

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107847

VINCENT E. BRADLEY, EMPLOYEE	CLAIMANT
SINGLE SOURCE TRANSP. CO., EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INS. CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 30, 2004

Hearing before Administrative Law Judge J. Mark White on December 2, 2004, in Texarkana, Miller County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 2, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on June 21, 2004, and a Prehearing Order was entered that same day. A copy of the June 21, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including June 28, 2001; that on June 28, 2001, the claimant sustained a compensable injury; that Respondents accepted the June 28, 2001, injury as compensable and paid benefits; and that this claim was the subject of a Full Commission Opinion filed August 18, 2003, which opinion is now final and is *res judicata* to this claim.

The parties agreed that the sole issue to be presented was whether additional medical treatment is reasonably necessary in connection with the compensable injury.

The claimant contends that additional medical treatment, including that recommended by Dr. Burba, is reasonably necessary in connection with his compensable injury.

Respondents contend that they have provided the claimant with reasonable and necessary medical treatment; that additional medical treatment is not reasonably necessary in connection with the compensable injury; that Dr. Kleinschmidt is not an authorized treating physician; and that any back problems are the result of an unrelated prior injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury.

DISCUSSION

I. History

The claimant sustained compensable injuries on June 28, 2001, when the truck he was driving overturned. The respondents accepted the injuries as compensable and provided treatment. The claimant was treated for complaints of “passing out,” pain, dizziness and headaches through September 28, 2001, when he was released to return to work by Dr. Reginald Rutherford. An MRI of the claimant’s brain did initially reveal a subdural hematoma on the right, but later examinations showed that the hematoma had healed. Dr. Rutherford blamed the claimant’s continuing complaints of fatigue and memory dysfunction on the head trauma sustained in the accident.

Prior to his release by Dr. Rutherford, the claimant underwent a neuropsychological evaluation by Dr. Judy White Johnson. Dr. Johnson found “quite strong evidence for malingering,” in the words of Dr. Rutherford. Dr. Johnson opined that the claimant’s findings did “not suggest any impairments of either a localized or global nature.”

After his release by Dr. Rutherford, the claimant sought treatment on his own from a Dr. Covert on November 29, 2001. Through referrals by Dr. Covert, the claimant received treatment for his knee, for vision problems, and for neck pain and

headaches. The claimant also underwent surgery to repair a nasal fracture. The claimant then sought a change of physician to Dr. Lon Burba, which was granted by the Commission. Dr. Burba recommended Botox injections for cervical spasms, a program of Depakote to “normalize” the claimant’s mood, and neuropsychological treatment for depression. The respondents controverted this proposed treatment, as well as the treatment provided through Dr. Covert and his referrals.

A hearing was held before a prior administrative law judge, who ultimately found that the treatment provided by Dr. Covert and his referrals was reasonably necessary in connection with the compensable injury, but that the treatment proposed by Dr. Burba was not. The judge’s findings were affirmed and adopted by the Full Commission on October 6, 2003.

In February 2004 the claimant sought medical treatment for chest pains unrelated to his compensable injury. As a result he was able to later return to Dr. Burba. In a June 2, 2004, letter, Dr. Burba diagnosed the claimant with a closed-head injury and “complaints of confusion and vertigo.” He also noted his intention to rule out “cupolith,” though I am unable to determine with any certainty what this is. It may be a mistaken reference to cupulolithiasis, defined by *Dorland’s Illustrated Medical Dictionary*, 29th Edition, as “the presence of calculi in the cupula of the posterior semicircular duct, a cause of benign paroxysmal positional vertigo.”

Dr. Burba recommended "UDS," but I am unable to determine from the record what this is, nor is this term/acronym contained in any of the medical dictionaries or treatises I have consulted. He also recommended "MRI of the brain with special attention to the cerebellum," an EEG, and a neuropsychometric battery.

Dr. Burba concluded his letter as follows:

Since we last saw him, he continues to have headaches, dizziness, trouble with memory, judgment, calculations and speed of thought. He was describes [sic] as having a hematoma of the brain, but we were never able to document this based on this CAT scans that we were able to obtain. His exam today does reveal some upbeat nystagmus. He does have some dysarthria, difficulty with tandem gait with sort of a wobbly gait and I do not know the cause of this. He admits to smoking marijuana, but he states this was a long time ago and should be out of his system by now. Perhaps he has some injury to the upper cerebellum, the craniocervical junction or some diffuse axonal sheering injury. Perhaps he has a cupolith from the accident. He has had extensive oral facial surgery. We are going to work him up as outlined above to see if there is anything objective we can document and go from there.

An MRI was performed on June 7, revealing only a possible "tiny" hemorrhage. The report specifically found the cerebellum and brainstem to be normal. He underwent a psychiatric evaluation on June 29, resulting in a diagnosis of "major depression, recurrent, severe without psychotic features" and "marijuana abuse."

II. Adjudication

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. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

It is not clear what other treatment can be provided to the claimant. Dr. Burba recommended yet another MRI and psychological testing, both of which were performed. The MRI was essentially normal, and there is no evidence in the record to show that any treatment is needed for the possible hemorrhage. The psychological evaluation recommended treatment for the claimant's depression, but the prior administrative law judge specifically found that the claimant's psychological problems were not related to his compensable injury, and there is no new evidence to justify a contradictory decision. Dr. Burba also mentioned "UDS", but nothing in the record explains what this is or what its connection is with the compensable injury.

In short, the claimant's symptoms appear to be essentially the same as in 2001 and 2002. Though *res judicata* does not bar this claim, as Dr. Burba's recommendations are new, I see no new evidence to justify a different finding. I find

that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge