

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H204558

VINCENT WALKER, Employee

CLAIMANT

GREENWOOD SCHOOL MAINTENANCE, Employer

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSN., Carrier/TPA

RESPONDENT

OPINION FILED AUGUST 20, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondent represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claimant in this matter is a 62-year-old male who sustained compensable injuries to his shoulders bilaterally, ribs, and right thumb on June 16, 2022, when he fell from a ladder. On that same day a form AR-N was signed by the claimant. The claimant hired an attorney and on June 21, 2023, a form AR-C was signed by the claimant. The claimant's AR-C was file-marked by the Commission on July 24, 2023, and requested, among other benefits, additional temporary total disability and additional medical treatment. The claimant's AR-C is found at Respondents' Exhibit 1, page 5.

A prehearing conference was conducted on September 11, 2023, with this administrative law judge. A prehearing order was issued as a result of that prehearing conference on September 12, 2023. Following are portions of that prehearing order:

By agreement of the parties the following stipulations were submitted to the Commission for its consideration:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on June 16, 2022.
3. The claimant sustained a compensable injury to his bilateral shoulders, ribs, and right thumb on or about June 16, 2022.
4. The claimant's weekly compensation rates will be determined at a later date.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to continued/additional medical treatment for his compensable left shoulder injury.
2. Whether Claimant is entitled to temporary total disability benefits from January 24, 2023, to February 8, 2023.
3. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“a. The Claimant contends that the incident involving the claimant falling off of a bucket is not an independent intervening event that caused new injury to the claimant's left shoulder. Rather, the claimant contends that his shoulder was still symptomatic, he was still under active medical treatment and that any trauma that occurred to his shoulder in regard to the bucket incident was not sufficient to cause a new injury to his left shoulder.

b. The Claimant contends that he is entitled to temporary total disability benefits from January 24, 2023 through February 8, 2023 and reasonably necessary medical treatment regarding his left shoulder.

c. The Claimant contends that his attorney is entitled to an appropriate attorney's fee regarding

any disability benefits due the claimant regarding his left shoulder injury.

d. The Claimant contends that he has sustained permanent impairment regarding his left shoulder but that it is premature to address that issue. Accordingly, the claimant reserves the issue of permanent impairment/disability and contends that he is entitled to additional compensation regarding that issue at some point in the future and that therefore that issue is preserved.”

The respondents’ contentions are as follows:

“Respondents contend that all appropriate benefits have been and are being paid with regard to Claimant’s injuries sustained on 6/16/22. Claimant’s current need for treatment for his left shoulder is due to a new injury sustained at home.”

As a result of the prehearing conference, a hearing was set for November 16, 2023, in Fort Smith, Arkansas. On November 8, 2023, the claimant’s attorney sent a letter by email to the Commission requesting the hearing be cancelled so that he could take the deposition of Dr. Terry Clark.

On December 14, 2023, the claimant deposed Dr. Clark regarding a letter he wrote about the claimant’s condition. Thereafter, on January 29, 2024, this administrative law judge entered the Agreed Order that the parties requested. Following is a portion of that Agreed Order:

1. Per the Prehearing Order entered on September 12, 2023, Claimant currently has a claim pending before the Arkansas Worker’s Compensation Commission concerning: “1. Whether Claimant is entitled to continued/additional medical treatment for his compensable left shoulder injury. 2. Whether Claimant is entitled to temporary total disability benefits from January 24, 2023, to February 8, 2023. 3. Whether Claimant’s attorney is entitled to an attorney fee.”

2. The parties have reached an agreement thereby alleviating the need for a decision from the Commission on the aforementioned issues.
3. Respondents have requested proper billing forms from Dr. Greg Jones' office concerning the surgery he performed on Claimant's left shoulder on January 24, 2023. Payment will be made pursuant to the Arkansas fee schedule. Respondents have also requested that Claimant provide any out-of-pocket expenses associated with the surgery and follow up care.
4. Respondents have requested Claimant's post-injury wages to pay the appropriate temporary disability benefits and the attorney's fee. Payment will be made promptly upon receipt of this documentation.

On February 13, 2024, another Agreed Order was issued by this administrative law judge.

Following is a portion of that order:

1. Claimant underwent left shoulder surgery with Dr. Greg Jones on January 24, 2023, and an Agreed Order has previously been entered concerning his entitlement to the medical treatment and temporary disability benefits associated with the same.
2. A permanent impairment rating has not been assigned associated with the left shoulder surgery performed on January 24, 2023, but the parties have reached an agreement thereby alleviating the need for a decision from the Commission on this issue.
3. Respondents mutually agree and stipulate to Claimant's entitlement to an 8% rating to the body as a whole.
4. Upon entry of this Order, Respondents shall make the following payments to Claimant, Vincent Walker, and his attorney, Eddie H. Walker, Jr.:

\$13,104.00 to Claimant
\$3,744.00 to Eddie H. Walker, Jr.
5. The parties jointly agree that payment as outlined above fully and finally extinguishes any and all claims Claimant may have to permanent partial impairment associated with the surgery performed on January 24, 2023.

The respondent filed a Motion to Dismiss for Failure to Prosecute, which is the matter presently before the Commission, on March 8, 2024, bringing that motion under both Arkansas Workers' Compensation Commission Rule 099.13 and A.C.A. §11-9-702. However, at the hearing in this matter on May 23, 2024, the respondent amended the motion to only seek a dismissal under Rule 099.13 as follows:

MS. WOOD: Our Motion to Dismiss does indicate that it is seeking it under both Rule 13 and 11-9-702. I would like to amend that and just seek it under Rule 13 and to acknowledge that a hearing has been requested previously. However, as we sit here today, there is nothing before the Commission to address. There is no hearing request that has been made. It is our position that the filing of a Form C in workers' comp is the equivalent of a complaint in Circuit Court. It can't just sit there forever indefinitely. If there is something to litigate, it needs to be done. It is prejudicial to my client to continue to keep it open. Witnesses disappear, I mean there are lots of reasons, but essentially if there is something to litigate, it should be done.

On April 8, 2024, the claimant's attorney authored the following letter to the Commission:

The Claimant hereby files a claim for additional compensation in the form of medical benefits.

Although the Claimant sustained injury to both shoulders, he only underwent surgery in regard to one shoulder.

It is believed that because the respondents chose to controvert the Claimant's entitlement to additional medical treatment and indemnity benefits at one time he may not have received all the treatment that may have otherwise enabled him to have a fuller recovery. Therefore, the Claimant contends that he is entitled to return to Dr. Greg Jones for evaluation of both shoulders for a determination in regard to whether physical therapy would likely improve the strength that the Claimant has lost as a result of his compensable injuries.

If the respondents will authorize an appointment for Mr. Walker to return to Dr. Jones, it of course would be premature to consider their Motion to Dismiss at this time.

If the respondents will not authorize Mr. Walker to return to Dr. Jones, I will be requesting a hearing and that request will cause it to be inappropriate to grant the respondent's Motion to Dismiss.

By copy I am requesting Ms. Wood to advise whether the respondents will authorize the Claimant to return to Dr. Greg Jones.

On April 16, 2024, the respondent's attorney authored a letter to the Commission in response to the claimant's attorney's April 8, 2024, letter as follows:

I am in receipt of Claimant's counsel's correspondence to you dated 4/8/24. My client has scheduled an appointment for Claimant to return to Dr. Greg Jones as requested by Claimant's counsel. Respondents continue to ask for a dismissal of this case. It is our position that the providing of benefits does not affect whether or not the claim is being prosecuted by the claimant.

Rule 099.13 states:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom for a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

Rule 099.13 provides discretion in deciding whether a case is to be dismissed in that its given language states “may” and not shall. This is not a case with a long and tortured history. The claimant’s compensable injuries occurred roughly two years prior to the respondent’s filing of the motion to dismiss. In fact, the claimant had an appointment scheduled with his physician within roughly a week of the hearing on the motion to dismiss in this matter regarding his compensable injuries. It appears to this administrative law judge that this claimant has not ignored or wasted the time of the Commission or the respondent, but instead, has actively pursued indemnity and medical benefits to return him as much as possible to his preinjury financial and physical state and continues to do so. The respondents’ motion to dismiss is denied.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny the motion to dismiss filed by the respondents.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE