

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H106980

TRAVIS EVANS, Employee	CLAIMANT
ARK. DEPT. OF TRANSPORTATION, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED MAY 31, 2023

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 CHARLES H. MCLEMORE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 15, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on March 1, 2023 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 claimant sustained a compensable injury to his left lower extremity on August 18, 2021.

3. The claimant was earning an average weekly wage of \$853.69 which would entitle him to compensation at the weekly rates of \$569.00 for total disability benefits and

\$427.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's back on August 18, 2021; or, alternatively, that his back complaints are a compensable consequence of his left leg injury.

2. Temporary total disability benefits from October 12, 2022 through a date yet to be determined.

3. Related medical.

4. Attorney fee.

5. Credit for overpayment.

6. Notice.

Claimant clarified prior to the hearing that he is contending that he suffered a compensable injury to his left hip, pelvis, and back on August 18, 2021. In addition, claimant clarified that he is requesting temporary total disability benefits from October 12, 2022 through April 3, 2023.

The claimant contends that on August 18, 2021, in addition to sustaining injury to his hamstring and left lower extremity, he sustained injury to his back, left hip and pelvis. Alternatively, the claimant's problems with his back are a compensable consequence of the effects of the injury to his hamstring and left lower extremity. The claimant contends he is entitled to temporary total disability benefits from October 12, 2022 through April 3, 2023, and reasonably necessary medical treatment. The claimant contends that any benefits regarding his back have been controverted and that his attorney is therefore entitled to an appropriate attorney's fee regarding any indemnity benefits awarded related

to his back. The claimant contends his attorney is entitled to an appropriate attorney's fee.

The respondents contend that the claimant reported having an injury to his upper left leg on August 18, 2021 when he stepped out of his truck. Respondents accepted this claim as compensable and provided medical treatment reasonable and necessary for the claimant's left leg injury. The claimant has been provided medical treatment, including MRI and EMG studies, and treatment with Dr. Bryan Smith. On March 3, 2022, Dr. Smith opined that surgery was not needed for the left leg, and ordered an FCE to determine impairment. The claimant did not have the FCE. Respondent paid temporary total disability benefits to the claimant while he was in his healing period, from August 19, 2021 until December 30, 2021; however, the claimant had returned to work December 2, 2021 resulting in an overpayment of TTD benefits for which respondent is entitled to a credit. The claimant complained about his back. Respondents provided the claimant with a lumbar MRI; however, respondent contends that the claimant gave no notice of having a back injury at the time of his August 18, 2021 injury, and did not claim a back injury before filing his November 16, 2022 form AR-C. Respondents further contend claimant cannot establish that he has a back, left hip or pelvis injury which occurred August 18, 2021. Dr. Smith did not offer any surgery for claimant's back complaints. Dr. Smith found the claimant reached maximum medical improvement for his left leg injury October 11, 2022 but did not address permanent anatomical impairment because claimant would not participate in an FCE, so respondent voluntarily paid the claimant PPD benefits for 7% permanent anatomical impairment to the left lower extremity.

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 March 1, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his lumbar spine on August 18, 2021. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his pelvis or left hip on August 18, 2021 or that those are compensable consequences of his left leg injury.
3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's lumbar spine injury.
4. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning October 12, 2022 and continuing through March 27, 2023.
4. Claimant did not fail to give notice of his injury pursuant to A.C.A. §11-9-701.
5. Respondent is entitled to a credit for temporary total disability benefits claimant was paid subsequent to his return to work on December 2, 2021.
6. Respondent has controverted claimant's entitlement to all unpaid indemnity

benefits.

### FACTUAL BACKGROUND

Claimant worked for the Arkansas Highway Department and on August 18, 2021 he suffered an admittedly compensable injury to his left lower extremity. Claimant testified that on that date he was in the process of delivering a piece of equipment when his truck died as he pulled out into an intersection. As he was getting out of his truck he put his foot on the bottom step and it slipped causing his leg to hit the ground. Claimant stated:

I tore the hamstring somewhere up in my hip. It feels like maybe about the center of my backside. It hurts all the way from my belt loop down into the back of my knee and then over to the side of my knee.

Later that day claimant was seen by Dr. Christopher Bell in the emergency room who diagnosed claimant as suffering from a left hamstring strain. Thereafter, claimant has primarily been treated by Dr. Bryan Smith, an orthopedist at Mercy in Fort Smith.

Claimant's initial evaluation with Dr. Smith occurred on August 23, 2021. Dr. Smith diagnosed claimant as suffering from a left hamstring injury and was concerned about claimant having torn the hamstring. As a result, he recommended that claimant undergo an MRI scan of the femur "to include the proximal aspect, all the way up to the hamstring origin, all the way down to the level of the knee." Claimant underwent the MRI scan on August 25, 2021, and according to Dr. Smith's report of August 26, 2021 the MRI scan was consistent with a complete tear of the biceps femoris tendon. However, Dr. Smith noted that claimant's semitendinosus and semimembranosus tendon were intact. Dr. Smith indicated that his plan was to treat claimant nonoperatively with activity limits,

physical therapy, and anti-inflammatory medication.

Claimant returned to Dr. Smith on September 9, 2021 at which time he noted that claimant was having increased anterior knee pain at the level of the patellar tendon. Dr. Smith prescribed muscle relaxers and again recommended physical therapy as well as a hinged knee brace.

At the time of the visit on October 7, 2021, claimant had been undergoing physical therapy. Because of claimant's continued complaints involving his knee, Dr. Smith recommended and performed a knee injection for the purpose of relieving pain and to determine whether there was any intra-articular involvement such as a potential meniscus tear.

Claimant returned to Dr. Smith on November 2, 2021, and reported that the injection had helped with pain and popping in his left knee. However, claimant continued to have pain and as a result Dr. Smith ordered an MRI scan of the femur and left knee. Claimant underwent those MRI scans on November 19, 2021, and returned to Dr. Smith on November 29, 2021. Dr. Smith noted that the MRI of claimant's left knee was negative for any internal derangement such as meniscus tears. Specifically, he stated:

I think what he is dealing with now is more chondromalacia of the patella as well as some patellar maltracking secondary to weakness in the quadriceps.

Claimant again returned to see Dr. Smith on January 4, 2022 and he noted that claimant had returned to work since the time of his last visit. Claimant indicated that when he was standing or walking on even surfaces he was not having any issues, but when he was on hills or rough terrain he had complaints. Dr. Smith stated:

It is possible that some of this is related to patellar tracking issues that may have been present before and now are exacerbated as he has to compensate for recovering hamstring injury.

Claimant's next visit with Dr. Smith occurred on February 1, 2022 and he noted that claimant continued to have problems with standing for extended periods of time and that claimant felt like he was "hanging" his left toes and catching them. At this point, Dr. Smith became concerned that claimant's problems were related to his low back.

My concern is that given his current limitations, perhaps this is more indicative of radiculopathy as he has failed to make substantial improvements with treatments directed at the hamstring and the knee.

Dr. Smith ordered an EMG/nerve conduction study of the left lower extremity to rule out any radiculopathy. The EMG was performed on February 17, 2022, and was read as normal.

Following the EMG claimant returned to Dr. Smith on March 3, 2022. Dr. Smith again noted that there was not anything from a surgical standpoint that he could do, but instead indicated that claimant could best be served with a FCE and impairment rating.

It should be noted at this point that there was much discussion and testimony at the hearing regarding the FCE. While there was some indication on claimant's part that this FCE was suggested by the respondent, it is clear from a review of Dr. Smith's March 3, 2022 report that he recommended the FCE. Regardless, claimant did not undergo an FCE but did return to work for the respondent. After returning to work for the respondent, claimant had a second incident. Claimant testified that sometime in April 2022 he was walking up and down an embankment under a bridge and his hamstring began to hurt

and "... the back of my knee just felt like it opened up like there wasn't nothing holding it. It got to hurting and popping." Respondent had claimant complete additional paperwork regarding this second incident; however, claimant is proceeding with the contention that his current problems are simply a continuation of the August 18, 2021 incident.

Following this incident, claimant returned to Dr. Smith on April 19. Because claimant was having mechanical symptoms in his knee, Dr. Smith was concerned that there might be some meniscal pathology and he ordered a repeat MRI scan of the left knee. That scan was performed on May 4, 2022, and showed no evidence of internal derangement.

Following the MRI scan Dr. Smith nevertheless recommended that claimant undergo a diagnostic arthroscopic procedure. Although claimant had undergone two MRIs which were both normal, he noted that claimant continued to have mechanical symptoms in his left knee. As a result, he recommended an arthroscopic procedure. This procedure was performed on May 18, 2022 and according to Dr. Smith's operative report his post-operative diagnosis was anterior fat pad impingement, patellar chondromalacia and medial plica syndrome.

Subsequent reports from Dr. Smith indicate that following the surgical procedure claimant's knee was "1000 times better" and "excellent". However, Dr. Smith noted that claimant continued to have problems in his posterior thigh and hamstrings.

In his report of September 13, 2022, Dr. Smith again recommended that claimant undergo an evaluation for his lumbar spine.

I would like to work up his back starting with lumbar spine xrays and lumbar spine MRI.



The lumbar spine MRI was performed on September 29, 2022, and contained the following impression:

1. Mild-moderate degenerative change throughout the lumbar spine.
2. Small broad-based disc protrusion eccentric to the right at L5-S1.

Following the MRI scan claimant returned to Dr. Smith on October 11, 2022. At that time Dr. Smith again believed that claimant's problems might be related to his back.

I am somewhat concerned that all this is really more related to his back. We had a long discussion about this. I think it would be wise for us to get him set up with pain management for a trial of lumbar epidural steroid injections to assess how his left lower extremity responds. With regard to left lower extremity, I do not have any further surgical interventions, but I am happy to see him through the results of his lumbar spine injections.

Claimant was evaluated by Dr. Natalie Strickland, a pain management specialist, on November 16, 2022. Dr. Strickland diagnosed claimant as suffering from lumbar radicular pain; lumbar herniated disc; spondylosis of lumbosacral region without myelopathy or radiculopathy; chronic bilateral low back pain without sciatica. Dr. Strickland gave claimant a lumbar epidural steroid injection at the L5-S1 level.

Claimant returned to Dr. Smith on December 13, 2022, and apparently informed Dr. Smith that he had not noticed a whole lot of difference in his day to day activities following the injections; however, he indicated that his wife felt like he had slept better the last several nights. Dr. Smith stated:

We thought he had his hamstring injury. I did not feel that surgical intervention was warranted. It has taken

him a long time, he has been dealing with it for a year. We were concerned that this might be more of a lumbar radiculopathy type picture.

Dr. Smith recommended that claimant continue his follow up treatment with the pain management doctor and see if future injections gave him any relief.

On March 27, 2023, claimant was evaluated by Dr. William Rambo, neurosurgeon. Dr. Rambo diagnosed claimant's condition as lumbar/lumbosacral spondylosis. Dr. Rambo did not believe that claimant needed any surgical intervention, but did indicate that claimant should undergo an epidural steroid injection at the L4-5 level. Dr. Rambo also indicated that claimant had no disability or work restrictions with respect to his lumbar spine.

The final medical report is from Dr. Smith dated April 6, 2023, at which time he recommended that claimant follow up with the pain management specialist for consideration of an epidural steroid injection at the L4-5 level. In addition, the claimant also returned to work for respondent on April 2, 2023.

Claimant has filed this claim contending that he suffered a compensable injury to his left hip, pelvis, and back as a result of the incident on April 18, 2021, or alternatively, that his back complaints are a compensable consequence of his left leg injury. He seeks payment of related medical treatment as well as temporary total disability benefits and a controverted attorney fee.

### ADJUDICATION

The initial issue for consideration involves compensability to the claimant's back, pelvis, and left hip. In order to prove a compensable injury as a result of a specific

incident, identifiable by time and place of occurrence, claimant must prove by a preponderance of the evidence (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.

Here, there is no question that the incident on August 18 arose out of and in the course of claimant's employment with respondent. I also find that the claimant has offered medical evidence supported by objective findings establishing a compensable injury to his back. Claimant underwent a lumbar MRI scan on September 29, 2022, which revealed a disc protrusion at the L5-S1 level. In addition, claimant's treating physicians have recommended medical treatment for his lumbar spine in the form of lumbar epidural steroid injections initially at L5-S1 and most recently at L4-5.

The primary issue is whether claimant has proven by a preponderance of the evidence that his low back complaints are causally related to the incident of August 18, 2021.

As previously noted, respondent has accepted a compensable injury to claimant's left lower extremity. Admittedly, the forms signed by the claimant and the medical records for an extended period of time make no mention of any low back complaints. Instead, the only reference is to an injury to the claimant's upper left leg (lower extremities); possible hyperextension of the left knee and upper left leg; and a tear or rip to the hamstring. Based on claimant's complaints involving his hamstring, Dr. Smith

recommended various medical treatments. When those treatments did not alleviate claimant's symptoms, Dr. Smith began to consider that claimant's complaints were related to his low back. In his report of February 1, 2022, Dr. Smith stated:

My concern is that given his current limitations, perhaps this is more indicative of radiculopathy as he has failed to make substantial improvements with treatments directed at the hamstring and the knee.

Dr. Smith went on to recommend an EMG of the claimant's left lower extremity which was read as normal. Thereafter, claimant had the second incident in April 2022 and continued to have complaints involving his leg and his left knee. Dr. Smith performed surgery on claimant's left knee which alleviated most if not all of the left knee complaints. However, claimant continued to have issues with his hamstring. Accordingly, Dr. Smith in his report of September 13, 2022 again recommended that claimant be evaluated for low back issues.

I would like to work up his back starting with lumbar spine xrays and lumbar spine MRI.

The lumbar MRI scan was performed on September 29, 2022 and revealed degenerative changes as well as a disc protrusion at the L5-S1 level. Following that MRI scan Dr. Smith in his report of October 11, 2022 stated:

I am somewhat concerned that all this is really more related to his back.

Dr. Smith went on to recommend that claimant undergo a trial of lumbar epidural steroid injections to see how his left lower extremity responded. Claimant underwent the initial epidural steroid injection at the L5-S1 level by Dr. Strickland on November 16, 2022.

Dr. Strickland's diagnosis of the claimant's condition was lumbar radicular pain; lumbar herniated disc; spondylosis of lumbosacral region without myelopathy or radiculopathy; and chronic bilateral low back pain without sciatica.

Following this injection claimant again returned to Dr. Smith on December 13, 2022, at which point he stated:

We thought he had his hamstring injury. I did not feel that surgical intervention was warranted. It has taken him a long time, he has been dealing with it for a year. We are concerned that this might be more of a lumbar radiculopathy type picture. (Emphasis added.)

Subsequent to that evaluation claimant was seen by Dr. William Rambo, a neurosurgeon, on March 27, 2023. Dr. Rambo diagnosed claimant's condition as a lumbar/lumbosacral spondylosis. In his report of that date he stated:

Tough situation. He has been thoroughly evaluated and treated since his work-related injury in 2021. I think his pain is probably multifactorial including hamstring and knee etiologies. Arguing against a radiculopathy is that his pain stops at the knee and his MRI findings are mild and mostly right-sided. However he does have some mild lateral recess stenosis at L4-L5. While this is not bad enough to warrant surgical intervention, it is possible that it is contributing to his clinical picture.

Dr. Rambo went on to recommend that claimant receive an epidural steroid injection at the L4-5 level.

Obviously, the claimant is not a physician. Claimant has repeatedly informed his treating physicians that he has had pain radiating from his beltline down to the back of his knee. It is also clear that claimant did have a tear in one of the tendons of his hamstring and also had issues with his left knee which required surgery by Dr. Smith. However,

claimant's complaints have continued in his left leg. Because of those continued complaints Dr. Smith was of the opinion that claimant might have a low back issue involving radiculopathy and recommended lumbar epidural steroid injections. These injections have been performed by Dr. Strickland. Dr. Strickland has diagnosed claimant with low back complaints and claimant has also undergone an evaluation by Dr. Rambo who is of the opinion that claimant's complaints are probably multifactorial which include hamstring and knee etiologies. He has also indicated that while claimant's low back complaints are not significant enough to warrant surgical intervention, it is possible they are contributing to his complaints and he has recommended an epidural steroid injection at the L4-5 level.

I find based upon the evidence presented that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back as a result of the accident on August 18, 2021. Claimant's complaints have been consistent throughout his treatment and it is the opinion of his treating physician, Dr. Smith, that those complaints have a radicular component for which he has recommended medical treatment. Accordingly, 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 on August 18, 2021.

I also find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left hip or pelvis separate and apart from the admitted hamstring injury. While claimant's hip is mentioned in several medical reports, it is in connection with the claimant's hamstring injury, not a separate injury to the left hip itself. In short, after reviewing the evidence in this case; specifically, the medical records

of Dr. Smith as well as Dr. Strickland and Dr. Rambo, I do not find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his pelvis or left hip on August 18, 2021, or that he suffered an injury to his left hip or pelvis as a compensable consequence of his left leg injury.

Having found that claimant suffered a compensable injury to his lumbar spine, I find that respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with that compensable injury.

I also find that claimant is entitled to temporary total disability benefits beginning October 12, 2022 and continuing through March 27, 2023. In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

Claimant underwent surgery on his left knee by Dr. Smith on May 18, 2022. According to Dr. Smith's medical report of October 11, 2022, he was concerned at that time that claimant's complaints were related more to his back and recommended a trial of epidural steroid injections. Dr. Smith also stated with regard to claimant's left lower extremity he did not have any further surgical recommendations. Dr. Smith took claimant off work that day to be evaluated for pain management. Respondent ceased paying claimant temporary total disability as of that date because it did not accept claimant's low back complaints as compensable. However, based upon the finding that claimant's low back complaints are a compensable injury, Dr. Smith's continuation of claimant's off work status as of October 11, 2022 and his continuation of that status in his report of December

13, 2022, indicates that claimant suffered a total incapacity to earn wages. Likewise, claimant's receipt of medical treatment in the form of epidural steroid injections establishes that claimant remained within his healing period. I find that claimant's total incapacity to earn wages continued through March 27, 2023. On that date, claimant was evaluated by Dr. Rambo who recommended an epidural steroid injection at the L4-5 level. However, Dr. Rambo indicated that with respect to claimant's lumbar spine "I cannot give him any disability or work restrictions." Claimant apparently returned to work for the respondent a few days after this evaluation by Dr. Rambo.

Accordingly, I find that claimant has met his burden of proving by a preponderance of the evidence that he remained within his healing period and that he suffered a total incapacity to earn wages from October 11, 2022, the date he was given an off work note for his lumbar spine by Dr. Smith, through March 27, 2023, the date claimant was evaluated by Dr. Rambo and he opined that he could not give claimant any disability or work restrictions. Therefore, claimant is entitled to temporary total disability benefits from October 12, 2022 through March 27, 2023.

Other issues for consideration involve respondent's request for a credit for overpayment. Apparently, claimant returned to work for respondent on December 2, 2021. However, respondent's payment records indicate that respondent paid claimant additional temporary total disability benefits from December 2, 2021 through December 30, 2021. Respondent is entitled to a credit for overpayment of those benefits.

Finally, respondent contends that claimant did not give any notice of a back injury at the time of his August 18, 2021 injury and did not claim a back injury until he filed Form AR-C on November 16, 2022. Therefore, respondent contends that it is not liable for any



compensation benefits prior to that notice.

Notice of an injury or death is governed by the provisions of A.C.A. §11-9-701.

Subsection (a)(1) of that statute states:

Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury. (Emphasis added.)

In addition, Subsection (b)(1)(A) states that failure to give notice shall not bar any claim if the employer had knowledge of the injury or death and Subsection (B) indicates that failure to give notice shall not bar any claim if the employee had no knowledge that his condition or disease arose out of and in the course of his employment.

Here, respondent was clearly aware that claimant had suffered a compensable injury. Claimant was sent for treatment at the emergency room and he completed forms for the respondent indicating that he had suffered an injury on August 18, 2021. There is no requirement under A.C.A. §11-9-701 that claimant list every possible diagnosis which will be made during the course of his treatment. Claimant testified that he never really had any back pain and it was only his treating physicians who concluded that his complaints were related to his low back and not entirely to his hamstring. Nevertheless, respondent had knowledge of claimant's injury; therefore, A.C.A. §11-9-701 is not applicable.

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 August 18, 2021. He has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left hip or pelvis on that date or as a compensable consequence of his compensable injuries. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable low back injury. Claimant is entitled to temporary total disability benefits beginning October 12, 2022 and continuing through March 27, 2023. Respondent is entitled to a credit for overpayment of temporary total disability benefits.

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.

Respondents shall pay the court reporter's charges for preparation of the hearing transcript in the amount of \$645.95.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE