, C3-5. An MRI on October 26, 2018, showed a disc collapse with an anterior and posterior broad annular bulge with mild canal narrowing and no neural compression at C3-4, and a mild annular bulge without neural compression at C4-5. Dr. Rammos on November 1, 2018, continued with his surgical recommendation, but also wrote: “It is conceivable that his prior motor vehicle collision [which Claimant in

his testimony, *supra*, denied having] may have accelerated the development and progression of the aforementioned imaging findings.” The operation took place on November 2, 2018. The pre and post-operative diagnoses listed in the operative report were “Cervical spondylosis and stenosis, C3-C5; Cervical spondylotic myelopathy.” Claimant on January 8, 2019, reported general improvement in his symptoms. However, on June 11, 2019, he related that he was experiencing moderate neck pain that is made worse with activity. X-rays taken that day showed no evidence of hardware failure.

Claimant on April 24, 2020, suffered from an attack of bilateral loss of vision that lasted approximately fifteen (15) minutes. On April 27, 2020, due to COVID-19 restrictions, he met with Dr. Rammos via telephone, per the report (which does not comport with Claimant’s hearing testimony that he never had such an appointment). Rammos wrote that he had been following Claimant “for cervical spondylosis and stenosis and a right cerebellar unruptured small cavernous malformation.” The doctor added that he had Claimant undergo CT scans, and that based on his review of the results, “[t]here is no acute intracranial pathology such as hemorrhage or a large acute ischemic infarction. There is no significant cervical or intracranial arterial stenosis present.” Rammos stated that Claimant’s episode “may have represented a complex migraine.” On November 10, 2020, Claimant returned to the doctor and reported having intense headaches over the past few months, along with dizziness and blurred vision. The doctor wrote:

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I have personally reviewed his dynamic cervical spine and MR imaging on PACS. There is a presence of a stable instrumented construct. There is no abnormal motion on flexion and extension views. MR C-spine reveals no significant stenosis, central or foraminal. Will get an ESI C-spine and I also gave him a prescription for outpatient physical therapy.

As alluded to above, Dr. Vargas conducted an independent medical evaluation on December 7, 2020. His report reads in pertinent part:

Assessment[:]

Cervical spine with multilevel degenerative disc disease and uncovertebral arthrosis status post 2 years of ACDF C3-C5 stable.

No evidence of severe central canal stenosis or foraminal narrowing no nerve root compression or focal disc herniations on the recent MRI.

Opinion:

This patient has history of degenerative disc disease of the cervical spine for several years, he ended up having a fusion of the cervical spine C3-C5, 2 years ago. His main concerns and complaints have been headaches, dizziness, blurry vision, frequent falls which are not related to the cervical spine. He has no evidence on the recent MRI of myelopathy or nerve root impingement. The fusion is solid. The CT angiogram of the cervical spine done recently also showed no evidence of encroachment of the arteries at the cervical spine.

I believe the patient[’s] symptomology is not related to the cervical spine pathology.

Consequently, I am considering with a reasonable degree of medical certainty that the patient has reached the maximum medical improvement with regards of the cervical spine. I found no evidence of injury to the cervical spine and all the imaging studies including retrospective evaluation of 2017 x-rays. All his findings are consistent with degenerative changes.

Mr. Buhrman has certainly reached maximum medical improvement and he has no[t] sustained an injury that would result in any permanent impairment rating.

Claimant received a referral to Arkansas Spine & Pain Center from Dr. Rammos.

At that clinic, he saw Dr. Tolba, and presented with headaches, neck pain, and back

pain. Following examination on January 19, 2021, he assessed Claimant as having, inter alia, cervico-occipital neuralgia and failed back syndrome of the cervical spine. Tolba prescribed Claimant Hydrocodone, Cyclobenzaprine, and Gabapentin. In addition, the doctor administered an ultrasound-guided left occipital nerve block. Claimant reported on February 24, 2021, that the nerve block helped for five (5) days. Tolba administered a right medial branch nerve block on April 1, 2021, and trigger point injections on April 13, 2021.

Discussion. I have carefully considered Dr. Vargas's opinion that is quoted above, with regard to the question of if/when Claimant reached the end of his healing period. In light of the extensive radiological and other medical evidence, which supports this opinion, I credit the doctor's opinion that Claimant had reached the end of his healing period as of the date of the independent medical evaluation, December 7, 2020. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In so doing, I also credit Claimant's testimony that he is suffering from severe pain in his head and neck that has been only partially alleviated by injections and other treatment. Dr. Tolba is treating him for these symptoms on an ongoing basis. But it must be noted that persistent pain, by itself, is not sufficient to extend the healing period. *Mad Butcher, supra*. Because the preponderance of the evidence establishes that Claimant reached the end of his healing period by December 7, 2020, which was prior to the cessation of his temporary total disability benefits, he has not proven his entitlement to additional benefits of this nature.

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B. Attorney's Fee

Claimant has asserted that he is entitled to a controverted attorney's fee in this matter. However, because he has not shown that he should be awarded additional indemnity benefits, he cannot prove that his counsel should be awarded a fee in this matter under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim for additional benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge