

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H002898**

JOSE MARTINEZ, EMPLOYEE	CLAIMANT
HARRIS COMPANY OF FORT SMITH INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED **JULY 1, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 7, 2022, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on April 14, 2022, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No.1 and was made part of the record without objection.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on April 17, 2020.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury on April 17, 2020.
2. Whether claimant is entitled to medical benefits.
3. Whether claimant made a timely report of his injury.

The claimant contends that:

“a. Although the respondent/carrier was placed on notice on May 20, 2020, that the claimant was receiving treatment from Dr. William Hutchinson, the respondents have not paid for treatment by Dr. Hutchinson nor notified claimant’s attorney that they were denying liability for such treatment.

b. Treatment by or at the direction of Dr. Hutchinson is reasonably necessary treatment and should therefore be the liability of the respondents.”

The respondents contend that “the claimant did not sustain a compensable injury. Claimant failed and/or refused to report any injury or need for treatment to his employer. Claimant is not entitled to medical or indemnity benefits.”

All other issues are reserved by the parties.

From a review of the entire record, including medical reports and non-medical documents, and having heard the testimony and observed the demeanor of the claimant, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on April 14, 2022, 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 is entitled to additional medical treatment as recommended by Dr. William Hutchison.

FACTUAL BACKGROUND

When the hearing began, respondent objected claimant introducing into evidence two letters his attorney sent to an adjuster for respondent Travelers. I had to review them in order to rule on respondent’s objection, which I sustained, but beyond that, those letters have not been considered in this decision. Both are a part of the record as proffered exhibits.

As part of responding to the objection to those letters, claimant requested that judicial notice be taken of the Employer's First Report of Injury that is part of the Commission's file. Counsel for the parties were given an opportunity to review it. As there was no objection, judicial notice was taken as to that document, which is blue-backed and made part of the record.

While the compensation rate was listed in the prehearing order as an issue for this hearing, the parties advised that it did not need to be decided in this proceeding and was reserved for a future hearing.

HEARING TESTIMONY

Claimant testified that he was involved in a motor vehicle accident on April 17, 2020, while he and his work crew were traveling to the jobsite in Fayetteville, Arkansas. His supervisor, Sammy Scoggins, was driving the vehicle when it was hit from behind. Claimant said that he was aware immediately that he was injured on the lower part of his neck and his lower back. He said his supervisor asked him to get checked out and told him to go to a chiropractor. Claimant testified that no one at his employer explained anything to him about how to file a workers' compensation claim if he was hurt on the job. He had not seen any notices posted on the premises at the Harris Company that explained what he was supposed to do if he was hurt on the job.

Claimant started seeing Dr. William Hutchinson, a chiropractor in Fort Smith, which provided some relief. Because he did not have an answer from the insurance company whether they were going to cover the expenses, he eventually had to stop going to treatment; the bill had become too high. Claimant said he continued to work while he was receiving treatment for his neck and back. He stated he had never had chiropractic or medical treatment for his neck or back before April 17, 2020.

On cross examination the claimant said he did not continue with the crew to Fayetteville, but rather stayed in Van Buren to seek medical care. Claimant clarified that he was the one that chose Dr. Hutchinson after the supervisor told him to "get checked out." Claimant said that there was a gap in

treatment because he had gone to Colorado to see his son. Claimant explained that he had told the doctor that he was “working like crazy unless it rains,” because he couldn’t miss work very often to get treated unless it was raining or cold. Claimant conceded that on May 25, 2020, he was improving and was treating himself with medicine that he purchased at the store, but no prescription medicines. Claimant said that at the end of his treatment on January 6, 2021, he was getting better “little by little” and last treated with Dr. Hutchinson on February 19, 2021. He has continued to work full-time for respondent Harris Company of Fort Smith. Claimant stated that he had not paid Dr. Hutchinson for any of the treatment he had received, so he is not out of pocket for any payments. He stated he did not have health insurance and to his knowledge, no one else had paid Dr. Hutchinson.

On redirect examination, claimant said he had not been back to Dr. Hutchinson since February 2021 because “we didn’t have a response from the insurance company if they were going to cover it and I can’t afford to pay him out of my own pocket.” Claimant said that he still needed more treatment.

REVIEW OF EXHIBITS

Claimant presented eighteen pages of medical exhibits from Fort Smith Chiropractic and Acupuncture, the facility operated by Dr. William Hutchinson. The notes from Dr. Hutchison were somewhat repetitive, and an exhaustive review of those records is unnecessary. In the subjective portion of his notes, Dr. Hutchinson frequently mentioned that claimant was coming in when weather or holidays prevented him from working. The objective findings throughout the ten months of treatment were consistent: “motion/static palpitation reveals moderate tenderness and moderate spasm of cervical, mid-thoracic and lumbar spine paramusculature.” Following the office visit on October 27, 2020, Dr. Hutchinson did not schedule another appointment but rather left it to claimant to call when he was going to be able to come in as his work schedule allowed.

Claimant's non-medical records included a copy of the police report, which provided the date of the accident as well as this entry on page 12: "One of Scoggins' passengers, Jose Barroso, complained at the scene of being hurt, but refused for me to call EMS to the scene to have him checked." Claimant also submitted the AR-C Form filed on his behalf on December 28, 2020.

Finally, the document of which I took judicial notice was the employer's First Report of Injury, filed May 14, 2020, by Carla Bickham, a claims professional for Phoenix Insurance Company, the claims administrator for respondent Travelers. In it, Ms. Bickham reported to the Commission that the employer was notified of the injury on April 17, 2020, and included this narrative: "Employee was injured during vehicle accident, neck, shoulders, and lower back pain."

ADJUDICATION

The first issue to be decided was whether claimant sustained a compensable injury on April 17, 2020. 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.

I find claimant met his burden of proof as to the existence of a compensable injury. Claimant was riding in a vehicle that was struck from behind while traveling to a job site, thus satisfying the first and fourth elements above. He stated at the scene of the accident that he thought he was hurt, and went to see Dr. Hutchinson the same day, whose reports noted objective findings of spasms, meeting the second and third requirements. I found claimant to be a credible witness, and although a claimant's testimony is never viewed as uncontroverted, the Commission need not reject the claimant's testimony

if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). His testimony was consistent with the police report and the medical records that were introduced. I believed his testimony that he worked through the pain because he couldn't simply stop working, that he couldn't go to the chiropractor every day because of how and where he was working, and that he stopped going in February 2021 because he couldn't afford to pay for his treatment.

In addition to contending claimant did not sustain a compensable injury, respondent also maintained that claimant did not report the injury or need for treatment to his employer. However, both the testimony of the claimant and the filing by respondent Travelers with the Commission demonstrated that claimant reported the injury to his employer on the day it happened. Claimant was with his immediate supervisor in the vehicle—a vehicle owned by respondent Harris—when it was struck by another driver. "The employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission," and the employer is not responsible for benefits related to the injury "prior to receipt of the employee's report of injury." Ark. Code Ann. § 11-9-701(a)(1). "Failure to give the notice shall not bar a claim, however, if the employer had knowledge of the injury." Ark. Code Ann. § 11-9-701(b)(1)(A). It is notice to the employer, not the insurance carrier, that is required, *Baxter v. Baxter*, 2012 Ark. App. 251, 413 S.W.3d 561, and under the facts of this case, the employer was notified on April 17, 2020, not only of the incident, but also of the need for treatment for an injury.

Ark. Code. Ann § 11-9-508(a)(1) requires employers to promptly provide such medical services as are reasonably necessary in connection with the injury received by the employee. I find respondents have failed to provide medical services to claimant, and that Dr. Hutchison's treatment was reasonable and necessary for the injuries claimant sustained in the motor vehicle accident. Therefore, respondent is liable for payment of all reasonable and necessary medical services provided in connection with claimant's compensable injury.

ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his neck and lower back on April 17, 2020. Respondent is liable for payment of all reasonable and necessary medical services provided in connection with claimant's compensable injury.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$302.50.

IT IS SO ORDERED

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE