

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H207576**

WILLIE HINTON, EMPLOYEE	CLAIMANT
B H I ENERGY INC., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES INC., CARRIER	RESPONDENT

OPINION FILED **AUGUST 22, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Russellville, Pope County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by Michael E. Ryburn, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 31, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on June 6, 2024, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. All prior Opinions are *res judicata*.
3. The employee/employer/carrier relationship existed on or about October 10, 2022.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant is entitled to temporary total disability benefits from December 20, 2023 to a date to be determined.
2. Whether claimant is entitled to additional medical benefits.

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3. Whether claimant is entitled to reimbursement of past medical benefits.
4. Whether claimant is entitled to payment of unpaid medical from last Order.

All other issues are reserved by the parties.

The claimant contends that “He worked night shift 10/10/22 6pm-6am. Was off loading/staging camera/communication equipment was near end of shift. Felt a pull-on right hand. Completed shift. Told coworker (James Patrick) what happened, left work. Woke 1 ½ hours later with swollen arm/wrist/fingers. Called Bob Dow and reported accident at that time.”

The respondents contend that “The healing period ended February 22, 2023. That issue is *res judicata* as it was decided in the previous hearing. There is no proof of a new condition or a new reason for additional temporary total disability. Additional medical treatment is not reasonable or necessary and has not been identified by any physician.”

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 6, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proof by a preponderance of evidence that he is entitled to temporary total disability benefits beginning December 20, 2023.
3. Claimant has met his burden of proof by a preponderance of evidence that he is entitled to be reimbursed for medical expenses incurred since the date of the previous opinion that are related to his compensable right arm injury, both those that he paid out of pocket and those that are still

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outstanding upon presentation to respondent of an itemized statement.

4. Claimant is not entitled to his travel expenses to and from the hearing of this matter.

FACTUAL BACKGROUND

This is the second hearing on this claim. As recited above, the opinion issued on September 29, 2023, is *res judicata*. Because it will be referred to in the adjudication section of this opinion, it is blue backed to the record in this case.

HEARING TESTIMONY

Claimant testified that he worked for respondent BHI Energy Inc. until December 15, 2023, when his previous injury “regenerated itself and swelling even to the capacity of I couldn’t deal with it, so I asked for medical attention, and it was denied.” He sought temporary total disability from December 20, 2023, to a date to be determined because his doctor removed him from work at that time and he has not been released to return. He requested reimbursement for out-of-pocket expenses, payment for unpaid medical bills related to his injury, an award of future medical benefits, as well as expenses associated with coming to court.

When questioned on whether a particular incident happened on December 15, 2023, claimant said he couldn’t pinpoint anything specific but that it flared back up.

On cross-examination, claimant testified that he had not worked for any employer other than respondent BHI since the last hearing. He explained that his work for that company was not a straight forty hours a week but was rather on location as a nuclear refueling technician. Claimant also stated that on December 15, 2023, the job he was working for respondent BHI had ended. After December 15, 2023, claimant received a call back for the remaining portion of the job and did not return because of the situation he was in. Claimant stated that while he was released to return to work in February 2023, he was still injured and that what he was complaining of at the present hearing was the same

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injury. Claimant was questioned about his medical treatment from February 2023 until the date of the hearing, and that portion of the evidence will be covered in a review of those exhibits.

When asked if claimant was asking that respondents be ordered to send him to a doctor, he stated that he did not want that because he had to choose doctors in order to be treated due to the denial of care from respondent Sedgwick. Claimant conceded that he did not submit his carrier with a 6-UB or a HCFA Form.

After the close of testimony, claimant made closing remarks which it was his position that he should have been sent to medical providers for his injury. In its closing comments, respondent made it clear that it was relying on the previous decision of this Court that said the healing period for temporary total disability benefits ended and that nothing in the medical evidence would change the end of the healing period.

REVIEW OF THE MEDICAL RECORDS

Claimant submitted the June 20, 2023, record from Dr. John Wing which was summarized in the previous Opinion. Because it is brief and germane to the issues in this case, it reads as follows:

“Mr. Willie Hinton is currently a patient at the Hampton Veteran’s Administration Medical Center. Mr. Hinton has been followed for a right wrist injury since October 11, 2022. He was given a rest cure along with a Cortisone shot. MRI indicated diffuse synovitis along with a tear in the bolar band of scapholunate ligament. Mr. Hinton was released to work on February 22, 2023. Patient continues to have right wrist pain and stiffness; treatment is pending orthopedic reevaluation. Any consideration you might give this veteran would be greatly appreciated.”

On December 20, 2023, Dr. Wing issued another short statement regarding claimant’s condition:

“Mr. Willie Hinton is currently a patient of Hampton Veteran’s Administration Medical Center. Mr. Hinton continues to be unable to work due to a right wrist injury and is advised not to work until further treatment is given. Any consideration you can give this veteran would be greatly appreciated.”

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Claimant was next seen by Dr. Jude Kotsko on January 2, 2024 at the Riverside Regional Medical Center Emergency Room. The chief complaint was “patient is coming in with a right arm pain history. The same is currently on workers’ compensation for a torn ligament in the right arm. Exacerbated with movement, no alleviation, this is a chronic injury. He is wanting something for pain.” He was released back to his primary care physician and his workers’ compensation physician.

On February 5, 2024, claimant’s right hand was x-rayed at the request of Dr. Andrea Lese. The report showed “no acute osteo abnormality. Mild to moderate osteoarthritic change in the first CMC joint. No significant soft tissue findings.” The next day, he was seen by Dr. Lese. Claimant gave a history of his current condition, and Dr. Lese performed a physical examination in which she noted:

“Right wrist and forearm; there is dorsal swelling. There is tenderness over the swelling dorsal wrist and forearm with tenderness. Pain with resisted wrist extension. Tenderness over the distal radius, SL interval, snuff box, ECU. There is pitting and nodules over the right palm consistent with Dupuytren’s.”

Dr. Lese’s assessment and plan was a right wrist and forearm tenosynovitis for which she did not have a surgical solution. Dr. Lese thought claimant might have a seronegative systemic inflammatory condition. She referred claimant to physical therapy.

Claimant began physical therapy on February 9, 2024, at Riverside Outpatient Therapy. Therapist Elizabeth Gray noted swelling to claimant’s right hand; she also recorded that claimant’s right hand was warm to touch and may have a slight red color. (Claimant is African American, which would make discoloration harder to determine.)

Claimant continued with physical therapy throughout the remainder of February through May 3, 2024. At that last session, claimant stated his wrist was not better; nonetheless, Occupational Therapist Steve Hermann recommended that he continue with physical therapy.

On May 23, 2024, claimant returned to Dr. Lese upon the referral by Occupational Therapist

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Hermann. Claimant reported that while he was taking physical therapy, he felt some soothing of the pain in his wrist during the treatment, but the pain in his dorsal wrist radiating up the forearm returned after his therapy session. There was minimal swelling noted in the right wrist and forearm. Dr. Lese again stated that she did not have a surgical answer to his issue.

Claimant was seen by Dr. Stephanie Giammittorio at Riverside Orthopedic and Sports Medicine on June 11, 2024. (This physician is referred to as Dr. G during the hearing.) The objective findings on the physical examination were that claimant had tenderness in his right hand at the radial carpal joint, first dorsal compartment. Claimant's range of motion with extension and flexion was normal with pain, and it was noted that he had normal right wrist strength. Dr. Giammittorio noted that claimant had a negative Tinel's sign, and a positive Finkelstein's test. The Watson's test was also positive and the TFCC grind was negative. Dr. Giammittorio recommended rest, ice, compression, and elevation therapy, and prescribed claimant a brace to provide stabilization to help improve his function. She ordered an EMG and scheduled a follow up after that test was performed. Claimant's right forearm was x-rayed again on June 11, 2024, with a report as follows:

“There is no new fracture, dislocation or sublocation. There is no bone lesion or periosteal reaction. Soft tissue is unremarkable.”

The impression was “normal study.”

ADJUDICATION

Claimant has four separate components of the claims that he presented at his hearing. These will be addressed individually below.

1. Is claimant entitled to additional medical treatment for his compensable injury?

Claimant testified that in December, 2023, his request for additional medical treatment for his compensable injury was denied. Respondents' position was that since it was determined in the previous order of this court that claimant had reached the end of his healing period, no further

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treatment was reasonable and necessary. In discussing the temporary total disability (TTD) portion of this claim, there was the following ruling in the September 29, 2023, opinion:

A claimant who suffers a scheduled injury is entitled to temporary total disability benefits until they reach the end of their healing period or until they return to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Dr. Wing's records support the contention that claimant had not reached the end of his healing period until February 22, 2023, and I am satisfied that it began on October 11, 2022.

Reviewing again what Dr. Wing said in his June 20, 2023, report, I am convinced I awarded the appropriate amount of TTD but should have said it ended because claimant returned to work rather than how it was phrased.¹ Regardless, though, the next paragraph of that order addressed past medical expenses, concluding with this sentence:

“Claimant is entitled to be reimbursed for any payments he made toward treatment of his compensable injury, and for any future treatment as may be reasonable and necessary.”

Dr. Wing was clear in June, 2023 that claimant would likely need additional medical treatment. Claimant's testimony was that his injury “regenerated itself and swelling even to the capacity of...I couldn't deal with it, so I asked for additional medical attention and like I say, it was denied.” I find the claimant to be a credible witness that medical treatment for his compensable injury is again necessary. “Once it has been established that a claimant has sustained a compensable injury, he is not required to offer objective medical evidence to prove entitlement to additional benefits, *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, at 9, 558 S.W.3d 408, 414. As I had already ruled that claimant had objective evidence to support his initial claim, it was unnecessary for him to provide new objective findings for the treatment he sought at this hearing.² I find he reentered his healing period on

¹ While I recognize my mistake in the wording of that opinion, *res judicata* prevents me from correcting it at this point.

² This is not to say the records claimant presented lacked objective medical findings; Dr. Lese noted swelling among her findings, some of which were subjective in nature.

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December 20, 2023, and respondent has failed to provide him with the reasonable and necessary medical services to which he was entitled under Ark. Code. Ann. §11-9-508.

2. Is claimant entitled to temporary total disability from December 20, 2023 until a date to be determined?

“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 more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.*”

Because respondent refused to provide medical services, claimant has been forced to seek treatment at his own expense. Thus, there were not extensive medical reports available. However, based on the medical records that were introduced, I see nothing to indicate that claimant has reached the end of this current healing period, and I am also convinced that he has not returned to work. It would be to the respondents’ advantage to expedite the medical treatment rather than resisting it, because until claimant returns to work or reaches the end of this healing period, he is entitled to TTD, which is at the maximum rate as per §11-9-518(a)(1) and the previous opinion.

3. Is claimant entitled to reimbursement for out-of-pocket medical expenses and for payment of unpaid expenses?

Commission Rule 099.30, Part 1, Section J, states the following:

“Reimbursement for Employee-Paid Services. Notwithstanding any other provision of this rule, if an employee has personally paid for a health care service and at a later date a carrier is determined to be responsible for the payment, then the employee shall be fully reimbursed by the carrier.”

Claimant provided both statements of medical bills that he had paid and invoices for unpaid services, and respondent is responsible for any expenses for medical treatment claimant has sought since December 20, 2023. Except as noted below, the exhibits appear to correspond to the medical

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records introduced by claimant. However, I believe it would be reasonable for respondents to obtain itemized statements from the providers before making payments to those providers or reimbursement to claimant. Claimant is directed to provide those itemized statements to respondent, and respondent will have 10 days after receipt to address these expenses.

Claimant said there were charges that were covered by my previous order that had not been paid. All I saw in his exhibit was a statement of account from Hampton Roads Ortho Spine and Sports Med for visits on September 26 and 27, 2023, which took place between the first hearing of this matter and the date of the opinion. I do not see any corresponding medical records for this treatment. Without those records, I have no evidence that claimant had reentered his healing period during this time; consistent with my finding above that claimant's evidence shows he reentered his healing period on December 20, 2023, I find he is not entitled to reimbursement for charges before that date.

4. Is claimant entitled to reimbursement for his expenses in traveling to the hearing?

Claimant sought reimbursement for his expenses of traveling to the hearing. Commission Advisory Opinion 89-2 addresses such claims:

Mileage Reimbursement Rates

The Arkansas Workers' Compensation Commission (AWCC) approves mileage reimbursement rates as medical expenses related to an injury or illness out of and in the course of employment.

For actual miles driven to and from medical providers on and after May 18, 2022, the reimbursement rate will be a floating rate which corresponds with the rate Arkansas State employees are authorized for mileage reimbursement.

As of May 19, 2022, the current rate paid to Arkansas state employees by the State of Arkansas for mileage reimbursement is 52¢ (\$0.52) per mile.

Travel must be as a result of job-related injuries and meet all reasonableness requirements established by law, the AWCC, and the courts.

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I see nothing in this advisory opinion that allows for reimbursement for any travel expenses other than to and from doctor's appointments, nor was I able to locate any statute, Commission Rule or court opinion that allows for such reimbursement. Therefore, this portion of this claim is denied.

ORDER

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.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$533.15.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE