

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by WILLIAMS
Commissioner

Jan. 21, 2015

TODD RYDER v. NEW BELL TRUCK LINES INC
GREAT WEST CASUALTY COMPANY, Insurance Carrier
Jurisdiction Claim No. VA02000016097
Date of Injury January 7, 2014

Corey R. Pollard, Esquire
For the Claimant.

Alan D. Sundburg, Esquire
For the Defendants.

REVIEW on the record by Commissioner Williams, Commissioner Marshall and Commissioner Newman at Richmond, Virginia.

The defendants request review of the Deputy Commissioner's September 22, 2014 Opinion awarding medical benefits and temporary total disability benefits beginning on January 10, 2014 and continuing. We AFFIRM.

I. Material Proceedings

The claimant filed a claim on January 14, 2014 alleging that he sustained a compensable injury by accident on January 7, 2014 and injured his neck, back and legs. He sought medical benefits and temporary total disability benefits. The defendants raised numerous defenses against the claim, including that there was no compensable injury by accident arising out of and in the course of the employment, the claimant was not disabled to the extent alleged as a result of an occupational injury, and the claimant failed to adequately market his residual work capacity.

Deputy Commissioner Tabb conducted an evidentiary hearing on August 20, 2014. The Deputy Commissioner found that the claimant proved the occurrence of a compensable injury by accident. He explained:

The claimant testified to driving his tractor-trailer on January 7, 2014, into Indiana where there was a snow storm with high winds. He was operating in a location where he was unable to safely pull to the side of the road, and, while rounding a curve, his trailer jack-knifed, and smacked the tractor on the driver's side. He stated his adrenalin was pumping and he was cold, so once the police arrived he sat in the cruiser for a while to stay warm and was taken later to a motel where he stayed for a couple of days before being given a ride back to Virginia. During that stay, he asserted, he was uncomfortable but without pain, and remained that way all the way back to Richmond several days later. It was not until after he was told he was relieved of his job on January 10, 2014, that he first sought medical treatment at the hospital emergency room. The hospital's report references a motor vehicle accident from which he was having back pain. Several days later, again at the hospital, he reported both back and neck pain. Though x-rays were taken, which did not indicate, according to Dr. Vokac, a nexus between thoracic and cervical changes and the lumbar injury, he opined in mid-February the claimant had an annulus tear/disc injury causing the claimant's symptoms.

While the claimant was not thrown around inside the cab of the tractor indeed he was hit by his oncoming heavy trailer during the jack-knife, and, as referenced by Dr. Vokac, there can be a delay in the onset of symptoms causally related to that impact. The Commission is persuaded that there is a causal relationship between the claimant's neck and back injuries as a result of his vehicular accident which arose out of and in the course of his employment, and thus he sustained compensable injuries on January 7, 2014.

(Op. 6-7.) The Deputy Commissioner held that the claimant proved total incapacity through February 27, 2014, and continuing partial disability thereafter. Lastly, the Deputy Commissioner found that the claimant made a reasonable effort to market his residual work capacity.

The defendants timely requested review. The defendants assigned error to the findings that the claimant sustained a compensable injury by accident arising out of and in the course of

the employment, was disabled as a result of any work injury and adequately marketed his residual work capacity.

II. Summary of Evidence

At the hearing, the claimant testified to working as a long haul truck driver for the employer. During the early morning of January 7, 2014, he was driving on a snowy and icy highway in Indiana. The claimant stated that, while curving to the right, his trailer swung and struck the driver's side of the cab "with some serious force." (Tr. 13.) The truck jack-knifed and ran off the road to the left. The claimant explained that the temperature was extremely cold, and he was very concerned about freezing. The claimant denied paying attention to any type of pain because "I wasn't thinking about anything about pain . . . I was just trying to live." (Tr. 18.)

The claimant stated that, eventually, a police officer responded. The police officer transported him to a motel. He stayed in the motel until January 9, 2014 when Carlos Matos, another driver, returned him to Virginia. The claimant said that he slept while at the motel. He said that he felt discomfort, "not really pain," all over his body, including his head, shoulder, low back, hip and legs. (Tr. 22.)

The claimant spoke with Dave Clark, safety director, after the accident. He disputed that Mr. Clark asked whether he sustained any injuries. He talked with Donna Tiller, the dispatcher, and denied having any injuries.

The claimant said that Mr. Matos asked why he was dragging his bag, and he replied that his back hurt. He stated that Mr. Matos placed the bag in the truck for him. The claimant explained that he and Mr. Matos returned to the crashed truck at a salvage yard to obtain valuable items. The claimant said that Mr. Matos retrieved all the items because his back pain

prevented him from the activity. He denied leaving Mr. Matos' truck during this time period. The claimant reiterated that, by the morning of January 9, 2014, he was suffering back, neck and leg pain. The claimant said that, when the men returned to Virginia, Mr. Matos placed his few items in his car for him. The claimant drove home.

The claimant said that, on January 10, 2014, he went to work and the employer terminated him. He asserted that he asked Mr. Clark "what are we going to do about these injuries" and Mr. Clark simply dismissed the inquiry. (Tr. 31.) The claimant sought medical treatment later that day. The claimant said that he began seeing Dr. Charles Vokac, who initially excused him from all work, and then released him to modified duty in February 2014 and continuing. The claimant denied having the capacity to perform his pre-injury duties with restrictions such as no lifting greater than ten pounds, no twisting, no kneeling and only occasionally driving.

The claimant submitted a written log of 130 employment contacts dated from March 10, 2014 through the end of July 2014. (Cl.'s Ex. 4.) He maintained that he also searched prior to documenting his efforts. The claimant said that he applied at the Virginia Employment Commission and utilized its offerings. He described that he personally approached employers, completed applications and submitted résumés. The claimant explained that he looked with five or six employers per week. He said that, after giving his search list to his attorney in July 2014, he contacted approximately 70 to 80 more employers during August 2014.

Mr. Matos testified to picking up the claimant at the motel. He stated that the claimant handed him a bag, and he placed it in the sleeping area. Mr. Matos said that he and the claimant retrieved items from the wrecked truck. Mr. Matos denied discussing the accident with the

claimant beyond the potential of him losing his job. Mr. Matos stated that he asked the claimant “how he felt and he said he was alright.” (Tr. 72.)

Mr. Clark testified to speaking with the claimant on the telephone after the accident on January 7, 2014. He stated that he asked details, such as did the claimant have any injuries. Mr. Clark completed an internal report which indicated no injuries. (Defs.’ Ex. 2.) Mr. Clark saw the claimant on the day of his termination, January 10, 2014. Mr. Clark did not ask about injuries on this day because “I noticed nothing out of the ordinary about his behavior, the way he was walking.” (Tr. 78.) Mr. Clark disputed that the claimant addressed any injuries during the meeting. He said that he first learned about any claimed injuries “[i]mmediately after the termination.” (Id.)

The medical record reflects that the claimant received treatment on January 10, 2014 for a diagnosis of back pain. (Cl.’s Ex. 1.) A motor vehicle accident was noted. The claimant returned on January 13, 2014 and was assessed to suffer back pain, neck pain and a motor vehicle collision.

Dr. Vokac evaluated the claimant on January 16, 2014. The claimant described suffering cervical and lumbar spine pain following a motor vehicle accident occurring on January 7, 2014. Dr. Vokac diagnosed cervical, thoracic and lumbar strains status-post motor vehicle accident. He excused the claimant from employment.

Normal cervical and thoracic MRI scans were reported on February 7, 2014. A lumbar MRI scan taken on the same date showed mild degenerative changes and borderline canal stenosis at the L1-L2 level.

Dr. Vokac monitored the claimant's ongoing symptoms. Dr. Vokac viewed the MRI scans and maintained that the claimant suffered an annulus tear or disc injury. He released the claimant to modified duty effective February 27, 2014.

In July 2014, Dr. Vokac completed the claimant's counsel's questionnaire. He diagnosed the claimant as suffering a cervical sprain, gluteal tendonitis and a lumbar disc herniation. Dr. Vokac agreed that the claimant's symptoms, injuries and restrictions were causally related to the motor vehicle accident. He affirmed that the claimant lacked the capacity to perform his pre-injury job duties. Dr. Vokac confirmed that the onset of severe symptoms several days after the accident was reasonable.

Dr. Walter Rabhan, orthopedist, performed an independent medical examination of the claimant on July 29, 2014. (Defs.' Ex. 1.) Dr. Rabhan's evaluation found normal lower extremity reflexes, generalized motor weakness of left lower extremity, antalgic gait, lumbar flexion restriction, no paraspinal muscle spasm, no trigger point to palpation and generalized global tenderness to palpation of the lumbar spine. Dr. Rabhan concluded that the claimant suffered a lumbar strain as a result of the motor vehicle accident. He advised that "[s]ymptom magnification was noted on examination today and I could find no significant objective neurological abnormalities on examination." Dr. Rabhan opined that the claimant had reached maximum medical improvement and could return to full-duty employment without restrictions.

On August 16, 2014, Dr. Vokac confirmed reviewing Dr. Rabhan's report. Dr. Vokac denied that the claimant could return to his pre-injury duties based upon his pain spasms. Dr. Vokac noted that the claimant's subjective complaints were proven by physical examination findings of lumbar spasms.

III. Findings of Fact and Rulings of Law

A. Injury by Accident

On appeal, the defendants maintain that the claimant was not credible and that he failed to prove a compensable injury by accident.¹

We have carefully reviewed the record and find no error in the holding that the claimant proved a compensable injury by accident arising out of and in the course of his employment on January 7, 2014. The claimant testified to being involved in the motor vehicle accident, resting for several days while experiencing bodily discomfort, and then suffering noticeable pain by the morning of January 9, 2014.² We are not persuaded that the Deputy Commissioner's findings are inconsistent with the presented evidence. We acknowledge the somewhat conflicting testimonies from Mr. Clark and Mr. Matos. We do not find the discrepancies to be fatal to the claimant's claim.

B. Extent of Disability

We find no error in the Deputy Commissioner's assessment of the medical evidence concerning the extent of the claimant's injuries and disability. Dr. Vokac was the claimant's treating physician. He diagnosed the claimant as suffering a cervical sprain and lumbar disc herniation causally related to the occupational accident. Dr. Vokac limited the claimant to light duty after February 27, 2014, and he maintained this restriction. Dr. Rabhan agreed that the

¹ The defendants assert that "[t]he Deputy Commissioner's Opinion and findings are inconsistent with the claimant's own testimony concerning the events which occurred" and that, "to reach a determination as to whether or not the claimant actually had symptoms on January 9, the conflicting testimony of the various witnesses must be resolved." (Defs.' W.S. 7.)

² "[I]t is not necessary in establishing causation that the pain or other physical manifestation of injury be contemporaneous with the incident in employment to prove that the injury arose out of the employment." Morris v. Morris, 4 Va. App. 193, 200, 355 S.E.2d 892, 896 (1987), rev'd on other grounds, 238 Va. 578, 385 S.E.2d 858 (1989).

claimant suffered a lumbar strain as a result of the accident. Although Dr. Rabhan concluded that the claimant could return to regular duty, Dr. Vokac clearly disagreed. We find no error in the lower decision affording more probative value to the treating physician's conclusion.

C. Marketing

We find no error in the holding that the claimant sufficiently marketed his residual work capacity. The claimant testified to his efforts to locate suitable employment, including utilizing the resources of the Virginia Employment Commission, personally contacting employers, submitting his résumé and completing applications. The claimant presented written documentation of his search and explained his methods of trying to locate suitable employment. The Deputy Commissioner found the claimant's actions to be reasonable, and we agree.

IV. Conclusion

The Deputy Commissioner's September 22, 2014 Opinion is AFFIRMED.

From accrued compensation, an attorney's fee in the total amount of \$5,400, which includes the \$5,100 awarded by the Deputy Commissioner below, is awarded to Corey R. Pollard, Esquire, for legal services rendered the claimant.

Interest is payable on the Award pursuant to Va. Code § 65.2-707.

This matter is hereby removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information

concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.