

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F103487

ROBERT COOLEY,
EMPLOYEE

CLAIMANT

P& P TRUCKING, INC.,
EMPLOYER

RESPONDENT

FRMONT COMPENSATION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 15, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Searcy, White County, Arkansas.

The claimant was represented by Phillip Wilson, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Bruce Anible, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on May 19, 2003. A prehearing conference was conducted on October 29, 2002, and a prehearing order was filed on that same date. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The opinion and order filed by this administrative law judge on April 25, 2002, is now a final order and *res judicata*.

During the prehearing conference, the parties also agreed that the

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

1. Whether the back surgery proposed by Dr. Chan is reasonably necessary for treatment of the claimant's compensable injury.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. The claimant failed to prove by a preponderance of the evidence that the surgery proposed by Dr. Chan is reasonably necessary for treatment of the compensable injury.
4. The respondents controverted liability for the surgery proposed by Dr. Chan.

DISCUSSION

As indicated above, a prior hearing was conducted before this administrative law judge, and an opinion and order was filed on April 25, 2002. Although the surgery proposed by Dr. Chan was mentioned during that hearing, the question of whether the proposed surgery was reasonably

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necessary for treatment of the compensable injury was not included.

The claimant was a long haul truck driver, and he injured his back in a motor vehicle accident. He has been treated by Dr. Holston, a general practitioner, Dr. Anthony Russell, a neurosurgeon, and Dr. Patrick Chan, also a neurosurgeon. Extensive diagnostic tests were ordered by Dr. Russell, including MRI's and myelograms with post myelogram CT scans. Although these studies revealed some degenerative changes, Dr. Russell determined that neither his clinical examination nor these diagnostic studies revealed any operable lesion.

Dr. Chan has administered a series of epidural steroid injections. However, he has proposed a decompression laminectomy at L3-L4 and L4-L5. According to Dr. Chan's July 8, 2002, narrative report, Dr. Chan's recommendation is based on severe leg pain. Dr. Chan has opined that the claimant would continue to experience low back pain, even if the surgery is successful.

The claimant was also examined by Dr. J. K. Smelz at the Veteran's Administration, and Dr. Smelz addressed the proposed surgery. In this regard, Dr. Smelz made the following comments:

Apparently the surgery proposed by Dr. CHan is decompression "with eventual fusion," and "at best he will be impaired." The purpose and mechanism of accomplishment of the proposed

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surgery is unclear.

There is no neurological deficit on physical examination by four examiners today. There was no neurologic deficit on examination by Dr. Russell, Dr. Holston, or the physical therapist. (Only Dr. Chan found missing reflexes, both in the upper and lower extremities.)

Today, symptoms can be reproduced by pressure over muscle groups and over the sacroiliac joint. This also does not lead one to conclude that the pain would be alleviated by spinal decompression.

The reason for the proposed surgery is alleviation of leg pain, not back pain. Mr. Cooley's primary complain at this time is back pain, however.

In my opinion, there is no indication for surgery. The surgery itself risks further complications, as noted by Dr. Chan.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (1987). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission, Feb. 17, 1989 (Claim No. D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, Dec. 13, 1989 (Claim No. D511255).

In the present claim, I find that the preponderance of the evidence fails

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to establish that the surgery proposed by Dr. Chan is reasonably necessary. While the purpose and anticipated benefit for Dr. Chan's recommendation is apparently relief of the claimant's leg pain, the claimant's primary complaint involves low back pain. Moreover, Dr. Chan concedes that the surgery will not benefit the claimant's low back pain. Furthermore, Dr. Chan appears to recognize that the prospects for this proposed surgery benefitting the claimant is minimal and that there is a substantial chance that the surgery will result in other complication. In addition, neither Dr. Russell nor Dr. Smelz felt that surgery was indicated. Consequently, I find that the claimant failed to sustain his burden of proving that the proposed surgery is reasonably necessary.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

C. Michael White
Administrative Law Judge