

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H205569

**JUAN CARLOS SANCHEZ,
CLAIMANT**

EMPLOYEE

**CREATIVE WALL SYSTEMS,
EMPLOYER**

RESPONDENT

**BRIDGEFIELD CASUALTY INSURANCE COMPANY/
SUMMIT COUNSULTING, LLC,
CARRIER/THIRD PARTY ADMINSTRATOR (TPA)**

RESPONDENT

OPINION FILED MARCH 14, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Degan Clow, Attorney at Law and his Rule XV Law Clerk, Mr. Beau Duty, Little Rock, Arkansas.

Respondents represented by Mr. Zachary Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On December 14, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on November 9, 2022, from which a Pre-hearing Order was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

Stipulations

During the pre-hearing telephone conference, and/or during the hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
3. The Respondents have controverted this claim in its entirety.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether or not the employee-employer-insurance carrier relationship existed on March 29, 2022, which the Claimant allegedly sustained injuries to his back and neck.
2. The Claimant's average weekly wage on the day of his alleged accidental injury of March 29, 2022.
3. Whether the Claimant is entitled to temporary total disability from March 30, 2022 until a date yet to be determined.
4. Whether the Claimant's attorney is entitled to a controverted attorney's fee.
5. The parties agreed to hold issues number 5 and 6 from the prehearing in abeyance.

Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends that he was injured in a fall while working for the employer. He fell on March 29, 2022, from some scaffolding that they were using as their working platform as they added plaster to the side of a custom home. As a result of this fall from the scaffolding, he has suffered a back and neck injury that has limited his ability to find a new job. To date, he has

been unable to find suitable employment and is entitled to receive temporary total disability (TTD) from the date of the fall until the date of maximum medical improvement (MMI). It is the Claimant's contention that he will be unable to resume working in any position suitable for his level of education and experience due to the injuries sustained on March 29, 2022. However, counsel for the plaintiff has informed Claimant that the determination of whether to seek PTD or PPD should be made after the expert evaluation of his treating specialist physician. Pending the determination of the Claimant's specialist physician regarding the Claimant's healing period and MMI, Claimant should be entitled to PTD or PPD going forward. Additionally, Claimant is entitled to receive coverage for all past and future medical expenses related to his fall on March 29, 2022.

The Claimant contends that his average weekly wage was \$720.00, based on 40 hours per week at a rate of \$18.00. (TR. 14)

Respondents:

The Claimant did not suffer a compensable injury at work. The Claimant has submitted no proof of a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.

3. The Claimant was an employee of Mr. Victor Morales and he failed to obtain workers' compensation coverage. However, Elisei Conjocarú regularly employed Mr. Morales as a subcontractor to perform residential and commercial plastering. As such, Mr. Conjocarú is a liable prime contractor pursuant to Ark. Code Ann. §11-9-402.
4. The Claimant average weekly wage was \$720.00 at the time of his injury.
5. The Claimant proved by a preponderance of the evidence he sustained a compensable neck injury on March 29, 2022. However, he failed to establish by objective medical findings an injury to his back.
6. The Claimant proved by a preponderance of the evidence his entitlement to temporary total disability from March 30, 2022, to a date yet to be determined.
7. The Claimant proved by a preponderance of the evidence that all of the treatment for record was reasonably necessary to treat his neck injury. He also proved that he is entitled to additional medical treatment as recommended by Dr. Roberts in the form of an orthopedic specialist.
8. The Claimant attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.
9. All issues not litigated herein are reserved under the Act.

Summary of Evidence

During the hearing, Mr. Juan Carlos Sanchez Garcia/the Claimant and Mr. Martine Reyes were the only two witnesses.

The record consists of the December 14, 2022 hearing transcript and the following exhibits: Specifically, Commission's Exhibit No. 1 includes the Commission's Prehearing Order filed on November 9, 2022 and the parties' responsive filings; Claimant's Exhibit No. 1 is A Medical

Exhibit, which is made up of forty-one (41) numbered pages; Claimant's Exhibit No. 2 includes a Documentary Non-Medical Exhibit consisting of seven (7) pages; Claimant's Exhibit No. 3 consists of two pages of Color Photographs; Respondents introduced into evidence the Claimant's Oral Deposition of November 18, 2021, which was marked Respondents' Exhibit No. 1 and is retained in the Commission's file; and Respondents' Exhibit 2 is a Video on USB Flash Drive, which has been marked accordingly and retained in the Commission's file.

Additionally, the parties filed Post-Hearing Briefs. These have been blue-backed and marked as Commission's Exhibit No. 2.

Ms. Shannon Tanner, A.O.C., a Certified Spanish Interpreter, translated for the Claimant during hearing.

Background

The Claimant testified that he worked as a plaster for Victor Morales. He also testified that Mr. Morales worked for Elisei. He confirmed that Mr. Morales told him when to show up for work each day. According to the Claimant, Mr. Morales even gave him a ride to work each day. He agreed that he could be fired by Mr. Morales and would have to look for other work. Per the Claimant, he worked between forty-five (45) and fifty (50) hours per week. He earned \$18.00 an hour. Mr. Morales paid the Claimant on a weekly basis. Mr. Morales supplied the Claimant with the tools, supplies and materials for work. The Claimant confirmed that Mr. Morales was in the business of doing plaster work for houses and buildings. According to the Claimant, he worked for Mr. Victor Morales for approximately two (2) years.

Regarding the Claimant's alleged accidental injury on March 29, 2022. He gave a detailed description of his fall off the top of scaffolding on to the concrete. At the time of his injury, the Claimant agreed that he was performing the type of work that he normally performed for Mr.

Morales. Following his accidental fall, the Claimant was transported by ambulance to UAMS. He was treated at the emergency room there and discharged home. The Claimant confirmed that he had a follow-up visit to determine his progress following the accident. He confirmed that he was given a neck brace after his follow-up visit.

The Claimant testified that his doctor told him would not be able to return to the same type of work he was doing because his job required quite a bit of strength and he could not do it. He confirmed that he had an appointment with a Dr. Aaron Don Roberts in Jacksonville. Per the Claimant, Dr. Roberts also instructed him not to return to work. The Claimant testified that he was referred to a specialist. He denied any prior problems to prevent him from working before his accident.

On cross-examination, the Claimant confirmed that there were there other people on the scaffolding when his accident occurred. He admitted that he was the only one person that an ambulance was called for that day. The Claimant testified that he injured his head, neck, shoulder, back and hip.

He denied ever being injured before. The Claimant confirmed that he worked at Oaks Brothers for over ten (10) years before his accident. He also worked in construction for some time prior to going to work for Oaks brothers. The Claimant admitted that he fought off robbers in rural Louisiana. He denied being injured.

Under further questioning, the Claimant admitted that he underwent several x-rays, and CT scans of various parts of body at UAMS after his work-related accident. He denied being told that the x-rays performed on March 29, 2022 at UAMS were negative for left swelling, and had no palpable changes to the spine. In fact, x-rays of his ankle was unremarkable. The Claimant also denied that he was aware of his chest x-rays showing no rib fractures or abnormalities. He further

denied that the CT scan performed on March 29 of the head demonstrated no acute posttraumatic intracranial findings. The Claimant was not aware that the cervical scan showed disc height loss at C3-4 and C5-C6 and a disc bulge at C3-4. However, the Claimant explained that he had those from the accident because he fell seventeen (17) feet up in the air onto cement. The Claimant also denied he was aware of all of his scans to his lungs, liver, spleen, bladder, esophagus, heart and kidneys were all normal. However, the Claimant was noted to have severe degenerative changes to his right sternoclavicular joint. The Claimant denied a prior right shoulder injury.

The Claimant admitted that he went to the Jacksonville Medical Center in September 2022. He denied that all of the findings on the diagnostic tests were chronic changes. The Claimant denied that he had an accident before his work incident. He testified that he does plastering, a day or two for his uncle, Martin Reyes. The Claimant admitted that his uncle does not pay taxes. He could not remember the last time he paid taxes. Nor does the Claimant have a bank account. The Claimant denied that he works for Martin Reyes. However, he admitted that he previously worked for him. He denied that he lives with him. Instead, the Claimant, his wife and two children live in a storage area outside of his house. The Claimant testified that Reyes sometimes gives him \$100.00 or \$200.00 to help him out since his accident. He admitted that he cleans the yard since his lives there. The Claimant admitted that he previously worked for Mr. Reyes before he worked for Victor Morales. He denied going back to work for him since his accident.

The Claimant was shown video from a screenshot of a Facebook video posted by Jorge Aldaco to Mr. Martin Reyes's Facebook profile. It is a scene of a pool installation by Mr. Martin Reyes's' company. The Claimant admitted that he was aware that Mr. Reyes installed and finished residential pools. In this video is a man in a yellow shirt appearing to put on equipment. The

Claimant denied that he is the man pictured in the video. He testified that the man in the video is his cousin, Juan Razo.

He denied work for Mr. Reyes. The Claimant admitted that he delivered some water hose to a construction for him. He denied he helped to carry the hose to the jobsite. According to the Claimant he drove the truck to the jobsite and someone else got the hoses out of the truck. This occurred around June 20, 2020. He denied working for Mr. Reyes for two weeks. He maintained that Mr. Reyes will give him money to help him out, such as \$100.00.

The Claimant testified on recross examination, he has not seen a specialist because he does not have the resources.

He testified that he worked for Mr. Morales and three other guys. The Claimant also testified that Mr. Morales determined their course and sequence of work. They did not have a written contract.

It appears that Eli Conjocarú owns Creative Walls Systems. However, Mr. Conjocarú does use Mr. Victor Morales as a subcontractor. (TR 63)

Martine Reyes

Mr. Reyes was called as witness on behalf of the Claimant. He was shown screenshots from the video of record. These two photos have been marked as Claimant's Exhibit 3. Mr. Reyes testified the person depicted in the photo is not the Claimant. Instead, he testified that the person in the photo is the Claimant's cousin, Juan Razo.

On cross-examination Mr. Reyes testified that the Claimant and his family lives in his warehouse on his property. He confirmed that the Claimant delivered a water hose to one of his worksites for him. However, Mr. Reyes testified that it was simply a garden hose.

Under redirect-examination Mr. Reyes testified that the hose was already in the bed of the truck and asked the Claimant to drive his truck to the jobsite.

On inquiry by the Commission, Mr. Reyes testified that he has known the Claimant for ten (10) years. He confirmed that the Claimant is a good hard worker, and he has previously worked for him. Mr. Reyes testified that when the Claimant was working he gave him money for bills. He denied that prior to the Claimant's accident he had been ill and/or unable to work. Mr. Reyes denied that the Claimant had any prior problems with his neck or back.

Adjudication

A. Subcontractor/Employee

The evidence shows that the Claimant worked as an employee for Mr. Victor Morales by having met a majority of the requirements of 20-prong test sufficient for establishing the employee-employer relationship based on the Claimant testimony which is uncontroverted. During the hearing it was also established that Mr. Morales did not have workers' compensation coverage at the time of the hearing. The Respondents' attorney confirmed that the Mr. Morales worked as a subcontractor for the owner of Creative Wall System, who is Mr. Eli Conjocura. Therefore, based on the foregoing, I find that Mr. Eli Conjocura is a liable prime contractor pursuant to Ark. Code Ann. §11-9-402.

B. Average Weekly Wage

The Claimant contends that he is entitled to an average weekly wage of \$720.00. In that regard, the only evidence presented concerning the Claimant's average weekly was provided by the Claimant's hearing and deposition testimony. The Claimant testified during the hearing that he worked forty-five (45) to fifty (50) hours per week. He testified that his hourly rate of pay was \$18.00 The Claimant testified he was paid in cash. No testimony or documentary evidence

whatsoever to the contrary has been presented concerning the Claimant's average weekly wage by the Respondents. With that in mind, I find that the evidence preponderates that the Claimant's average weekly at the time of his March 2022 injury was \$720.00. Considering that the Claimant was restricted from working due to the weather, a calculation of only 40 hours per week is fair.

C. Compensability for Neck and Back Conditions

The Claimant contends that he sustained injuries to his neck and back on March 29, 2022, when he fell from scaffolding of approximately seventeen (17) feet.

In that regard, for the Claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the Claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a Claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

If the Claimant does not establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Here, the Claimant fell seventeen (17) feet from scaffolding while working for the respondent-employer. Immediately following his fall, he was transported by ambulance to UAMS. He underwent multiple diagnostics at the Emergency Department at UAMS. A CT of the cervical spine demonstrated in relevant part, “Acquired canal stenosis at C3-4. Severe right neural foraminal narrowing at C4-5 and moderate foraminal narrowing at C5-6 levels”. The Claimant denied any prior problems or injuries to his neck. His testimony is corroborated by the lack of any documentary medical evidence to the contrary and Mr. Reyes denied that the claimant had any prior problems with his neck. I find that the abnormalities demonstrated on the CT constitute medical evidence supported by objective findings sufficient to establish a work-related injury to the Claimant’s neck. Moreover, I find that the Claimant established by a preponderance of the evidence all of the requirements for establishing a compensable neck injury.

The Claimant has also alleged an injury to his back. He has failed to establish an injury to his back by medical evidence supported by objective findings. These finding were identified by Dr. Roberts in the form of lumbar paraspinal muscle tenderness and limit flexion. These findings are insufficient to establish a compensable injury.

D. Temporary Total Disability

An injured employee for an unscheduled injury is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn

wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Temporary total disability cannot be awarded after the Claimant's healing period has ended. *Trader v. Single Source Transportation, Workers' Compensation Commission E507484* (February 12, 1999).

Here, the Claimant suffered a compensable injury to his neck when he fell from scaffolding to the ground, which was cemented. The Claimant was transported to a local hospital, namely UAMS, following his fall. He was treated in the Emergency Department and discharged home with instructions to receive follow-up care. The Claimant testified he was instructed not to return to work. No testimony to the contrary has been presented.

After having observed the Claimant's demeanor during the hearing and when comparing his testimony with the medical evidence and other documentary evidence, I found him to be a credible witness, particularly regarding his inability to work since his compensable fall of March 29, 2020. The Claimant also testified that Dr. Roberts took him off work. His testimony is corroborated by Dr. Roberts' clinic note dated September 8, 2022. Since this time, the Claimant has not been released by a doctor to return to work. Moreover, Dr. Robert recommended that the Claimant see an orthopedic specialist.

Under these circumstances, I find that the Claimant proved he remained within a healing period and was totally incapacitated to earn wages beginning March 29, 2022 and continuing until he is directed to work to by a doctor or treating medical professional. As such, I further find that

based on all of the foregoing evidence, the Claimant proved his entitled to temporary total disability from March 29, 2022, until a date yet to be determined.

E. Medical Benefits

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2012). The Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with the injury received by the employee. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). Our courts have quantified the preponderance of the evidence to mean the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

In the present claim, the treatment of record was done for the purpose of treating, evaluating, and diagnosing the Claimant's injuries following his compensable work-related fall of March 2022. The Claimant was evaluated by Dr. Roberts on September 8, 2022, due to ongoing problems and pain related to his neck injury. He also recommended that the Claimant see an orthopedic specialist.

Therefore, I find that the Claimant proved by a preponderance of the evidence that all of the treatment of record was reasonable and necessary to treat the neck injury that he sustained during his work-related fall. He also proved his entitled to additional medical treatment based on the recommendation of Dr. Roberts that he see an orthopedic specialist.

F. Controverted Attorney's Fee

It is undisputed that the Respondents have controverted this claim in its entirety as stipulated to by the parties. Therefore, pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W. 2d 57 (1995).

Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Arkansas Workers' Compensation Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE