

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004125

JEREMY IBISON, Employee	CLAIMANT
SEBASTIAN COUNTY JUDGE, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier/TPA	RESPONDENT

OPINION FILED FEBRUARY 22, 2021

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 MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 1, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 16, 2020 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 between the parties on January 5, 2020.
3. The claimant was earning sufficient wages to entitle him to compensation at

the maximum rates of \$711.00 for total disability benefits and \$533.00 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 neck and back on February 25, 2020.
  2. Related medical.
  3. Temporary total disability benefits from April 22, 2020 through a date yet to be determined.
3. Attorney fee.

At the time of the hearing the claimant withdrew as an issue his entitlement to temporary total disability benefits, leaving as the only issues compensability and medical treatment.

The claimant contends that on February 25, 2020 while performing employment related services he sustained an injury to his neck and back. Claimant contends he is entitled to reasonably necessary medical treatment.

The respondents contend there are no objective medical findings to support a back injury and the neck problem is not acute or due to the accident at work. He also has no acute findings of a cervical injury. He was diagnosed with strains of the thoracic and cervical spine. All of the tests show only degenerative conditions.

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 her 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 September 16, 2020 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 cervical spine on February 25, 2020. I do not find that claimant suffered a compensable injury to his thoracic spine on February 25, 2020.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes physical therapy as recommended by Dr. Blankenship.

### FACTUAL BACKGROUND

Claimant began working for respondent as a paramedic in 2000. He testified that working as a paramedic is a very physically demanding job. Weights lifted can range from three to four hundred pounds, and it may be necessary to carry patients down stairs or down hallways. Claimant testified that as a paramedic he would be responsible for responding to motor vehicle accidents which would include moving injured individuals from vehicles which may be in the woods or down an embankment. As a paramedic, he would also use the Jaws of Life to extricate individuals if necessary. He also testified that he has carried individuals who have fallen from tree stands in the woods.

Claimant suffered a prior neck injury in 2007. He thought he had injured his

shoulder due to having shoulder and arm pain; however, an MRI scan performed on March 15, 2007 revealed a disc herniation at C5-6. Following that scan claimant was evaluated by Dr. James Rodgers at Tulsa NeuroSpine on May 7, 2007. Dr. Rodgers opined that claimant had a cervical disc herniation at the C5-6 level and noted that claimant had dramatically improved with a short course of steroids. It was his opinion that claimant should be treated conservatively and stated:

He is doing so well now that surgery is not even remotely a consideration.

Claimant returned to Dr. Rodgers on July 2, 2007, and Dr. Rodgers noted that claimant had “substantially healed” with regards to his cervical disc herniation and that his left arm C6 radiculitis had “significantly cleared.”

Claimant’s final visit with Dr. Rodgers occurred on October 1, 2007, at which time he stated that claimant’s condition had improved and he had reached maximum medical improvement. Dr. Rodgers did opine that he believed that claimant had a 20% chance of needing cervical spine surgery at some point in his life at the C5-6 level. Dr. Rodgers did not place any restrictions on the claimant’s ability to return to work.

Claimant testified that in 2007 he missed approximately two weeks of work and returned to his regular job as a paramedic and continued to perform that job until after the incident on February 25, 2020.

Claimant testified that on February 25, 2020 he and his partner responded to a medical call. Claimant described his accident as follows:

There were no first responders or any other assistants there with us. It was just he and I. The patient was critical, unable to move himself, so my partner and I

had to carry him out of the small trailer, house, down some steps. At the last step, I stumbled trying not to drop him, trying to set him down. It was a very awkward position. It was at that point that he was in cardiac arrest, so we just continued on. My partner asked me if I was okay. Afterwards, it just - - the pain started after the call.

Claimant testified that he reported his injury that same day to Jeff Turner, Director of Sebastian County EMS.

Claimant further testified that he was hoping he had simply pulled a muscle and he actually took off work for two weeks to rest and hope his condition would get better. When his condition did not improve, claimant requested medical treatment and underwent an MRI scan on April 23, 2020 which was read as showing a diffuse disc bulge at the C5-6 level. Claimant was evaluated by Dr. Ian Cheyne at Mercy Clinic on May 19, 2020, and was diagnosed with a strain of the muscle and tendon in the back wall of the thorax as well as a strain of the muscle, fascia and tendon at the neck level. Dr. Cheyne also placed lifting restrictions on the claimant.

When claimant's condition did not improve, he was referred to Dr. Charles Jones, an orthopedic surgeon. Claimant was evaluated by Dr. Jones on July 8, 2020 and he diagnosed claimant as suffering from neck pain with degenerative changes at the C5-6 level. He also stated:

I do not see any cord pathology. I am not sure what happened during his accident. Perhaps it was a severe muscle strain from when she [sic] has not recovered. I told him I cannot definitively say from these pictures there is any acute traumatic effect from his injury, but his symptoms seem concordant with this. Regardless, I will ask him to pain management for consideration of either a cervical epidural

and/or radiofrequency ablations to try make his pain better. Ultimately, if he fails this I guess we can talk about ACDF C5-6.

Thereafter claimant sought medical treatment on his own from Dr. Blankenship, neurosurgeon, on November 16, 2020. Dr. Blankenship was of the opinion that claimant had a ligamentous injury to his spine at the C4-5 level. Dr. Blankenship recommended that claimant be treated conservatively with physical therapy and medication.

Claimant has filed this claim contending that he suffered a compensable injury to his neck as a result of the accident on February 25, 2020. He seeks payment of related medical treatment for that compensable injury.

#### ADJUDICATION

Claimant contends that he suffered a compensable injury to his cervical spine on February 25, 2020 when he was carrying a patient down some stairs and stumbled, causing pain in his cervical spine area. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish 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.

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. First, I find that claimant has proven that he suffered a compensable injury to his cervical spine which arose out of and in the course of his employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence.

Claimant testified that he suffered the compensable injury when he and his partner were carrying a patient who was suffering a cardiac arrest down some stairs at a home and he stumbled on the last step. A review of the medical records contains a history of injury consistent with claimant's testimony. I find claimant to be a credible witness and based upon his testimony as well as the remaining evidence find that he has met his burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment and that it was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has proven that his injury caused internal harm to his body which required medical services and that he has offered medical evidence supported by objective findings establishing an injury.

Here, it is noted that claimant had a prior neck injury in 2007 at which time an MRI scan revealed a disc herniation at the C5-6 level. Likewise, following his most recent injury claimant again underwent an MRI scan which was read as showing a disc bulge at the same C5-6 level. This was the opinion of the radiologist as well as Dr. Cheyne. In addition, Dr. Jones also indicted that claimant suffered from neck pain with degenerative changes at the C5-6 level. However, Dr. Blankenship, neurosurgeon, also noted that the MRI scan showed an increased signal level at the C4-5 level and it was his opinion that claimant had suffered a ligamentous injury to the C4-5 level.

He has fairly grainy images but there does appear to be some increased signal in the annulus in the midline at C4-C5. Of more significance is on his neutral plain films he has slight anterolisthesis at C4-C5. This markedly exacerbates in flexion, completely reduces in extension, and this would be indicative of gross segmental instability at this level.

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First of all concerning causation it is my opinion based on a reasonable degree of medical certainty that his cause for treatment now is directly related to his more recent injury. \*\*\* I think he has had a ligamentous injury to his spine at C4-C5 and his current pain complaints are related to his segmental instability at C4-C5. This is a new change from his previous injury. Even if he did not have a change, my opinion would still be that this is related to his new injury based on clinical history but certainly the C4-C5 ligamentous instability is new.

Thus, it is Dr. Blankenship's opinion that claimant's current difficulties are not related to the C5-6 level, but instead to the C4-5 level and are the result of a new injury. I find that the opinion of Dr. Blankenship is credible and entitled to great weight.

With respect to Dr. Blankenship's opinion, I note that he went on to indicate that claimant should be treated conservatively with physical therapy and medication. He also noted:

He is a surgical candidate if he does not get better with a C4-C5 arthrodesis. Because of his previous injury at C5-C6 he would need to have this level incorporated.

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We are going to get him started working with the folks at Total Rehab. We are going to get him started on Celebrex and Lyrica and then I will see him back in six weeks. If he is not better at that time then a consideration of an anterior cervical arthrodesis



and fusion at C5-C6 and C6-C7 is not unwarranted.

Respondents correctly note that this discussion by Dr. Blankenship involves both the C5-6 level from 2007 as well as C6-7 level. It is unknown why Dr. Blankenship referred to the C6-C7 level since a review of his medical report does not make any other mention of the C6-7 level. Perhaps that was a typographical error. Irregardless, Dr. Blankenship is not recommending medical treatment in the form of surgery at the C5-6 and C6-7 levels at this time. Instead, as stated in his report of November 16, 2020, Dr. Blankenship is recommending conservative treatment in the form of medication and physical therapy for the new injury to claimant's cervical spine at C4-5. No finding is being made at this time with regard to any proposed surgical treatment.

With respect to this issue I also believe it is important to note that Dr. Rodgers in his report of May 7, 2007 stated that other than the C5-C6 level: "The levels above and below look pristine." After claimant returned to work following these issues in 2007 he continued to work as a paramedic for respondent for 13 years without any additional neck complaints.

Based upon the opinion of Dr. Blankenship which I find to be credible and entitled to great weight, as well the other evidence presented, I find that claimant has met his burden of proving that his injury caused internal physical harm to his body which required medical services and that he has offered medical evidence supported by objective findings establishing an injury.

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

cervical spine at the C4-5 level on February 25, 2020.

Claimant is entitled to payment for all reasonable and necessary medical treatment provided in connection with his compensable injury. This includes the physical therapy recommended by Dr. Blankenship.

Finally, it should be noted that the issues to be litigated includes an injury to both claimant's neck and back on February 25, 2020. I find only that claimant has proven a compensable injury to his cervical spine at the C4-5 level on February 25, 2020. I do not find based upon the evidence presented that claimant has proven a compensable injury to his "back" on February 25, 2020. Claimant underwent an MRI of the thoracic spine on April 23, 2020 and other than the prior problem of a disc bulge at C5-6 it was read as: "Otherwise normal MRI thoracic spine." Thus, there are no objective findings of an injury to the thoracic spine. Accordingly, I do not find that claimant suffered a compensable injury to his thoracic spine on February 25, 2020.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine on February 25, 2020. He is entitled to payment of all reasonable and necessary medical treatment provided in connection with that compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical

providers pursuant to A.C.A. §11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$343.15.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE