

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H004171**

JOSHUA SHELTON, EMPLOYEE	CLAIMANT
NUCOR YAMATO STEEL CO., EMPLOYER	RESPONDENT
ARCH INSURANCE COMPANY, CARRIER	RESPONDENT
ARCH INSURANCE COMPANY, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 21, 2023

Hearing before Administrative Law Judge Steven Porch on July 28, 2023, in Little Rock, Arkansas.

Claimant is represented by Mr. Andy Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on this claim on July 28, 2023. Claimant was represented by Mr. Andy Caldwell, Attorney at Law of Little Rock, Arkansas; Respondents were represented by Mr. Michael E. Ryburn, Attorney at Law of Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. An employer/employee relationship existed on June 25, 2020, when Claimant sustained an injury to his back.
3. The Claimant's average weekly wage on June 25, 2020, was sufficient to entitle him to compensation rates of \$711.00 and \$533.00 for temporary total and permanent partial disability benefits, respectively; and,
4. The Respondents have controverted the additional benefits sought herein.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether the Claimant is entitled to additional reasonably necessary medical treatment previously denied by Respondents.
2. Whether Claimant sustained a compensable back injury on June 25, 2020, and is entitled to appropriate benefits associated therewith.
3. Whether Claimant is entitled to temporary total disability benefits from June 25, 2020, through a date yet to be determined.
4. Attorney's fees with respect to controverted indemnity benefits.

All other issues are reserved.

CONTENTIONS

Claimant's and Respondents' contentions are set out in their responses to the Prehearing Questionnaire. Said contentions are hereby incorporated by reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, Claimant and Respondents' post hearing briefs that are blue-backed and made a part of this record and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant, including other 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. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant is entitled to additional medical treatment for his back injury of June 25, 2020.

4. The Claimant is entitled to additional temporary total disability benefits from June 25, 2020, through a date to be determined.
5. Claimant did sustain a compensable back injury on June 25, 2020.
6. Claimant is entitled to controverted attorney fees.

CASE IN CHIEF

Summary of Evidence

The witnesses at the hearing were the Claimant, Winford Parker, Josh Raper, and Gina Taylor. In addition to admitting the prehearing order into evidence, I also admitted into evidence Claimant's and Respondent's exhibits that were properly admitted before the Commission. Claimant suffered an alleged injury, during the course and scope of his employment with Nucor Yamato Steel Company, as a Caster Inspector, when he tripped over a roll line injuring his back. Claimant previously sustained a preexisting non-work related back injury and underwent back surgery December of 2018. Claimant was healed and symptom free by the time of Claimant's work related back injury on June 25, 2020. Dr. Riley Jones, of OrthoSouth, as it relates to the current claim, treated Claimant and ordered him off work and prescribed him a Medrol dose pack. The Claimant next went to the Nucor-Yamato Health Clinic on June 29, 2020, for physical therapy and TENS unit. The Claimant reported to the physical therapist that he fell at work, and he had immediate back pain and spasms. Dr. Jones diagnosed Claimant with a lumbar sprain and prescribed Flexeril on July 10, 2020.

The Claimant was subsequently placed on restricted duty while continuing his physical therapy. The Claimant returned to OrthoSouth on July 20, 2020, due to his back pain and was treated by Dr. Christopher Ferguson. Dr. Ferguson took the Claimant back

off work and changed his medication to Toradol and Robaxin. Dr. Ferguson also recommended additional physical therapy. On July 31, 2020, the Claimant returned to see Dr. Jones and reported a bad episode of muscle spasms. Claimant was kept off work and prescribed Robaxin specifically for muscle spasms. The Claimant saw Dr. Jones at OrthoSouth again on August 14, 2020, and he was kept on Robaxin for muscle spasms and was kept off work due to his injury.

The Claimant next saw Dr. Todd Fountain with Semmes Murphey Clinic on October 1, 2020. Dr. Fountain kept the Claimant off work and recommended a facet test block followed by radiofrequency ablation. Dr. Fountain referred the Claimant to Dr. Jay McDonald. The Claimant's pain management doctor, Dr. Jay McDonald, has treated Claimant with a medial branch block on February 1, 2021, a L5-S1 transforaminal epidural steroid injection on March 1, 2021, a medial branch blocks for his L4-S1 on March 23, 2021, and a radiofrequency ablation procedure on May 11, 2021. Dr. McDonald recommended work restrictions and released to full-time work on September 13, 2021. The Claimant returned to the clinic on September 30, 2021, complaining about aggravating his back injury again at work. Dr. McDonald then placed Claimant on sedentary duty. Claimant also received a lumbar epidural steroid injection on November 11, 2021. Dr. McDonald recommended a psychological evaluation and spinal cord stimulator on December 7, 2021. This recommendation was denied by Respondents including all other requests for additional treatment.

Dr. McDonald, signed a document on June 27, 2023, stating conclusively that he was treating claimant for muscle spasms and an aggravation of epidural fibrosis because of a work injury. Dr. McDonald requested a second opinion from Dr. Moacir Schnapp,

Pain Clinic Associates, concerning a spinal cord stimulator. Dr. Schnapp opined that the spinal cord stimulator is the next step for Claimant. Moreover, during Claimant's efforts to get approved treatment, the Respondents did not offer Claimant any sedentary work.

Adjudication

A. Whether Claimant has sustained compensable back injury on June 25, 2020, and is entitled to appropriate benefits associated therewith?

In this action, Claimant has alleged that he suffered a compensable injury, by specific incident, to his back on June 25, 2020, as he was attempting to jump over a roll line and landing on his back. The alleged injury occurred during the course and scope of his employment with Respondents. Respondents argue that Claimant's injury was not compensable due to the lack of medical objective findings.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

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.*

In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and space boundaries of employment, the critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

If the claimant fails to 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).

The Respondents contends that there were no objective findings of an injury. However, in a recent case from the Arkansas Court of Appeals, *Melius v. Chapel Ridge Nursing Center, LLC*, 2021 Ark. App. 61, 618 S.W.3d 410, the Court found appellant's diagnosis of muscle strain along with prescribed treatment of medications, physical therapy, and pain management was sufficient to establish objective findings. Specifically, in *Melius* the Court of Appeals stated:

Appellant was diagnosed with a strain of muscle, fascia, and tendon of right hip, received medication, and subsequently was referred to physical therapy and a pain specialist for relief. What is disputed is whether appellant presented proof of objective medical evidence and whether the injury was work related. Following our Supreme Court precedent, we agree with appellant's argument that her diagnosis of muscle strain along with prescribed treatment of medications, physical therapy, and pain management is sufficient to establish objective findings. See *Fred's, Inc.*, 361 Ark. 258, 206 S.W.3d 238. In *Fred's, Inc.*, no physician, or physical therapist reported witnessing or feeling Jefferson's muscle spasms. *Id.* At 262, 206 S.W.3d at 241. The doctor noted Jefferson's work-related injury (falling off a ladder) in the medical record; diagnosed a muscle strain; and prescribed Flexeril, a muscle relaxer, pain medication, and physical therapy. *Id.* at 263, 206 S.W.3d at 242. Jefferson was also placed on limited work duties and ordered not to engage in lifting more than ten pounds. *Id.* Jefferson's doctor did not indicate what the medications were for or state specifically why he prescribed physical therapy. The Supreme Court held that it was reasonable to infer from the chronology of events that the medication and physical therapy were prescribed to aid Jefferson and to treat her injury and that medical evidence was supported by objective findings. *Id.*

The instant case is similar to the *Melius* and *Fred's, Inc.* cases. The Claimant was diagnosed with strain of the lumbar region for which medication was prescribed specifically for muscle spasms. Moreover, as in the *Fred's* case, the physicians and physical therapist in the instant claim noted Claimant's work-related injury in the medical

records. The Claimant in the Fred's Inc. case was also placed on limited work duties and ordered not to lift more than ten pounds. The Claimant here was placed on restricted duty then sedentary duty. Despite this, Respondents argue that Claimant's back spasms must either be seen on an x-ray or physically felt by the treating medical professional. Respondents, however, have not acknowledged the precedent that states there is no requirement under Arkansas law that a doctor, physical therapist, or other medical provider observe a patient having a muscle spasm before an employee's injury can be compensable. *Melius*, 2021 Ark. App. 61, 618 S.W.3d 410 (citing *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000)).

Therefore, in keeping with the precedent from both the Arkansas Supreme Court and the Arkansas Court of Appeals, I find by the preponderance of evidence a diagnosis of muscle strain, along with prescribed medication for pain and muscle spasms, are sufficient to establish objective findings thereby making Claimant's back injury compensable. Considering this, I further find conclusively that Claimant did sustain a compensable injury to his back on June 25, 2020. I also find that a reasonable inference from the chronology of events in this matter, i.e. the prescribed medications, physical therapy, and pain management were to aid Claimant and to treat his injury, including back spasms, and there was no evidence to the contrary. The Claimant testified to his back spasms, and I find by the preponderance of the evidence that his testimony was the most credible. Finally, I do find by the preponderance of the evidence that Dr. Jay McDonald's June 27, 2023, signed letter stating that he has been treating Claimant for back spasms since his work injury is credible. The next issue is whether Claimant is entitled to benefits.

B. Whether Claimant is entitled to reasonably necessary medical care in relation to his compensable back injury of June 25, 2020?

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. See *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness's credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

There is no evidence that has been presented to show that any of the Claimant's treatments were unnecessary or unreasonable, including the recommendation for a psychological evaluation and spinal cord stimulator. Therefore, I find by the preponderance of the evidence that all of Claimant's previously denied medical recommendations were reasonable and necessary to treat his work related back injury, including the psychological evaluation and spinal cord stimulator. The Respondents shall pay for these necessary and reasonable treatments.

C. Whether Claimant has sustained compensable back injury on June 25, 2020, and is entitled to appropriate benefits associated therewith?

Temporary total disability for unscheduled injuries is that period within the healing period in which the Claimant suffers total incapacity to earn wages. *Ark. State Highway and Transportation Dept. v. Brehears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Claimant continues to go through

treatment for his back to improve his final condition. No evidence has been presented to show that these efforts will not improve Claimant's final condition. Claimant has missed large amounts of work since his June 25, 2020, back injury. Thus, I find by the preponderance of evidence that Claimant is entitled to temporary total disability from June 25, 2020, to a date to be determined when he is stable or has reached maximum medical recovery. This excludes any benefit amounts voluntarily paid by Respondents before the filing date of this opinion.

ATTORNEY FEES

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). Under Ark. Code Ann. § 11-9-715 (Repl. 2012):

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them.

Discussion. The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to additional indemnity benefits. Thus, the evidence preponderates that his counsel, the Hon. Andy Caldwell, is entitled to the fee as set out above for all indemnity benefits that should have been paid consistent with this opinion and in compliance with the Arkansas Workers' Compensation Act.

CONCLUSION

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in

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a 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).

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge