

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G902033

RAY WADSWORTH,  
EMPLOYEE

CLAIMANT

LA-Z-BOY, INC.,  
EMPLOYER

RESPONDENT

CONSTITUTION STATE SERVICES,  
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED APRIL 26, 2021

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents #1 represented by the HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Respondents #2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 9, 2020. The administrative law judge found that the claimant proved he sustained a compensable injury. The administrative law judge awarded medical treatment and temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

Raymond Wadsworth, now age 36, testified that he began a third period of employment with the respondents, La-Z-Boy, in 2017. The claimant testified that he worked as a Material Handler for the respondents. The parties stipulated that the employee-employer-carrier relationship existed “on all relevant dates.” The claimant testified on direct examination:

Q. And tell us what happened approximately October 30, 2018.

A. On that particular day, I was asked by my supervisor to break down boxes to get them ready to be shipped back to Mexico. So I am pulling out the empty boxes. I am breaking them down and I am stacking them on pallets to be shipped back. They approximately have to be stacked to about chest level and approximately about when I got to about my waist area, a little bit higher, I was placing the boxes on the pallet and I felt a strain in my back, probably in the upper left back between the shoulder blade and the spine. I proceed to just kind of stretch it out a little bit to see how it felt. I could notice that it was physically – I could feel the pain, so I proceeded to go around the corner where my supervisor was, Roger Boyd at the time, and I told him exactly what happened.

The record indicates that the claimant signed an Associate Incident Statement on October 30, 2018. The claimant described the alleged incident: “Lifting boxes and stacking them when I felt what seems to be a strain in my upper back. I was lifting in an upward motion pretty quickly and felt it in my shoulder blades.” The claimant wrote that his symptoms were “muscle soreness and tightness.” A Supervisor’s Incident Investigation form indicated that the Date of Incident or Illness was October 30, 2018.

The Supervisor's Incident Investigation indicated that the incident occurred while the claimant was "lifting broken down boxes."

The claimant began treating at Arkansas Occupational Health Clinic on December 4, 2018. Dalana G. Rice, APRN reported at that time, "At the request of and authorization by LaZBoy, we are seeing Raymond Wadsworth....Patient states he was lifting folded cardboard boxes and as he lifted them straight up in front of his body he had a sharp pain in his upper back....Raymond's primary problem is pain located in the upper back. He describes it as aching. He considers it to be severe. The problem began on 11/15/2018. Raymond says that it seems to be variable – depending on the activity level. He has noticed it is made worse by sleep, sitting. It is improved with hot bath. He feels it is getting worse."

A Form AR-3, Physician's Report dated December 4, 2018 indicated that the alleged Date of Injury was November 15, 2018: "Patient states he was lifting folded cardboard boxes and as he lifted them straight up in front of his body, he had a sharp pain in his upper back." The diagnosis was "Thoracic strain. Recommend OTC pain relievers, ice, heat, and topical muscle ointments."

A Form AR-3, Physician's Report dated December 18, 2018 indicated that the alleged date of injury was November 15, 2018: "Patient states he was lifting folded cardboard boxes and as he lifted them straight

up in front of his body he had a sharp pain in his upper back. Patient states his upper back pain has improved slightly. Continue OTC ibuprofen, ice, heat, and topical muscle ointments.”

Dalana G. Rice corresponded with the respondent-employer on December 18, 2018:

At the request of and authorization by LaZBoy, we are seeing Raymond Wadsworth....

Patient states he was lifting folded cardboard boxes and as he lifted them straight up in front of his body he had a sharp pain in his upper back....

Raymond's primary problem is pain located in the upper back. He describes it as sharp, aching. He considers it to be severe. The problem began on 11/15/2018....

Cervical Spine: Patient denies pain with arm motions, A rash is not present. No spasm is noted, Patient demonstrates good strength bilaterally, Pain to palpation is present over the left side of the cervical spine. Pain on motion is present over the cervical spine. Bruising is not present. An abrasion is not present. Erythema is not present. An open wound is not present. Swelling is not present. Range of motion is normal....

Thoracic Spine: A rash is not present. Pain on motion is present over the left thoracic paraspinous region. An abrasion is not present. Bruising is not present. Erythema is not present....Swelling is not present. Range of motion is normal....Spasm is not present.

Dalana Rice diagnosed “1. Sprain of ligaments of thoracic spine, subsequent encounter.” Ms. Rice recommended “Continue OTC ibuprofen, ice, heat, and topical muscle ointments as needed for symptom management. Follow up in 2 weeks....The cause of this problem appears to be related to work activities.”

Dr. Miles M. Johnson provided a Neurological  
Evaluation/Electrodiagnostic Report on February 20, 2019:

Patient is a 34-year-old right-handed male with a 3 month history of left-sided neck pain which radiates into the left upper extremity. He notes weakness in the limb as well as numbness and tingling in the third and fourth digits. He gets occasional improvement by placing his hand over his head. Patient states this began after lifting some boxes at work. Patient has been seen by Ms. Rice APRN and is referred for electrodiagnostic testing of the left upper extremity....After taking the above history and performing a clinical examination, it was deemed medically necessary to perform electrodiagnostic testing to evaluate for peripheral nerve involvement.

**SUMMARY:** Left median, radial, and ulnar motor studies are normal. Left median and ulnar orthodromic latency difference is normal. Median and ulnar sensory responses of the fourth digit were normal. Median sensory response of third digit was normal. EMG examination significant for abnormal spontaneous potentials and reduced recruitment in the left triceps, ECR, pronator teres. There are abnormal spontaneous potentials in the cervical paraspinals at an approximate C6-7 vertebral level.

Dr. Johnson assessed "Left C6 and/or C7 cervical radiculopathy.

**PLAN:** Patient has been counseled regarding the above findings and has been instructed to schedule a followup appointment in your office for further evaluation in order to utilize these results in the treatment/management of their condition. If not recently performed, I would recommend an MRI of the C-spine to rule out HNP, spondylosis, stenosis, etc. Depending on what this shows, the patient will likely require surgical consultation given the

severity of his symptoms and clinical findings including muscle atrophy and weakness.”

An MRI of the claimant’s cervical spine was taken on March 19, 2019 with the following impression:

1. At C6-C7, there is a moderate sized disc protrusion which extends into the left paracentral and left neural foraminal regions. This is associated with mild posterior osteophyte formation. This disc protrusion osteophyte complex severely narrows the left neural foramen and mildly distorts the anterior aspect of the left side of the cervical spinal cord.
2. Small disc protrusion osteophyte complex at C5-C6. This mildly narrows the AP dimension of the central canal.

The claimant followed up with Dalana Rice on March 25, 2019:

At the request of and authorization by LaZBoy, we are seeing Raymond Wadsworth....Patient states he was lifting folded cardboard boxes and as he lifted them straight up in front of his body he had a sharp pain in his upper back.... Patient states that his back was feeling better after physical therapy, but has started hurting more frequently now....The problem began on 11/15/2018.... Mr. Wadsworth is accompanied by Ian, safety representative. Mr. Wadsworth reports that he is doing pretty good. He reports occasional aching and has noticed muscle atrophy in his chest. He denies pain in the thoracic region. We discussed the cervical MRI findings, which indicate the following: 1) At C6-C7, there is a moderate sized disc protrusion which extends into the left paracentral and left neural foraminal regions. This is associated with mild posterior osteophyte formation. This disc protrusion osteophyte complex severely narrows the left neural foramen (to about 0.7cm) and mildly distorts the anterior aspect of the left side of the cervical spinal cord. 2) Small disc protrusion osteophyte complex at C5-C6. This mildly narrows the AP dimension of the central canal. I used a spine model to explain findings. Explained that these findings are most likely not related to the original work injury, since it was located in

the thoracic area, and should be evaluated by his PCP for further treatment....

Release from care. Instructed to follow up with his PCP regarding cervical MRI results....The cause of this problem appears to be related to work activities.

Dalana Rice diagnosed “1. Sprain of ligaments of thoracic spine, subsequent encounter. 2. Radiculopathy, cervical region.” The claimant’s testimony indicated that the respondents denied further treatment at about the time Ms. Rice released him.

The claimant began treating with Dr. Gannon B. Randolph on April 16, 2019:

Ray is a pleasant 35-year-old who works in manual labor and was lifting some boxes at work in mid October when he suffered acute onset of neck pain which resulted in severe neck and arm pain, very consistent with a C7 dermatomal distribution. He, unfortunately, has been misdiagnosed and mistreated during this time. He eventually did get to see his workman’s comp doctor. That doctor felt that either he had a muscle strain or a tennis elbow. Eventually, as the patient’s left triceps muscle and pectoralis muscle started to undergo deterioration and wasting, they did obtain an MRI scan. This MRI scan did show some mild disk osteophyte formation at 5-6 and 6-7, but the most significant and appropriate finding in it was a large soft disk herniation which was left paracentral and intraforaminal, causing at least moderate spinal canal stenosis and severe neural foraminal stenosis and stenosis on the C7 nerve root. The patient has had a little bit of symptomatic improvement from a pain standpoint, and he is interested in going back to work. His purpose for visit today is not to try and get out of work. In fact, he asked me for a work release. I told him it is probably safe for him to go back to work as he needs the money, but rather he is just very concerned about this wasting. He feels he continues to have functional decline in the left upper extremity and pectoralis region.

**IMAGING TODAY:** AP lateral and open-mouth odontoid views of the cervical spine demonstrate loss of cervical lordosis associated with antalgic posture. His neurologic exam today demonstrates intact light touch sensation C2-T2 with a classic C7 dysesthesia on the left side which is exacerbated by Spurling maneuver. Negative Lhermitte sign. He has clear wasting of his left triceps and his left pectoralis muscle compared to the contralateral side. He is 4- out of 5 left triceps, 5/5 on the right. Wrist flexion, again, his 4- out of 5. He cannot do a pushup. His pectoralis muscle is wasted and is 4/5 on the left side compared to the right side. He has just a trace reflex on the left side still which I think is good, and he is firing that muscle which is good, and he clearly has some sensation, although he is dysesthetic there, and so I think there is still some hope for this nerve root, but his DTRs demonstrate 2+ at C5, 2+ at C6. Right C7 is 2+. Left C7 is trace.

**MRI SCAN:** He has an MRI scan which shows osteophyte C5-6, C6-7 as described above, a large disk herniation in the left paracentral foraminal position with severe impingement upon the exiting C7 nerve root.

**ASSESSMENT:** C7 radiculopathy of greater than 6 months' duration with a large left-sided C6-7 disk herniation with severe impingement of the C7 nerve root. The patient has dermatomal and myotomal findings.

**RECOMMENDATIONS:** This has gone on long enough, especially with the patient's significant functional abnormalities, I would recommend a C6-7 ACDF. The procedure, alternatives, risks, benefits, and complications were explained to the patient in detail, and informed consent will be signed if he decides to proceed. He does have a worker's comp attorney, and I told him that his attorney could contact me for the note and any help with this case. I think this is just unfortunately a situation of a missed diagnosis, and I am concerned about long-term functional deficit in this patient with a C6-7 disk herniation with radiculopathy.



The record contains the following note from Gentry Medical Center: “This is a note to confirm that Raymond J. Wadsworth was seen in my office today 4/18/2019 for a doctor’s appointment. Raymond may return to work on 04/22/2019 without any restrictions. He will be scheduling a surgery in the future. If you have any questions in this regard please do not hesitate to call our office.”

The claimant testified that he underwent surgery from Dr. Randolph on June 3, 2019. The claimant testified that he benefitted greatly from surgery. The claimant testified that he returned to work for the respondents on August 13, 2019.

A pre-hearing order was filed on February 5, 2020. The claimant contended, “On or about 10/10/2018, claimant was lifting a box in the course and scope of employment when he injured his neck. Respondents sent the claimant for treatment and he was diagnosed as having a sprain/strain injury. Claimant was sent for an MRI and EMG. The EMG assessed left C6-7 cervical radiculopathy. The MRI revealed a disk protrusion at both C5-6 and C6-7. At that point, the respondents released the claimant and denied any further treatment. The claimant saw Dr. Randolph, who ordered an ACDF at C6-7. Claimant had the surgery on June 3, 2019. Claimant contends that he sustained a compensable injury and that his attorney is entitled to an attorney fee. All other issues are

reserved.” The respondents contended, “The respondents contend that the claimant did not sustain an injury arising out of and in the course of employment as defined by the Arkansas Workers’ Compensation Act.”

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury to his neck on November 15, 2018.
2. Whether the claimant is entitled to medical benefits.
3. Whether the claimant is entitled to temporary total disability benefits.
4. Fees for legal services.

A hearing was held on July 14, 2020. At that time, the parties agreed to litigate the issue of whether the claimant sustained a compensable injury to his neck on October 30, 2018. The parties agreed to litigate the issue of whether the claimant was entitled to temporary total disability benefits from June 3, 2019 until August 12, 2019.

An administrative law judge filed an opinion on October 9, 2020. The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury to his neck on October 30, 2018. The administrative law judge found that the claimant was entitled to medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:

(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 which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means 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).

An administrative law judge found in the present matter, “2. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his neck on October 30, 2018.” The Full Commission affirms this finding. The claimant testified that he became employed with the respondents in 2017, and that he worked for the respondents as a Material Handler. The claimant testified that he sustained an accidental injury on approximately October 30, 2018. The claimant testified that, while lifting a box at work, he felt a strain in his upper back

near the cervical region. The claimant signed an Associate Incident Statement on October 30, 2018 which corroborated his testimony. A Supervisor's Incident Investigation form also corroborated the claimant's testimony that he sustained an accidental injury on October 30, 2018. The respondents authorized treatment at Arkansas Occupational Health Clinic beginning December 4, 2018. Dalana G. Rice, APRN corroborated the claimant's testimony that he had sustained an accidental injury while lifting boxes, although Ms. Rice reported that the accident occurred on November 15, 2018 rather than October 30, 2018. Physician's Reports on December 4, 2018 and December 18, 2018 also corroborated the claimant's testimony, although the Physician's Reports identified that date of injury as November 15, 2018 rather than October 30, 2018. Dalana Rice opined on December 18, 2018, "The cause of this problem appears to be related to work activities."

Dr. Johnson reported on February 20, 2019 that the claimant complained of neck pain which was causally related to lifting boxes at work. An MRI of the claimant's cervical spine on March 19, 2019 showed, among other things, "a moderate sized disc protrusion which extends into the left paracentral and left neural foraminal regions." Nevertheless, Dalana Rice released the claimant from further treatment on March 25, 2019. The claimant therefore began treating with Dr. Randolph. Dr. Randolph

examined the claimant on April 16, 2019 and corroborated the claimant's testimony that he began suffering from neck pain as the result of a work-related accidental injury. Dr. Randolph reported based on an MRI scan that there was "a large soft disk herniation" in the claimant's cervical spine. The claimant testified that Dr. Randolph performed surgery on June 3, 2019. The claimant testified that he noticed significant improvement in his physical condition following surgery by Dr. Randolph. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. Despite the discrepancy regarding whether the accident happened on October 30, 2018 or November 15, 2018, it is well-settled that the statute does not require, as a prerequisite to compensability, that the claimant identify the precise time and numerical date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). Instead, the statute only requires that the

claimant prove the occurrence of the injury is capable of being identified.

*Id.* The claimant in the present matter proved that the occurrence of the injury was capable of being identified. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on or about October 30, 2018. Additionally, the claimant established a compensable injury by medical evidence supported by objective findings, namely the cervical disk herniation reported by Dr. Randolph. The Full Commission finds that the disk herniation was causally related to the October 30, 2018 accidental injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable injury on October 30, 2018. The Full Commission finds that the treatment of record following the compensable injury, including surgery performed by Dr. Randolph, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that he remained within a healing period and was totally incapacitated from earning wages from June 3, 2019 until August 12, 2019. The claimant therefore proved that he was entitled to temporary total disability benefits from June 3, 2019 until August 12, 2019. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing

on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority because I would find that Claimant failed to prove a causal relationship between his reported October 2018 workplace incident and the treatment Claimant began receiving two months later. This lack of causal relationship is underscored by the fact that Claimant continued to work his regular job and continued to lift weights afterwards. Moreover, it seems unlikely that the nature of the work Claimant was performing (lifting 5-pound boxes) caused a disc herniation. For these reasons, I respectfully dissent from the majority.

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CHRISTOPHER L. PALMER, Commissioner