

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H107393

DILLON CHAULSETT, Employee	CLAIMANT
SPRINGFIELD GROCER CO., Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED JANUARY 26, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by ZACH F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 10, 2022, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 27, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on July 19, 2021.

At the time of the hearing the parties agreed to stipulate that claimant would be

entitled to compensation at the maximum compensation rates.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's lumbar spine on July 19, 2021.
2. Medical.
3. Temporary total disability benefits from July 21, 2021 through a date yet to be determined.
4. Attorney's fee.

At the time of the hearing claimant clarified that he is requesting temporary total disability benefits from July 21, 2021 through December 22, 2021.

The claimant contends he sustained a compensable injury to his lumbar spine on July 19, 2021. Claimant contends he is entitled to temporary total disability benefits from July 21, 2021 through December 22, 2021 and reasonably necessary medical treatment. Claimant contends his attorney is entitled to an appropriate attorney's fee.

The respondents contend the claimant was not injured on the job. He does not have a compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on October 27, 2021 and contained in a pre-hearing order filed that same date are hereby

accepted as fact.

2. The parties' stipulation that claimant would be entitled to the maximum compensation rate is also hereby accepted as fact.

3. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his lumbar spine while working for respondent on July 19, 2021.

4. Respondents are liable for payment of all reasonable and necessary medical treatment provided in connection to claimant's compensable lumbar spine injury.

5. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 21, 2021 through December 2, 2021.

6. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 28-year-old man who began working for respondent in December 2019. Claimant drove a tractor trailer rig, delivering grocery products. Claimant testified that on July 19, 2021:

I finished my stop at 4 Star Diner and as I loaded everything up into my vehicle and got into my vehicle, as soon as I sat down and my butt made contact with the seat, I felt a pain from my lower back going down to my right leg.

Claimant testified that he reported this incident to his supervisor, Steve, by text and continued working.

On July 21, 2021, claimant sought medical treatment from Dr. Alexander, a

chiropractic physician, from whom he had received treatment in the past. Dr. Alexander's report of July 21 indicates that claimant was making complaints of low back pain which was rated as severe and that the symptoms were radiating to claimant's right leg. Dr. Alexander gave claimant an off work note due to injury on that date. Claimant did not return to work for respondent subsequent to that date until later in December.

In addition to Dr. Alexander, claimant was also evaluated by a nurse practitioner before he came under the care of Dr. Kainth, a neurosurgeon, on September 2, 2021. Dr. Kainth indicated in his report of that date that claimant's MRI scan revealed a disc herniation at the L4-5 level which was causing spinal canal stenosis and L5 radiculopathy. Dr. Kainth indicated that claimant was a candidate for an L4-5 laminectomy and microdiscectomy which he performed on September 27, 2021.

Claimant has filed this claim contending that he suffered a compensable injury to his lumbar spine on July 19, 2021. He seeks payment of related medical benefits as well as temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

There is no question that claimant suffered from pre-existing low back pain. Claimant initially injured his low back while working for Coca-Cola approximately five years ago when he was lifting a case of water. He testified that he sought medical treatment and was off work for one to two weeks but did not see another physician for his back until he sought chiropractic treatment in 2020.

The medical records indicate that claimant began receiving medical treatment for back complaints from Dr. Alan Alexander at the Balkman Chiropractic Clinic on June 3,

2020. Dr. Alexander indicated that claimant's main complaint on that date was mid back pain which claimant stated he had for a number of years. The medical report also contains a diagnosis and treatment for low back pain. These same complaints are also noted in Dr. Alexander's reports of June 17, 2020 and July 8, 2020.

In a report dated October 21, 2020, Dr. Alexander noted that claimant's main complaint was low back pain. Claimant reported his symptoms as mild, but stated that they were constant. Dr. Alexander also noted low back complaints in his report of February 24, 2021 and as late as June 2, 2021, Dr. Alexander indicated that his treatment and diagnosis included low back pain complaints.

Under the Arkansas Workers' Compensation Act, the employer takes the employee as the employer finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Comm. v. Cox*, 302 Ark. 69, 787 S.W. 2d 64 (1990). A pre-existing infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the infirmity to produce a disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W. 2d 550 (1996). An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000).

The requirements for a specific injury identifiable by time and place of occurrence include: (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place

of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proof.

Initially, I find that claimant has proven by a preponderance of the evidence that his injury arose out of and in the course of his employment with respondent and that it was caused by a specific incident, identifiable by time and place of occurrence. Here, as previously noted, claimant testified that he had made a stop for delivery and was getting back into his truck and as he sat down had immediate pain in his low back which radiated into his right leg. Claimant did report increased back pain to his supervisor. Claimant introduced into evidence a text message indicating that his lower back was “giving out” and that he would need to go to the chiropractor.

Claimant did go to the chiropractor, Dr. Alexander, on July 21, 2021 and for the first time claimant’s low back symptoms were rated as severe. In addition for the first time Dr. Alexander noted that claimant’s symptoms were radiating into his right leg. Because of claimant’s complaints, Dr. Alexander took claimant off work as the result of an “injury”.

Medical records indicate that claimant again saw Dr. Alexander for low back complaints on July 23 and he sought treatment at the Mercy emergency room on July 24 for low back complaints.

On July 27, 2021, claimant was evaluated by Nurse Practitioner Pace who indicated that claimant reported his back giving out as he was getting into his semitruck. Pace diagnosed claimant with low back pain and prescribed medication, physical therapy, and referred him to pain management.

After receiving an additional evaluation with Dr. Pace and Robert Langston,

another nurse practitioner, claimant eventually came under the care of Dr. Kainth, neurosurgeon, who on September 2, 2021 indicated that claimant's MRI scan revealed a disc herniation at the L4-5 level and he recommended a laminectomy and microdiscectomy which he performed on September 27, 2021.

Based upon the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back which arose out of and in the course of his employment with respondent and that it was the result of a specific incident, identifiable by time and place of occurrence.

I also find that claimant has offered objective findings establishing an injury and that his injury resulted in the need for medical treatment. As previously noted, Dr. Kainth indicated that claimant's MRI scan revealed a disc herniation at the L4-5 level and this resulted in surgery on September 27, 2021.

Based upon the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his lumbar spine on July 19, 2021. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's lumbar spine injury.

I also find that claimant is entitled to temporary total disability benefits beginning July 21, 2021 and continuing through December 2, 2021. A claimant who suffers an unscheduled injury is entitled to temporary total disability benefits during their healing period and while they remained totally incapacitated from earning wages. I find that claimant remained within his healing period and suffered a total incapacity to earn wages beginning July 21, 2021, the date he was taken off work by Dr. Alexander, and continuing through December 2, 2021. In a letter dated December 2, 2021, Dr. Kainth indicated that

he had seen claimant in his office on November 29, 2021, and that claimant was capable of returning to work with restrictions. Although claimant testified that he was not released to return to work by Dr. Kainth until December 22, Dr. Kainth's letter of December 2, 2021 clearly indicates that claimant could return to work as of that date with work restrictions. There is no indication as to whether claimant attempted to return to work for respondent or any other employer as of that date. Nevertheless, I find that claimant is entitled to temporary total disability benefits beginning July 21, 2021 and continuing through December 2, 2021.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back on July 19, 2021. He is entitled to payment of all reasonable and necessary medical treatment provided in connection with his compensable lumbar injury. Claimant is entitled to temporary total disability benefits from July 21, 2021 through December 2, 2021.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount.

Respondent is responsible for payment of the court reporter's charges for

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preparation of the hearing transcript in the amount of \$384.90.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE