

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F002116

KAY JARRELL, EMPLOYEE	CLAIMANT
STANT MANUFACTURING, INC., EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, CARRIER	RESPONDENT

OPINION FILED AUGUST 27, 2003

Submitted on the record and briefs in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE KENNETH BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE MELISSA ROSS and CAROL L. WORLEY, Attorneys at Law, Little Rock, Arkansas.

ISSUES

This case was submitted on the record and briefs to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not additional medical treatment is reasonably and necessary pursuant to Ark. Code Ann §11-9-508, and whether or not the respondents are in contempt for controverting the treatment as defined by Ark. Code Ann. §11-9-706.

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 are denied. Furthermore, I find the respondents are not in contempt of the Commission's change of physician order.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 23, 2000, at which time the claimant suffered a compensable injury at a compensation rate of \$332.00/\$249.00. Medical expenses and temporary total disability benefits until December 1, 2001 have been paid. This claim was the subject of a previous hearing with orders entered by the Administrative Law Judge on April 30, 2002 and April 17, 2003, the Full Commission on August 22, 2002 and the Medical Cost Containment Division on September 25, 2002.

The claimant contends that the respondent is in contempt of the Commission's order granting a change of physician to Dr. Lon Burba. The claimant argues that once a change of physician is granted, respondents should be liable for as many office visits and diagnostic tests as are necessary for the physician to assess the claimant's condition and make a definitive diagnosis. Until the physician has made a diagnosis and prognosis, it is premature for the respondent to contest the reasonable necessity of the medical treatment.

The respondents contend they have complied with the Commission's order by paying for a one-time visit, thereby allowing the claimant to change physicians. Thereafter, they are free to controvert a claim at any time or contest the reasonable necessity of proposed medical treatment on a case by case basis.

This case was previously set for a hearing on the issue of a change of physician. In view of the precedent establishing the claimant's entitlement to a mandatory change of physician, see Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W.3d 204 (2002), the respondents relented, cancelled the hearing, and entered into an Agreed Order on April 17, 2003 recognizing Dr. Lon

Burba as the authorized treating physician. The Order also instructed the respondents to pay all reasonable and necessary medical expenses. The claimant saw Dr. Burba on one occasion at the respondents' expense. Dr. Burba ordered diagnostic testing, a follow-up appointment, and a referral to Dr. Covey, all of which the respondents controverted as unreasonable and unnecessary.

I acknowledge Mr. Buckner's request in his brief dated July 10, 2003, for a 36% penalty pursuant to Ark. Code Ann. §11-9-802. However, that issue was not discussed at the prehearing conference and does not appear in the prehearing order filed June 25, 2003. Accordingly, that issue will not be addressed in this opinion.

MEDICAL EVIDENCE

This case was the subject of a previous hearing and opinion filed April 30, 2002 by this Administrative Law Judge which summarizes the past medical history (see pages 3-4 of the opinion). The claimant fell on a concrete floor and developed vaginal and perineal numbness with right hip, back and leg pain.

Since the change of physician order was entered, Dr. Burba has examined the claimant and diagnosed pudenda neuropathy and radicular back pain, as well as possible hypothyroidism. He recommended a polyneuropathy work-up, EMG/NCV studies of her legs and back, x-rays of her spine and an MRI scan of her spine. If those tests proved negative, Dr. Burba recommended a bone scan and an MRI scan of her pelvis.

The February, 2003 spinal x-rays and MRI scan and the pelvic MRI scan were all normal. The EMG/NCV study by technician T. Ray is difficult to read and no physician has explained the significance of the findings. The EMG of the lower extremities and paraspinous muscle of the spine were within normal limits. However, the amplitude and conditional velocities were reduced in the

lower extremities. The diagnosis was, “There is a moderately severe axonal sensory and motor polyneuropathy in the lower extremities” (sic).

Dr. Burba referred the claimant to Dr. Carl Covey who diagnosed “post-traumatic, post-fall” sacroiliitis and “neuropathic pain phenomenon related possibly to pudendal nerve injury.” He prescribed medication and recommended radiofrequency lesioning of the right sacroiliac joint. Neither Dr. Burba nor Dr. Covey offer any treatment or cure for a pudendal nerve injury.

In the past, the claimant has received extensive diagnostic testing, consultation with specialists and the opportunity to try different medical treatments.

Dr. Charles Clark in March 2000, characterized her spinal x-rays as normal for her age. He prescribed trigger point injections, medication, back school education and physical therapy.

Dr. John Wilson examined the claimant in April, 2000 and described her lumbar MRI scan as normal.

Dr. John Lytle x-rayed the claimant’s pelvis and hip which were normal. He recommended increased exercise for a contused hip and possible sciatic nerve.

Dr. P.B. Simpson ordered more diagnostic testing in September 2000, with a post-myelogram CT scan of the lumbar spine, whole body bone scan, MRI of the hips, and EMG/NCV studies of the lumbar paraspinal muscle and lower extremities. No abnormalities were found in the back or legs except for mild demyelinating neuropathy evidenced by slowing of conduction in the right lower extremity (see Dr. Reddy’s report of October 13, 2000). Dr. Simpson also recommended a Functional Capacity Evaluation (FCE) which was interpreted as invalid due to inconsistencies. In a report dated November 1, 2000 Dr. Simpson stated he had exhausted the work-up and had nothing further to offer her.

Dr. Yeshwant Reddy saw the claimant in December, 2000, reviewed her history and test results and stated, "the treating physicians and surgeons have not identified a cause for her ongoing pain symptoms." Based on his physical examination, Dr. Reddy diagnosed right sacroiliac joint dysfunction, and a "remote chance" of piriformis syndrome. Dr. Reddy noted that there was no clinical, radiological or electrodiagnostic evidence of lumbosacral radiculopathy or hip radiculopathy based upon the diagnostic testing gathered by her previous physicians.

Dr. Reddy recommended medication, physical therapy and sacroiliac joint injections. Dr. Reddy acknowledged that there is no anatomical impairment rating for a sacroiliac joint injury in the AMA Guidelines and he categorized her injury as similar to a lumbar sprain/strain.

Dr. Reddy performed the sacroiliac joint injections in February 2001. The claimant stated the treatment provided no relief from her back and right leg pain. Dr. Reddy stated "we do not exactly know the cause of her pain." He suggested medication for chronic pain management which the claimant declined. Dr. Reddy described her condition as "not serious" and returned her to work on February 2, 2001 at full duty.

The claimant returned to Dr. Lytle in September 2001, and reported that she was working with no problems. She reported no significant change in her condition with or without her medications. He diagnosed low back pain with gluteal bursitis. Dr. Lytle agreed with Dr. Reddy that there was no impairment rating and the claimant would have to learn to live with her condition. He prescribed medication and exercises. Dr. Lytle stated the claimant was not a surgical candidate.

FINDINGS AND CONCLUSIONS

Once the change of physician order was entered and the respondents paid for the initial consultation, in accordance with Wal Mart v. Brown, ___ Ark. App. ___, ___ S.W.3d ___ (2003),

Dr. Burba became the authorized treating physician.

Any authorized treating physician whether they are chosen by the claimant or by the respondent, is subject to the provisions of Ark. Code Ann. §11-9-508 and Rule 30. The respondents may at any time challenge the reasonable necessity of the authorized physician's medical treatment or controvert the claim in its entirety. Therefore, I find the respondents are not in contempt of the Commission's order.

Since the change of physician order was entered, Dr. Burba has conducted diagnostic testing which merely repeats the earlier tests ordered by Drs. Charles Clark, John Wilson, John Lytle, P. B. Simpson and Yeshwant Reddy with virtually the same results. Unless the quality of the testing is poor, I cannot understand the need to repeat the same diagnostic tests for a traumatic injury. How would a test in 2003 explain the claimant's symptoms two years earlier when testing done contemporaneously with her injury and complaints was negative?

Claimant's counsel argues that Dr. Burba has finally uncovered objective evidence of an injury as reflected by the abnormal EMG/NCV studies. However, this information is not new. Dr. Simpson ordered the same test two years earlier and Dr. Reddy did find evidence of neuropathy. Unfortunately, no physician has been able to use this information to make a diagnosis or to treat the claimant successfully.

Dr. Covey, a referral from Dr. Burba, focused on the sacroiliac joint, however, treatment for that complaint in the past by Drs. Reddy, Lytle and Wilson was unsuccessful.

What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). The extent of the claimant's injury is

called into question because her symptoms cannot be verified by diagnostic testing or the FCE, and because the claimant did not mention her symptoms to her gynecologist during routine check-ups. The claimant has declined pain management and she is not a surgical candidate. Conservative treatment (medication, injections, physical therapy) has not relieved her symptoms but she has no work restrictions or permanent impairment.

The respondents have provided the claimant with adequate medical care following the injury with access to diagnostic testing, and consultation with specialists in orthopedics and neurology, fulfilling their obligation to provide the claimant with reasonable and necessary medical care pursuant to Ark. Code Ann. §11-9-508.

Dr. Burba has not indicated that the claimant's past medical treatment was inadequate or inappropriate. In fact, he repeated the same diagnostic testing which I find was unnecessary. Accordingly, I find the claimant has not met her burden of establishing her entitlement to additional medical treatment by a preponderance of the evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed on February 23, 2000 at which time the claimant sustained a compensable injury.
2. All authorized physicians are subject to the provisions of Ark. Code Ann. §11-9-508 and Rule 30. Once a change of physician has been granted, the doctor becomes the authorized treating physician and his treatment plan is subject to challenge as unreasonable, unnecessary or unrelated to the compensable injury.
3. The respondents have provided adequate medical care to the claimant fulfilling their obligation under Ark. Code Ann. §11-9-508 and all appropriate medical expenses have been paid. Therefore, the respondents

are not in contempt of the Commission's change of physician order.

4. The treatment and referrals recommended by Dr. Burba are redundant and unnecessary. The claimant has failed to prove by a preponderance of the evidence of record that she is entitled to additional medical treatment.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge