

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E912139**

<b>FANNIE GREENE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MCGEHEE SCHOOL DISTRICT, EMPLOYER</b>	<b>RESPONDENT</b>
<b>MANAGEMENT CLAIM SOLUTIONS, INC., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 31, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 3, 2003, at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE H. OSCAR HIRBY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of additional medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the additional treatment was reasonably necessary in connection with the compensable injury as defined by Ark. Code Ann. §11-9-508.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and additional benefits must be denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on October 7, 1999 at which time the claimant sustained a compensable back injury. Medical expenses and temporary total disability benefits, at an incorrect compensation rate of \$90.00, were paid until this claim was

controverted as of February 3, 2000. The parties now agree the correct compensation rate is \$131.00, and respondents will make up the difference. The claimant's group carrier, Health Advantage, has paid some expenses.

The claimant contends she remains symptomatic from the compensable injury and seeks continuing medical treatment with Dr. Prosser and payment of expenses incurred with Drs. Prosser, Bruffett, and Reddy. The claimant also seeks payment of additional temporary total disability benefits from February 4, 2000 to a date yet to be determined and attorney's fees.

The respondents contend additional benefits are unreasonable and unnecessary based on Dr. Simpson's medical records and an invalid Functional Capacity Evaluation (FCE).

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript along with depositions of Dr. P. B. Simpson (taken December 30, 2001) and Dr. Wayne Bruffett (taken December 18, 2002), incorporated by reference.

The claimant was the only witness to testify at the hearing.

The claimant, age 54 (D.O.B. January 3, 1949), worked for the respondent-employer as a cook in the school cafeteria. On October 7, 1999, she injured her back when she slipped and fell. She reported the incident to her supervisor and eventually came under the care of Dr. Prosser, a general practitioner, Dr. P. B. Simpson, neurosurgeon, Dr. Bruffett, an orthopedic surgeon, and Dr. Yeshwant Reddy, a pain care specialist. She was treated conservatively and made unsuccessful attempts to return to work until Dr. Bruffett performed surgery on August 20, 2002. She has also tried to return to work at light duty unsuccessfully.

The claimant stated that she received some relief from the surgery but she still has severe pain in the back and hip (donor site of the fusion surgery) and remains under the care of Dr. Prosser for pain medication. She feels that her chronic pain has aggravated her preexisting conditions of high blood pressure and diabetes.

The claimant testified she would try again to return to work if offered a job, but she is unable to do heavy lifting. She further testified that she had no back trouble prior to the compensable injury.

### **MEDICAL EVIDENCE**

The claimant saw Dr. Prosser immediately after the injury complaining of back and left leg pain. His notes are handwritten and difficult to read but it appears he excused her from work and ordered diagnostic testing. The CT scan dated November 4, 1999 was interpreted as showing a bulge at L4-5 and L5-S1 with spondylolisthesis at L5-S1 “probably due to degenerative changes”.

Dr. Prosser referred the claimant to Dr. Simpson who ordered an MRI which was interpreted as negative. Based on the negative physical examination (showing no motor or sensory deficits except for a diminished Achilles reflex) and the MRI (negative for disc herniation with nothing in the canal or foramina) he released the claimant to return to regular duty on November 29, 1999. Because of her continuing complaints, the claimant returned to Dr. Simpson and additional testing (myelogram, post myelogram CT scan and lumbar spine films with flexion and extension views) was performed. Dr. Simpson’s report of February 3, 2000 indicates the tests were normal and he ordered an FCE. The FCE dated February 7, 2000 was considered invalid because of numerous inconsistencies in her abilities and symptoms with self-limiting behaviors and symptom magnification. She was released for work in the “medium” category.

The claimant returned to Dr. Prosser who referred her to Dr. Bruffett. Dr. Bruffett diagnosed spondylolisthesis at L5-S1 and prescribed physical therapy (a trunk stabilization program). He returned her to work on November 20, 2000. The claimant remained symptomatic and was referred to Dr. Reddy for injections in February, March and May 2001.

A repeat MRI scan was conducted showing spondylolisthesis at L5-S1 with foraminal stenosis and bulging of the disc on the left. In his report of July 10, 2002, Dr. Bruffett commented that her symptoms of radiculopathy suggested root impingement. Dr. Bruffett recommended interbody fusion because of instability due to spondylolisthesis and decompression to relieve the nerve. Surgery was performed on August 20, 2002 for spondylolisthesis at L5-S1 with foraminal stenosis. In follow-up visits, Dr. Bruffett recorded improvement of her symptoms with no need for medication. She was released March 5, 2003. The claimant did, however, return to Dr. Prosser for medication. The claimant saw Dr. Bruffett again on June 18, 2003 with complaints of back pain. Repeat x-rays showed a successful fusion although they apparently discussed surgical removal of the hardware.

In his deposition, Dr. Simpson testified he examined the claimant on referral from Dr. Prosser. She gave a history of injury after a slip and fall at work. Other than a slightly diminished Achilles' reflex (which could be related to her diabetes), her examination was normal. He was not impressed with the quality of an MRI scan (bulging at 4-5, 5-S1, spondylolisthesis at L5-S1) read by Dr. Rosen and ordered a second MRI scan. There was no evidence of a disc herniation or canal narrowing nor spondylolisthesis. Dr. Simpson released her to return to work November 29, 1999, but she was unable to do her job because of back and left leg pain. She returned to Dr. Simpson who ordered a myelogram and post-myelogram CT scan. This test revealed mild bulging at L5-S1 on the

left. He found no evidence of herniation or instability and released her again on January 24, 2000. She was unable to do her job without pain. Dr. Simpson ordered an FCE in February 2000 which was interpreted as invalid because of inconsistencies. He released her again with 0% impairment.

Dr. Simpson explained that spondylolisthesis is usually a congenital or degenerative condition. He found no objective evidence to substantiate the claimant's symptoms. It should be remembered, however, that objective medical evidence is not required to establish reasonably necessary medical treatment, Williams v. Prostaff Temporaries, 64 Ark. App. 128, 979 S.W.2d 911 (1998).

DR. SIMPSON: I just didn't find anything that showed that she really had true radicular pain... And I thought she just had a lumbar strain. I said she's had a myelogram, post-myelogram CT. She had MRIs. All this basically negative. And, also, I said that she has no pars defect and does not have a spondylolisthesis that I could see on those films. And certainly she didn't have any instability because I got flexion extension views... Neurological exam was normal. Straight leg raising test was negative. No motor deficit, no sensory deficit... she had pain in her back and towards her left hip, but no classical radiculopathy.

In his deposition, orthopedic Dr. Wayne Bruffett testified he first began treating the claimant on September 28, 2000. He diagnosed spondylolisthesis (misalignment of the discs) at L5-S1 and degenerative disc disease. He characterized the spondylolisthesis as a congenital condition and the degenerative disc disease as an side-effect of the spondylolisthesis. Dr. Bruffett explained that the

surgery in August was necessary to alleviate leg pain caused by stenosis (narrowing) putting pressure on a nerve. The stenosis developed as a result of an elongated pars (area between the joints), a congenital condition.

Fusion surgery was performed to alleviate pressure on the nerve. Dr. Bruffett opined that the claimant's spondylolisthesis was a preexisting condition made symptomatic by the fall at work based on the history given by the claimant. "It's consistent that she could fall, and the disc could bulge and herniate and narrow the foramen and then her leg starts hurting."

Dr. Bruffett did not review Dr. P. B. Simpson's records or the FCE results. Dr. Bruffett usually schedules FCEs after maximum medical improvement which he estimated at 6-12 months following surgery. Additionally, Dr. Bruffett felt the surgery was helpful and Dr. Reddy's treatment necessary.

MR. HIRBY: Okay, is it your opinion that, from what you've said, that the fall was maybe the cause and effect for the surgical procedure that you performed?

DR. BRUFFETT: Yes.

MR. HIRBY: And are your statements and opinions stated within a reasonable degree of certainty?

DR. BRUFFETT: Yes.

### **FINDINGS AND CONCLUSIONS**

As this case arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

The issue of whether treatment is reasonably necessary is a question of fact for the Commission. Wackenhut Corporation v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001). The

claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Post-surgical improvement is a factor to be considered in assessing whether the surgery was reasonably necessary. Winslow v. D & B Mechanical Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The claimant does not appear to share Dr. Bruffett's view that the surgery was successful.

Credibility is also a factor in this case due to the claimant's invalid FCE and the conflicting opinions between Dr. Simpson and Dr. Bruffett. The Commission has the authority to determine the credibility of the witnesses and the weight to be given to their testimony. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995), Beeson v. Landcoast, 43 Ark. App. 132, 862 S.W.2d 846 (1993).

It would have been helpful if Dr. Bruffett had reviewed Dr. Simpson's records and offered some explanation as to the difference of opinion. Assuming both physicians have accurately assessed the diagnostic testing, I find the evidence of record shows the claimant has failed to prove that her surgery to correct spondylolisthesis and stenosis is causally related to the fall at work.

The evidence shows the claimant was examined by Dr. Simpson after the incident at work and was diagnosed with a temporary back strain. He found no evidence of disc herniation, radiculopathy, spondylolisthesis or stenosis in 1999. The true extent of the claimant's injury was also called into question by an invalid FCE. The claimant's condition subsequently changed. In 2000, Dr. Bruffett diagnosed radicular pain, spondylolisthesis, stenosis and degenerative disc disease. He performed surgery to correct these problems which are chronic conditions that progressively worsen over time.

Although the claimant's work activities may temporarily aggravate her condition, the

compensable injury is not the cause for the claimant's surgery and resulting disability. Therefore I find the claimant's treatment is not reasonably necessary nor related to the compensable injury.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 7, 1999 at which time the claimant sustained a compensable back injury at a compensation rate of \$131.00. Medical expenses and temporary total disability benefits were paid until this claim was controverted on February 3, 2000.
2. The claimant has failed to prove that surgery performed by Dr. Bruffett to correct spondylolisthesis and stenosis are causally related to the fall at work. Therefore the additional medical treatment by Drs. Bruffett, Reddy and Prosser is not reasonably necessary for treatment of the compensable injury.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge