

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004171

JOSHUA SHELTON,
EMPLOYEE

CLAIMANT

NUCOR YAMATO STEEL COMPANY,
EMPLOYER

RESPONDENT

ARCH INSURANCE COMPANY, CARRIER/
SEDGWICK CLAIMS MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 11, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ORDER

In the above-styled matter, the claimant moves the Full Commission to modify our opinion filed March 7, 2024. The claimant requests that the Full Commission "award Claimant's attorney an attorney's fee for all indemnity benefits, including those previously paid by Respondents[.]" The Full Commission denies the claimant's motion.

The parties stipulated that the claimant "sustained a compensable injury to his back" on June 25, 2020. The parties stipulated that the respondents "accepted this claim as compensable and paid some benefits."

A pre-hearing order was filed on May 10, 2023. The claimant contended, "On or about June 26, 2020, the Claimant was injured in the course and scope of his employment stepping across a gap into the roll line. Claimant injured his back. The Respondents initially accepted the claim as compensable and have paid certain medical and indemnity benefits until approximately January 9, 2022. The Respondents controverted the Claimant's entitlement to additional benefits at that time. The Claimant's orthopedic doctor, Dr. Riley Jones, released the Claimant to light duty but the Claimant's pain management doctor, Dr. Jay McDonald has not released the Claimant and he has recommended additional treatment which has not been authorized. The Claimant contends that he is entitled to TTD from the (sic) January 10, 2022 to a date yet to be determined; reasonable and necessary medical treatment as recommended by Dr. McDonald; and attorney's fees. All other issues are reserved."

The respondents contended, "The claim was accepted as a temporary aggravation of a pre-existing condition and the claimant was diagnosed with a back strain. The major cause of the condition is a prior, non-work-related surgery in 2018. The MRI after the 6-26-20 incident shows no new objective medical findings. Dr. Robert Jones released the claimant to full duty without restrictions on 11-10-20. The claimant is not

entitled to additional TTD and additional medical treatment is not reasonable or necessary or related.”

The parties agreed to litigate the following issues:

1. Whether Claimant is entitled to additional reasonably necessary medical treatment previously denied by Respondents.
2. Whether Claimant is entitled to temporary total disability benefits from January 9, 2022, to a date yet to be determined.
3. Attorney’s fee. All other issues are reserved.

A hearing was held on July 28, 2023. At that time, the claimant contended, among other things, that he was entitled to temporary total disability benefits from January 11, 2022 to a date yet to be determined.

An administrative law judge filed an opinion on August 22, 2023. The administrative law judge found that the claimant “did sustain a compensable back injury on June 25, 2020.” The administrative law judge found that the claimant was entitled to “additional medical treatment,” and that the claimant was “entitled to additional temporary total disability benefits from June 25, 2020, through a date to be determined.” The respondents appealed to the Full Commission and stated in part, “2. The claimant did not prove that he is entitled to additional TTD.”

The Full Commission filed an opinion on March 7, 2024. A majority of the Full Commission found that the claimant proved he sustained a compensable injury and that the medical treatment of record, including recommendation of a spinal cord stimulator, was reasonably necessary in

accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission found that the claimant “did not prove he was entitled to additional temporary total disability benefits.”

II. ADJUDICATION

Ark. Code Ann. §11-9-715(Repl. 2012) provides, in pertinent part:

(a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.

(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....

(ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

(b)(1) If the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the full commission and appellate court levels in addition the fees provided in subdivision (a)(1) of this section, the additional fee to be paid equally by the employer or carrier and by the injured employee or dependents of a deceased employee, as provided above and set by the commission or appellate court.

(2) The maximum fees allowable pursuant to this subsection shall be the sum of five hundred dollars (\$500) on appeals to the full commission from a decision of the administrative law judge and the sum of one thousand dollars (\$1,000) on appeals to the Court of Appeals or Supreme Court from a decision of the commission.

In the present matter, the parties initially stipulated that the claimant sustained a compensable injury on June 25, 2020. The parties stipulated that the respondents “accepted this claim as compensable and paid some benefits.” A pre-hearing order was filed on May 10, 2023. The claimant contended that the respondents “paid certain medical and indemnity

benefits until approximately January 9, 2022.” The claimant contended, among other things, that he was “entitled to TTD from the (sic) January 10, 2022 to a date yet to be determined[.]” The respondents contended, among other things, that the claimant was “not entitled to additional TTD[.]” The parties agreed to litigate the issue, “2. Whether Claimant is entitled to temporary total disability benefits from January 9, 2022, to a date yet to be determined.”

An administrative law judge filed an opinion on August 22, 2023. The administrative law judge found, among other things, that the claimant was “entitled to additional temporary total disability benefits from June 25, 2020, through a date yet to be determined.” Ark. Code Ann. §11-9-715(a)(2)(B)(ii)(Repl. 2012) expressly provides that attorney’s fees shall be allowed “*only on the amount of compensation for indemnity benefits controverted and awarded* [emphasis supplied].” See *Gant v. First Step, Inc.*, 2023 Ark. App. 393; *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). In the present matter, the respondents did not controvert the claimant’s entitlement to temporary total disability benefits beginning June 25, 2020 *et seq.* The claimant contended that the respondents paid indemnity benefits “until approximately January 9, 2022.” The claimant contended that he was entitled to temporary total disability benefits beginning January 10, 2022 until a date yet to be determined. The

respondents contended that the claimant did not prove he was entitled to additional temporary total disability benefits. The Full Commission did not affirm the administrative law judge's award of temporary total disability benefits beginning June 25, 2020. The Full Commission expressly found that the claimant "did not prove he was entitled to additional temporary total disability benefits."

The Full Commission filed an opinion on March 7, 2024 and found, among other things, that the recommendation of a spinal cord stimulator was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission awarded the claimant's attorney a fee of five hundred dollars in accordance with Ark. Code Ann. §11-9-715(b)(Repl. 2012). However, because the claimant did not prove he was entitled to an award of temporary total disability benefits, the claimant's attorney did not prove he was entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(2)(B)(ii)(Repl. 2012). The claimant's motion is therefore denied.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner