

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H207642**

QUINTON D. THOMAS, EMPLOYEE

CLAIMANT

**HINO MOTORS MFG USA INC.,
EMPLOYER**

RESPONDENT

**FIRST LIBERTY INSURANCE CORP.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED NOVEMBER 8, 2023

Hearing before Administrative Law Judge Steven Porch on October 6, 2023, in Marion, Arkansas.

Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

A full hearing was held on this claim on October 6, 2023. Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas; Respondents were represented by Mr. Michael Ryburn, Attorney at Law, 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 the within claim.
2. An employer/employee/carrier relationship existed among the parties on October 18, 2022, when Claimant sustained compensable injury to his lower back.
3. The parties will stipulate to Claimant's average weekly wage and compensation rates on or before the hearing date.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained compensable injuries to his groin, left testicle, left hip, and left leg by specific incident.
2. In the alternative, whether Claimant's alleged injuries to his groin, left testicle, left hip, and left leg are a compensable consequence of the lower back injury.¹
3. Whether Claimant is entitled to reasonable and necessary medical treatment of his lower back and alleged groin, left testicle, left hip, and left leg injuries.
4. Whether Claimant is entitled to temporary total disability benefits for his alleged groin, left testicle, left hip, and left leg injuries from October 18, 2022, to a date yet to be determined.
5. Whether Claimant is entitled to additional reasonable and necessary medical treatment for his lower back injury.
6. Whether Claimant is entitled to additional temporary total disability benefits for his compensable lower back injury.
7. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

A. Claimant Contentions.

Claimant contends that on October 18, 2022, he was in the scope and course of employment, unloading a cart of brakes, when the cart was knocked into him, causing him pain in his back, groin, left hip and left leg. Claimant reported the injury immediately and filled out an accident report.

An MRI of the Claimant's low back revealed a disc extrusion at L5-S1; but the Claimant has also been referred for an MRI to the left hip, injections for the low back

¹ This was argued briefly at the full-hearing and later argued by post-hearing brief by the Claimant.

injury, and to a urologist for the pain in his groin. Respondents have denied all of this treatment.

Additionally, the Claimant's employer cannot accommodate light duty restrictions, but the Respondents refuse to pay temporary total disability.

Claimant contends that he is entitled to additional medical treatment, temporary total disability benefits, and that his attorney is entitled to an attorney's fee.

B. Respondent Contentions.

The Claimant was paid temporary total disability benefits up to February 21, 2023, when he was released to return to duty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, and other matters properly before the Commission, 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 has not proven by the preponderance of the evidence that he sustained a compensable injury to his groin, left leg, left hip and left testicle on October 18, 2022.
4. The Claimant did not prove by a preponderance of the evidence that his alleged groin, left leg, left hip, and left testicle injuries are a compensable consequence of the lower back injury.
5. The Claimant has proven by the preponderance of the evidence that he is entitled to reasonable and necessary medical treatment for his lower back, including injections and a L5-S1 decompression and fusion.

6. Claimant has proven by the preponderance of the evidence that he is entitled to additional TTD following his October 18, 2022, low back injury.
7. Claimant has proven by the preponderance of the evidence that his attorney is entitled to a controverted attorney's fees.

CASE IN CHIEF

Summary of Evidence

The record consisted of Claimant's Exhibit 1 Medical Records, that consists of 32 pages, Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages, Claimant's and Respondent's post-hearing briefs. I also had the opportunity to hear the testimony and observe the demeanor of the Claimant, Quinton Thomas, who was the sole witness in the full hearing.

The Claimant suffered an alleged compensable injury to his lower back, groin, left testicle, left leg, and left hip during the course and scope of his employment with Respondent. Claimant worked as an equipment unloader for the Respondent. While unloading brakes, another employee hit a table where Claimant was working and pinned him between the table and a cart of brakes. The Claimant was pinned between the table and cart of brakes by his hips. The force caused Claimant's hips to squeeze together allegedly impacting Claimant's lower back, groin, left testicle, left leg, and left hip. Claimant stated that the squeezing produced a painful knot to the left side of his groin. Claimant told the doctors about this knot, but the doctors did not see a need to treat or examine it. However, Claimant did suffer a small left disc protrusion which abuts the exiting left L4 nerve root within the left foraminal zone.

The Claimant was placed on light duty in February of 2023, but Respondents did not provide any light duty work. Claimant alleges that he can only do an hour of activity

then he would have to sit down. Dr. John Brophy treated Claimant and recommended a nerve block but this treatment for his back was denied by Respondent. Dr. Brophy didn't treat the groin and testicular pain because it was pre-existing and felt that private insurance should be used. Essentially, the groin and testicular pain were different issues.

Adjudication

A. Compensability of Groin, Left Testicle, Left Hip, and Left Leg.

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

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).

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' 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.*

The Claimant has not produced any medical objective findings for Claimant's left hip, left leg, groin, and left testicle. For that reason, Claimant cannot prove that he sustained a compensable injury to these body parts by specific incident. However, Claimant has pled in the alternative that these alleged injuries are compensable consequences.

B. Are Claimant's Injuries to His Left Testicle, Left Hip, and Left Leg the result of a Compensable Consequence.

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Hublely v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The test is whether a causal connection between the two episodes exists. *Sword, supra*; *Jeter v. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, 2009 Ark. App. LEXIS 947. It is generally a matter of

inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), a claimant has the burden of establishing the existence of a compensable consequence by a preponderance of the evidence. 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).

As stated earlier, the determination of a witness' 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.*

The compensable injury here is to the lower back. No evidence was presented showing a causal connection between Claimant's compensable low back injury and the alleged injuries to his left hip, left leg, groin, and left testicle. Thus, I find the Claimant has not proven by the preponderance of the evidence that he sustained injuries to his left hip, left leg, groin, and left testicle as a compensable consequence of his low back injury. Due

to this finding, I further find that temporary total disability benefits and medical treatment for these alleged injuries are moot.

C. Whether Claimant is entitled to any additional reasonable and necessary medical treatment for low back injury.

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*.

Dr. John Brophy recommends an injection for the lower back injury or the option of surgical intervention to include an L5-S1 decompression and fusion. *Claimant Exhibit 1, p. 23*. The purpose of these treatments is to alleviate symptoms of the Claimant's compensable low back injury. I hereby credit Dr. John Brophy's opinion concerning Claimant's treatment of his lower back injury. Thus, I find by the preponderance of the evidence that Claimant is entitled to reasonable and necessary medical treatment, including injections to his lower back and the L5-S1 decompression and fusion.

D. Whether Claimant is entitled to additional temporary total disability benefits to a date yet to be determined.

Claimant's compensable lower back injury is an unscheduled one. See Ark. Code Ann. § 11-9-521. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffered a total incapacity to earn wages. *Ark. State Highway and Transportation Dept. v. Breshears*, 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). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id.*, A.C.A. § 11-9-501(a)(1). Claimant must prove his entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002). 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 Claimant was released to light duty; however, he was never given the opportunity to work. The Claimant expressed that he had a great deal of pain in his lower back and could move about for an hour where he then would have to sit down. The Commission was not presented with any credible evidence that demonstrated that the Claimant's healing period for his back has ended. The Claimant testified that he was unsure whether he could perform light duty work. Nevertheless, despite his many phone calls to the Respondent/Employer to acquire light duty work, the Respondent/Employer did not accommodate this light duty work restriction. The Claimant, whose work history involved mainly manual labor, remained off from work. Thus, the evidence is insufficient to determine whether he did suffer a total incapacity to earn wages.

Nonetheless, a claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where insufficient evidence exists that the claimant has the capacity to earn the same or any part of the wages he was receiving at the time of the injury. *Ark. State Hwy & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984). I credit Claimant's testimony that he has made many efforts to return to work with restrictions but was not given that opportunity by the Respondent/Employer. I credit Claimant's testimony that he wants to try to work. By the Respondent/Employer's refusal to allow the Claimant to return to work with restrictions, it's clear that Claimant did not have the capacity to earn wages. Moreover, no evidence was presented pertaining to his ability to earn wages. Therefore, I find by the preponderance of the evidence that Claimant has proven his entitlement to additional temporary total disability benefits from February 2, 2023, to a date to be determined.

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. Tanner Thomas, is entitled to the fee as set out above.

CONCLUSION AND AWARD

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, minus any lawful offsets, shall be paid in 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. 2002). 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