

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER E416931/E305862

JOHN P. COLLIER, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER

RESPONDENT

OPINION FILED AUGUST 6, 2003

The hearing was held on May 21, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

The claimant was represented by Kenneth A. Olsen, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The hearing was held on May 21, 2003, at Little Rock, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant's left upper extremity injury(February 10, 1993) and back injury (October 14, 1994) are accepted as compensable.
3. Temporary total disability was paid at the rate of \$244.03 for the left upper extremity injury, and \$267.00 for the back injury.
4. Medical care was paid by the respondents up to July 31, 2001, for both injuries.

5. Maximum medical improvement was achieved on the claimant's left upper extremity in 1993, and in 1998 for the claimant's back.

6. The respondents accepted a 5% permanent impairment rating for the claimant's left upper extremity, which was paid in August, 1993.

7. The respondents accepted and paid an 8% permanent impairment rating for the claimant's back.

The issues to be litigated at the hearing were limited to the following:

1. Is claimant entitled to reimbursement of out-of-pocket medical expenses?

2. Is claimant entitled to continuing therapy medication and maintenance type treatment for both compensable injuries?

The claimant testified at the hearing that he is an auto mechanic for the City of Little Rock. He rebuilds cars used by police officers. As of the date of the hearing, the claimant was still working in that capacity for the City of Little Rock.

In 1993, the claimant injured his arm working on earth moving equipment and lifting batteries in and out of equipment. He tore a muscle in his left upper extremity. He did not have surgery.

In 1994, the claimant injured his back while working underneath a truck on a drive shaft. He was re-installing a transmission. He did not have surgery on his back. The claimant testified that since July, 2001, he's had no more medical treatment paid by respondents. He testified that he had previously seen Dr. Adametz for his back and Dr. Robert Casper, a general practitioner, for initial treatment of his back and arm. He received treatment from Dr. Scott Bowen, orthopedic surgeon, for his left upper

extremity. The claimant received physical therapy for his back. The claimant testified that even though he received medications and different therapies, he still had problems with both his left upper extremity and his back. He testified that he experienced muscle spasms in his back and pain in his legs, along with numbness. He testified that he experienced problems at different intervals of time. Regarding his arm, when he returned to work, he was unable to perform his job as well as before the injury. He testified as follows:

“A. It swells up because of the type of lifting I have to do. And it’s inflamed where I can’t - - I’ve got numbness in my fingers where it’s like when you put your hand in a glove and you feel something, but you know you’ve got a glove on your hand. It feels like that, and just a throbbing pain.

Q. When did you start having this numbness?

A. About - - I’d say it was about a couple of months after I first injured it. The numbness was - - he - - well, nobody said, but it just radiated up from the injury down.

Q. So the numb fingers is not a new sensation - -

A. No.”
(T-14)

He testified that he has received back treatments since he was denied medical treatment from the respondents. He’s had low back lumbar traction and stimulation. He had hot packs and ultra-sound on his back. The claimant testified as follows:

“Q. Now, what medical expenses are you asking to be paid by the insurance carrier in this case?

A. Mileage, reimbursement for my medical pharmacy medicines, going back and forth to physical therapy, and doctor visits.

Q. Which doctors are you wanting to continue to see?

A. My primary, which is Casper, and Dr. Scott Bowen, Dr. Adametz.
That's it.

Q. Have you seen either of these doctors since you were notified that this would no longer be handled as a workers' comp matter?

A. Yes, I have.

Q. On the date that we had specified earlier? Which doctor did you see?

A. I've seen Dr. Casper and Dr. Bowen.

Q. Without saying he said this or that, what kind of treatment did you get from - -

A. Injections in my arm and then physical therapy.

Q. What was the physical therapy for?

A. My low lumbar area.

Q. What kind of physical therapy - - well, excuse me. Let me back up just a moment. Who gave you the injection in the back - - or in the arm, rather?

A. Dr. Scott Bowen.

Q. Do you recall about when that was? Has it been in the last year, or has been more than that?

A. I'd have to go through the paperwork, but about that, about a year.

Q. Did you receive any benefit from the injection?

A. Yes, I do.

Q. Are you currently getting any injections or any treatment for your arm?

A. I've been denied the treatment from the insurance carrier."
(T-12, 13, 14)(Emphasis added.)

The claimant testified that he has never been pain free in his back since

the injury, and he needed medical treatment such as continued therapy and medication. He testified that he saw the doctor for his back injury approximately seven to eight months ago, but he hasn't been since then because he had a knee injury in August, 2002, and has been concentrating on having that resolved.

The claimant testified that the last injection to his elbow was on March 7, 2001 - the last time he saw Dr. Scott Bowen, an orthopaedic surgeon. He testified that any treatment sought from Dr. Bowen was denied subsequent to March 7, 2001. The claimant testified that he could not afford to maintain the treatment after the respondents decided that any additional treatment was not reasonably necessary.

Medical records in this case indicated that the claimant injured his left arm in February, 1993. He tore a muscle in his forearm. He had therapy and injections. He was off work for a period of time. In August, 1993, the claimant received a 5% permanent impairment rating. There was no surgery performed on his left arm. On August 13, 1993, Dr. Scott Bowen, who was treating the claimant's elbow, stated:

"I think that it will be somewhat permanent. I don't think he will need any surgery and he may need an occasional anti-inflammatory and analgesics."
(Rx-1, p. 31)

In April, 1994, the claimant complained of pain and received another injection, anti-inflammatory medications and a splint.

In October, 1994, the claimant injured his back. Tests showed that the claimant had ruptured a disc which involved nerve impingement. The claimant saw Dr. John Adametz, an orthopaedic surgeon. He received physical therapy, and the hope was that the therapy would make the surgery unnecessary. The claimant returned to

work shortly after the therapy, but he still experienced pain. Dr. Adametz said that if the pain became severe, the claimant should consider surgery.

The records reflect that the claimant's elbow would continue to bother him as he tried to continue a normal job. He was unable to sleep at times because of pain in his back and hip. The claimant appeared to continue to want to work a full duty job and did not want surgery. The doctors, as far back as 1995, stated that the claimant should return to see them on an "as needed" basis.

The claimant continued to complain of pain in his elbow in 1995. There was increased pain and numbness. Nerve conduction studies did not shed light on any additional treatment that should be necessary. He was provided arm exercises which seemed to improve his condition. However, it appears that the claimant's course of action would be that he would have therapy and then return to work only to have his condition aggravated by performing his normal job duties.

In 1996 and 1997, it appears that the claimant aggravated his elbow and back. Additional physical therapy and elbow injections would be performed every few months. In May, 1998, Dr. John Adametz interpreted a recent MRI scan as showing three small disc herniations in the claimant's back. (Rx-1, p. 106). In December, 1998, the claimant received a permanent impairment rating of 8% for his back injury. Dr. Adametz stated that if there was more radicular pain demonstrated at a later date, then the claimant should consider surgery.

The claimant's March, 1998, MRI showed a disc herniation with impingement on the nerve root at L3-4 and L5-S1. (Cx-1, p.2; Rx-1, p. 103) In 1999, Dr. Adametz and Dr. Casper, claimant's general practitioner, stated that the claimant

was “getting by with physical therapy on an occasional basis and would do much better with this than resorting to surgery.” (Rx-1, p. 126)

Through the end of 1999 and early 2000, the claimant obtained physical therapy for his back and injections and medications for his left upper extremity. In March, 2001, the claimant saw Dr. Bowen for his left forearm and left lateral epicondylitis. Dr. Bowen recommended steroid injections and anti-inflammatory medications. He recommended that the claimant continue with the forearm band. He stated:

“He may face surgical exploration of this in the future. I believe that he can continue to work in his present capacity as tolerated.”
(Cx-1, p. 4)

In September, 2002, claimant’s back was examined. He was at that time doing quite well. No therapy was recommended and he was placed on a plan of medication and back exercises when needed. Claimant’s Exhibit 1, page 5, a letter dated September 17, 2002, from claimant’s general practitioner, Dr. Robert Casper, stated that the claimant was not interested in surgery or overuse of any therapy modality because he wished to be gainfully employed. The doctor stated :

“It is my clinical opinion that he will require episodic care with respect to his lumbosacral spine condition which would include additional physical therapy and conservative therapy. It is also my opinion that his notes (meaning Dr. John Adamez’ notes) reflect that this definitely is a workmen’s comp related accident.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant’s left upper extremity (February 10, 1993) and back injury

(October 14, 1994) are accepted as compensable.

3. Temporary total disability was paid at the rate of \$244.03 for the left upper extremity, and \$267.00 for the back injury.

4. Medical care was paid by the respondents up to July 31, 2001, for both injuries.

5. Maximum medical improvement was achieved on the claimant's left upper extremity in 1993, and in 1998 for the claimant's back.

6. The respondents accepted a 5% permanent impairment rating for the claimant's left upper extremity, and the 5% was paid in August, 1993.

7. The respondents accepted and paid an 8% permanent impairment rating for the claimant's back.

8. The preponderance of the evidence reflects that the claimant is entitled to payment of expenses which he incurred for treatment of his compensable arm and back injuries. The treatment reflected by the medical records , (and all times since the compensable injuries,) for the compensable injuries was reasonably necessary and related to those compensable injuries. The claimant also is entitled to future reasonably necessary medical treatment from the physicians mentioned herein. The claimant's attorney is entitled to an attorney's fee.

DISCUSSION

The claimant bears the burden of proving that he is entitled to benefits and he must sustain that burden by a preponderance of the evidence. Dalton v. Allen Eng. Co., 66 Ark. App. 201, 981 S.W.2d, 543 (1999). An employer must promptly provide for an injured employee such medical treatment as may be reasonably

necessary in connection with the injury received by the employee. A.C.A. § 11-9-508(a). In the present matter, the claimant sustained two admittedly compensable injuries. He received two permanent impairment ratings for those compensable injuries. What constitutes reasonably necessary medical treatment is a question of fact for the Arkansas Workers' Compensation Commission. The Commission has long stated that medical treatment to reduce or enable an injured worker to cope with chronic pain attributable may constitute reasonably necessary treatment. See: generally, Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W. 463 (1997), and Artex Hydroponics Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). It was shown on the MRI examinations that the claimant has herniated discs in his lumbar spine. There is nerve root involvement. Indications were that he also had a torn muscle in his left upper extremity. No treating physician has questioned the legitimacy of the claimant's continuing complaints. I found the claimant to be credible in his testimony concerning his persistent pain and discomfort. The preponderance of the evidence in this case reflects that the claimant's medical care for both the left upper extremity and lumbar spine have been reasonably necessary. The preponderance of the evidence reflects that the treatment that the claimant has received and will continue to receive has helped to stabilize or maintain his condition and allow him to be a productive member of society. Medical treatment to stabilize or maintain an injured worker is the responsibility of the employer. The claimant has attempted to return to work doing a strenuous job. The claimant is entitled to any reimbursement for any out-of-pocket expenses in connection with seeking additional medical treatment for his work related injury, and the travel to obtain such treatment. The claimant is also entitled to reasonably necessary

medical treatment recommended by his treating physicians. Such treatment as proposed by the medical records and the testimony is reasonably necessary and related to claimant's work related injury.

AWARD

The claimant is awarded the medical benefits described above, along with the attorney's fee pursuant to the Arkansas Workers' Compensation law. This award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DON N. CURDIE,
Administrative Law Judge

DC