

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H304795**

MARISSA M. LARA, Employee	CLAIMANT
J. B. HUNT TRANSPORT INC., Employer	RESPONDENT
ESIS INC., Carrier	RESPONDENT

OPINION FILED **JANUARY 11, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney, Fayetteville, Arkansas.

Respondents represented by JOSEPH H. PURVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 7, 2023, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 12, 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 this claim.
2. The employee/employer/carrier relationship existed on June 26, 2023.
3. Claimant sustained a compensable injury on June 26, 2023.

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

1. Whether claimant is entitled to an attorney's fee on temporary total disability benefits.

All other issues are reserved by the parties.

Lara-H304795

The claimant contends that “The claimant, Marissa Lara, sustained a compensable head injury on June 26, 2023, while working for J.B. Hunt Transport, Inc. in Gravette, Arkansas when he was hit in the head by falling equipment. The claimant has been given the restriction by Nicolas J. Daniel, MD, of no driving, however, no alternative light duty work has been offered. The claimant contends that he is owed temporary total disability benefits from June 26, 2023, through a date yet to be determined. Due to the controversion of entitled benefits, the respondents are obligated to pay one half of the claimant’s attorney’s fees. Claimant reserves the right to raise additional contentions at the hearing of this matter.”

The respondents contend that “Claimant sustained a compensable incident on or about June 26, 2023, which the respondents accepted from the outset as compensable. The respondents have paid and are continuing to pay all sums that are due and owing.”

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant, 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 12, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant's attorney is entitled to an attorney fee on temporary total disability benefits paid to claimant as a result of claimant’s compensable head injury.

FACTUAL BACKGROUND

During the prehearing conference, the parties advised that they believed this matter could be submitted on a stipulated record. To that end, both submitted briefs before the trial date, which were

Delgado-H010070

admitted as evidence by agreement of the parties. In reviewing those submissions, I see no issues of material facts that are in dispute. However, respondents did not agree to have the deposition of claimant admitted, and as such, a hearing was held on December 7, 2023, during which claimant testified.

HEARING TESTIMONY

Claimant testified that on June 26, 2023, he suffered a head injury while working for respondent, J. B. Hunt as a local CDL truck driver. He was rushed to the emergency room where he received five staples in his head and testified that he had a concussion. Claimant was given medication that restricted his ability to drive. After the staples were removed at the emergency room on July 8, 2023, claimant was sent by respondent to the Conservative Care Occupational Health Clinic. Following a physical examination with Dr. Daniel Nicholas on July 13, 2023, claimant's work status was limited in that he was not released to drive a truck.

Claimant said he sought the service of his attorney on July 31, 2023, because he was having trouble getting in contact with Valerie Wilkerson, the adjuster that was handling his claim. Claimant testified that he made multiple phone calls, left multiple voice mails, and sent emails and never heard back from her. He finally received compensation about two weeks after he met with his attorney.

On cross-examination, claimant said he reported the injury to his supervisor immediately after he was injured. He did not fill out any paperwork from J. B. Hunt before being taken to the emergency room and was on a leave of absence after the injury. Claimant said he had not been sent any paperwork regarding the injury. He spoke with the claims adjuster, Valerie Wilkerson, on June 28, 2023, and answered her questions. After that call, claimant said he tried calling the phone number that she gave to him, but she never returned his call. He said he called her the next week and again about three weeks later. Claimant testified that he had voice mail and had not received any messages nor any email

Delgado-H010070

from Ms. Wilkerson. He said he next heard from Ms. Wilkinson in the middle part of August 2023. Claimant agreed that July 31, 2023, was the first formal filing of his workers' compensation claim on the form AR-C, and he heard from the respondents within three days of filing that claim. Claimant agreed that his medical bills have been paid, and that the check for his temporary total disability was received by his attorney.

I found claimant's testimony to be credible and consistent with the documentary evidence submitted on his behalf.

REVIEW OF THE EXHIBITS

Claimant provided the medical records that related to his injury, including those that restricted him from driving from June 26, 2023, through September 7, 2023. The medical provider selected by respondent, Conservative Care Occupational Health, completed Form AR-3 on both July 13, 2023, and July 27, 2023, both of which contain the contact information for respondent ESIS.

Claimant's non-medical records contain the AR-C filed on July 21, 2023, the AR-2 filed by respondent on August 3, 2023, and documents after those dates that have little bearing on the issue before me.

During claimant's testimony, a question was raised about when respondent was notified about his injury. To clarify the record, I marked as Commission Exhibit #2 the First Report of Injury or Illness filed by respondents, stating the employer was notified of the injury on June 26, 2023, and the administrator was notified on June 28, 2023.

ADJUDICATION

After reviewing the testimony and the evidence, I find the sequence of relevant events to be as follows:

Delgado-H010070

June 26, 2023: Claimant injured his head while engaged in his duties for respondents. He was taken to Gravette Hospital by someone at J.B. Hunt, where he received sutures in his head. The discharge instructions restricted claimant from driving.

June 28, 2023: Valerie Wilkerson, a senior claims specialist with ESIS, was notified of the injury. She spoke with claimant on that day.

Late June/early July: An appointment was made for Claimant with Conservative Care Occupational Health, and communicated to claimant.

July 8, 2023: The staples were removed from claimant's head.

July 13, 2023: Claimant had his first visit at Conservative Care Occupational Health, where Physician's Assistant J. Daniel Nicholas saw him. The restriction on truck driving was continued due to "dizziness and decreased reaction time." PA Nicholas reported that the "return to work plan discussed with patient and communicated to his employer." A Form AR-3 was completed on this day, with an estimated time for the duration of treatment to be "several weeks."

July 27, 2023: Claimant again saw PA Nicholas, and he was again restricted from truck driving. The restriction was again discussed with claimant and communicated to respondent.

July 31, 2023: Claimant filed Form-C requesting Temporary Total Disability Benefits.

August 3, 2023- Form 2 filed by Respondents stating first date of Disability is June 27, 2023, with July 4, 2023, being the first day of disability.

August 7, 2023: ESIS mails check postmarked August 7, 2023, for the past due

Delgado-H010070

temporary total disability payments to claimant's counsel's office, which was received on August 15, 2023.

In its brief, respondents asserted that they “promptly responded within four days of having received electronic notice and immediately responded they accepted this claim as compensable.” I agree; once an attorney filed the AR-C, respondents did what it should have done much earlier in the process. However, I disagree with respondent's contention that “Nothing can be done until the claimant actually starts his claim;” the facts in the case show that respondents did not wait for something to be filed before providing medical benefits as the law requires. Regarding temporary total disability benefits, Arkansas Code Annotated §11-9-501 provides:

- (a)(1) Compensation to the injured employee shall not be allowed for the first seven (7) days' disability resulting from injury, excluding the day of injury.
- (2) If a disability extends beyond that period, compensation shall commence with the ninth day of disability.
- (3) If a disability extends for a period of two (2) weeks, compensation shall be allowed beginning the first day of disability, excluding the day of injury.

Claimant credibly testified that he attempted to contact Valerie Wilkerson on several occasions and did not hear back from her. The records in evidence show that ESIS was provided with Form AR-3 on July 13, 2023, and July 27, 2023, which continued the claimant's work restrictions. There was nothing preventing respondents from starting the disability benefits as per A.C.A. §11-9-501 after claimant had been off work for the requisite amount of time.

In *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529, (1998) the Arkansas Supreme Court held it “has long recognized that making an employer liable for attorney's fees serves legitimate social purposes such as discouraging oppressive delay in recognition of liability, deterring arbitrary or capricious denial of claims, and insuring the ability of necessitous claimants to obtain adequate and competent legal representation.” In its reply brief, respondent said “Unfortunately, it is a matter of

Delgado-H010070

fact that once the Respondents receive a claim, they investigate.” This overlooks that the injury caused a readily apparent injury on June 26, 2023, that claimant was taken to the emergency room by an employee of J.B. Hunt on that day, that Ms. Wilkerson knew of the claim on June 28, 2023, had interviewed claimant, had scheduled him for his appointment with Conservative Care Health Clinic, and had received the AR-3 forms completed by that provider during the month of July. Ms. Wilkerson had ample time to investigate this matter in the five weeks before claimant felt he needed to retain counsel to receive disability benefits. To find for respondents, I would have to believe that Ms. Wilkerson was almost ready to issue that first check when she got the notice that Mr. Kinder was involved, and his entry into the case had no influence on her decision to issue it. Lacking any evidence to support that conclusion, I find it was Mr. Kinder’s appearance that caused the end to the “oppressive delay in recognition of liability” for indemnity benefits. The failure to pay those benefits amounted to controversion; those (in)actions speak louder than the acceptance of the claim on the AR-C filed by respondent on August 3, 2023. As such, Mr. Kinder is due an attorney’s fee as per A.C.A §11-9-715.

ORDER

Claimant's attorney is entitled to an attorney's fee on temporary total disability benefits paid to claimant.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE