2015020279 Trial

STATE BOARD OF WORKERS' COMPENSATION
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STATEMENT OF CASE

The employee requested a hearing in the above referenced claim seeking payment of temporary total disability benefits from June 30, 2015 through March 22, 2016, prior to the employer/insurer agreeing to commence benefits on March 23, 2016. The employee is also seeking the payment of medical expenses found on Claimant's exhibit 7 The employee began receiving temporary total disability benefits on March 23, 2016 at the rate of $462.77 and is currently receiving those benefits.

The employer/insurer contend the employee failed to prove by a preponderance of competent and credible evidence that he suffered any disability prior to March 23, 2016. The employer/insurer further assert the medical expenses for which the employee seeks payment were from non-authorized treating physicians.

Based upon a consideration of all the evidence presented, I find the employee has failed to prove by a preponderance of competent and credible evidence that he suffered any disability from June 30, 2015, to March 22, 2016, causally connected to his work accident. I further find the medical expenses submitted by the employee are not the liability of the employer/insurer as they were incurred from visits to non-authorized providers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon a consideration of the evidence presented I make the following findings of fact and conclusions of law:

1.The 41 year old employee began working for the employer in March, 2015 , as a driver of a concrete truck. Three months later , on June 29, 2015,the employee lost control of the concrete truck he was driving and it tipped over on the driver's side while on a construction site. The employee crawled out of the passenger window of the truck. Police were summoned to complete an accident report. While the employee alleges he did not leave the scene of the accident, Mr. S, the maintenance supervisor testified differently. Mr. S was sent to the accident site where the employee stated he was okay but asked Mr. S what would happen if he did not take a drug test. Mr. S told the employee that he would be immediately terminated . Mr. S credibly testified he then observed the employee get into an automobile , driven by the employee's wife, leave the scene and remained gone for about an hour before returning. When the employee returned to the accident site, he was carrying a large jug of water. Mr. S ,as instructed , took the employee to an occupational clinic listed on the panel of physicians so the employee could receive immediate medical attention from Dr. Sherrer, an occupational medicine physician.

2. According to the medical records of Dr. Sherrer dated June 29, 2015, the employee reported complaints of pain on his left hip from the arm rest of the truck striking him in the hip at waist level. He denied lower back pain. The records indicate the employee did not exhibit any discomfort but had a few abrasions on his left hand and

forearm. He was diagnosed with a left hip contusion and authorized to return to work regular duty. The employee did not return to work. He returned to Dr. Sherrer for his follow up appointment on July 1, 2015 and complained of left shoulder pain which Dr. Sherrer diagnosed as a contusion. Dr. Sherrer instructed the employee to return to him in one week and continued to authorize the employee to return to work regular duty. The employee was terminated by the employer for several workplace violations. He failed to keep his next appointment with Dr. Sherrer but instead went to the emergency room of St. Francis hospital on July 6, 2015. The notes of the employee's July 6, 2015 visit to the emergency room note that he reported pain in his left hip and pelvic area. There is no complaint listed of any back pain and the employee was noted to be in "no apparent distress". X-rays were performed and the employee was discharged with the diagnosis of "hip contusion". The employee was not given any work restrictions but was prescribed narcotic pain medication.

3. The employee returned to the emergency room of St. Francis hospital on July 12, 2015 and for the first time reported low back pain but noted to be in no apparent distress. He was discharged with hip strain and provided another prescription for narcotic pain medication. He hired an attorney on July 15, 2015. He again returned to the St. Francis emergency room on July 29, 2015, complaining of left shoulder pain and "chronic back pain". The medical notes of this visit indicate the employee became upset when he was told he could not get another prescription for narcotic pain medication..At none of the three emergency room visits did the employee receive any work restrictions. The employee admitted at the hearing that no one during his emergency room visits assigned him any work restrictions.

4. After three visits to the St. Francis emergency room and exhausting his ability to get narcotics, the employee jumped to the Midtown Medical Center emergency room for treatment. He sought medical treatment at the Midtown emergency room on September 25, 2015, where he reported left side pain. He was able to procure a prescription for narcotic pain medication. He then returned to the Midtown Medical emergency room on November 10,2015 for more narcotic medication based upon complaints of "shoulder pain, night terrors and insomnia".

5. The employee then sought medical treatment with Dr. McGrory, an orthopedist at Hughston Clinic on February 16, 2016. The employee had been out of work for almost eight months since his accident which occurred on June 29,2015. He reported new complaints that he had not registered on previous visits to either Dr. Sherrer or to emergency room physicians. He complained of muscle weakness and numbness in his left arm and hand along with previously reported left hip pain and lumbar pain. Dr. McGrory upon physical examination noted the employee had a full range of motion in his lumbar spine and left hip. An x-ray of the employee's left hip was normal. Dr. McGrory' s notes read: "I personally doubt that this is going to be a serious injury. He did not sustain a fracture and it has been several months… I will refer him to physical therapy for lumbar strain and left hip strain." I find there is nothing in the medical records to indicate that Dr. McGrory was taking the employee out of work. Dr. McGrory ordered an MRI of the employee's lumbar spine which was performed on March 21, 2016, nine months after the employee's work accident. The MRI report showed a disc protrusion at L5-S1 and does not list any disc herniation or nerve root encroachment. The employee returned to Dr. McGrory on March 23, 2016 .What I find puzzling is the fact that upon close reading of the MRI narrative report issued by the radiologist, it reads " disc protrusion at L5-S1", nevertheless Dr. McGrory notes on March 23, 2016 visit "disc herniation at L5-S1". Dr. McGrory for the first time took the employee "out of work until the next appointment of April 27, 2016."

6. The employee returned to Dr. McGrory on April 27, 2016 and Dr. McGrory notes "patient to continue out of work". However, Dr. McGrory noted employee " is at MMI" and scheduled an FCE. There is nothing in the medical records of Dr. McGrory to indicate the employee has any type of surgical problem. The employee has not returned to Dr. McGrory in over a year prior to the hearing.

7. An FCE was conducted on September 28, 2016. The employee was approved for light-medium physical work capacity. The FCE report noted the employee could not return to work as a concrete truck driver " according to the job description *provided by the client*". (emphasis supplied). While the employee attempted to persuade me

that he has made a diligent but unsuccessful job search, I do not find the employee credible and find he has not made a diligent job search. He admitted he has not looked for any work since Dr. McGrory took him out of work in March, 2016, despite the findings of the FCE. I do find the employee was required to make a job search following the FCE and that his termination by the employer was for reasons unrelated to his job injury. The employee has been out of work for over two years since his work injury and is currently receiving temporary total disabilitybenefits.

8. The only issue before me currently is whether the employee is entitled to the payment of temporary total disability benefits from June 30, 2015 through March 22, 2016. An employee seeking benefits under the Act has the burden of proving an accident with injury that arose out of and in the course of the employee's work for the employer from whom benefits are sought. O.C.G.A. §34-9-1(4). See *Scandrett v. Talmadge Farms*, 174 Ga. App. 547, 330 S. E. 2d 772 (1985). The standard of proof is by a preponderance of the credible evidence. See *Maloney v. Gordon County Farms*, 265 Ga. 825, 462 S. E. 2d 606 (1995). I find the employee has failed to prove by a preponderance of competent and credible evidence that he is entitled to temporary total disability benefits for this period of time. There is no credible evidence to show the employee was taken out of work by any treating physician for this period of time. Neither Dr. Sherrer nor any of the emergency room physicians with whom the employee treated ever placed any work restrictions upon the employee nor did they take him out of work. The first time the employee was taken out of work was on March 23, 2016 by Dr. McGrory and the employer/insurer commenced the payment of temporary total disability benefits which the employee continues to receive to present. Having found the employee has failed to prove he suffered total disability as a result of his work accident from June 30, 2015 through March 22, 2016, I find he is not entitled to temporary total disability benefits for this period of time.

9 The employee is seeking the payment of medical expenses for all of his visits to the emergency room. I find the employer/insurer is not liable for the payment of these medical bills. The employer is responsible only for those charges related to the on the job injury which are reasonable and necessary. *Edwards v. Firemans Fund Ins Co,* 147 Ga. App. 27, 248 S.E. 2d 2 (l978). I find the employee's repeated visits to the emergency room were neither necessary nor reasonable. The employee could have returned to Dr. Sherrer, a panel physician, with whom he sought treatment on several occasions. He could have contacted his employer to exercise his right to select a second physician from the panel of physicians. I find the employee's visits to the emergency rooms were not characterized as true emergencies but were for the purpose of seeking narcotic pain medication. The employee has been diagnosed with hip strain and lumbar strain. The lumbar disc protrusion shown on this MRI is a non-surgical problem for which the employee received physical therapy and epidural injections.

AWARD

Wherefore based upon the foregoing findings of fact and conclusions of law applicable thereto, the request of the employee for the payment of temporary total disability benefits from June 30, 2015 through March 22, 2016, is hereby denied.

The employee's request for the payment of medical expenses for his visits to the emergency room, listed on employee's exhibit number 7, is hereby denied.

IT IS SO ORDERED, this the 02nd day of October, 2017.

STATE BOARD OF WORKERS' COMPENSATION

This order has been electronically signed and approved

TASCA HAGLER

ADMINISTRATIVE LAW JUDGE