

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F211555**

**DEKASHUN LOWE, EMPLOYEE**

**CLAIMANT**

**HEAVYQUIP OF LITTLE ROCK, EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED OCTOBER 10, 2003**

Submitted on the record before Administrative Law Judge Dail Stiles.

Claimant represented by Mr. Thomas W. Mickel, Attorney at Law, Conway, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

The issue to be resolved in this case is the claimant's entitlement to an independent medical evaluation.

The case is submitted on briefs by the respective parties.

It is stipulated that the claimant had a compensable injury to his arm on September 17, 2002.

The claimant was seen and treated by Dr. John Yocum, an orthopedic surgeon. Dr. Yocum performed surgery on the claimant to excise a foreign body on October 14, 2002.

On October 28, 2002, Dr. Yocum stated the following in a clinic note:

On return the bandage is removed. The incision looks good. The sutures are removed. He has full finger motion in flexion/extension. He has elbow motion from about 30 to 120. He has no neurovascular deficit with a palpable pulse.

I will put him in therapy for the coming week. I will let him return to work on the 4<sup>th</sup> of November. I do not feel he has suffered any permanent partial impairment as a result of this injury.

The claimant argues that he continued to have pain and difficulties with his affected upper extremity after Dr. Yocum's report of October 28, 2002, and is entitled to an independent medical evaluation for additional treatment.

The claimant argues that Dr. Yocum's finding that his elbow range of motion was from 30 to 120 degrees was an abnormal finding.

The claimant further argues that "objective medical findings" are not needed to support a continuing need for medical treatment.

Lastly, the claimant cites the case of Chwalinski v. Jim Walter Homes, Inc., 2001 AWCC 217, WCC Claim No. F003001, in support of his position. In that case, the Commission found the Administrative Law Judge had not abused his discretion in awarding an independent medical examination. In that case, the claimant had an abnormal MRI finding.

The respondents argue that an independent medical evaluation is asked for in this case for purposes of obtaining a physical impairment rating which Dr. Yocum did not assess. The respondents argue that an independent medical evaluation is not medical treatment, and that the respondents have no obligation to provide the claimant with an independent medical evaluation merely to seek an impairment rating.

### **FINDING OF FACT**

The claimant does not demonstrate by a preponderance of the evidence that he is entitled to an independent medical examination.

### **DISCUSSION**

The respondent properly articulates the law to require the employer to provide medical treatment to the employee.

Administrative Law Judges often employ and order independent medical evaluations primarily where there is conflicting medical evidence relative to

physical impairment ratings. In this case, there is no conflicting impairment rating, and the “abnormality” claimant’s attorney suggests is found in Dr. Yocum’s report of October 28, 2002, is a diminished range of motion. A range of motion test, as has been previously established, is a test that is not considered “objective” but rather a test which can potentially be manipulated by the claimant, although, I do not suggest that in this case.

The claimant’s request for an independent medical evaluation is respectfully denied and dismissed.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge