

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200943

GARRY G. CHRISTOPHER, EMPLOYEE	CLAIMANT
SMURFIT STONE CONTAINER, EMPLOYER	RESPONDENT
CRAWFORD & COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 15, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on August 13, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted August 13, 2004, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on June 16, 2004, and a Prehearing Order was filed on June 17, 2004. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to some amendments relative to their respective contentions. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the

parties at all relevant times, including August 27, 2001; that the claimant sustained a compensable injury on said date; that he earned sufficient wages to entitle him to compensation rates of \$331.00 per week for temporary total disability and \$248.00 per week for permanent partial disability; and that the respondents had controverted all benefits beyond those previously paid.

By agreement of the parties, the sole issue presented for determination concerned the claimant's entitlement to additional medical treatment, if any.

At the prehearing conference, claimant contended, in summary, that respondents had inappropriately terminated additional medical treatment; that he was entitled to continued, reasonably necessary medical treatment, including, but not limited to back surgery previously recommended, together with a detoxification program which claimant maintained was reasonably necessary, as well as related to the admitted injury and should remain the responsibility of the respondents. At the hearing, claimant amended his contentions to request a nerve conduction study be approved as additional treatment.

The respondents contended that it had accepted and paid appropriate, medical and related treatment; that any surgery recommended by Dr. Savu and/or Dr. Kornblum was not reasonably necessary, and, further, that the detoxification treatment was not reasonably necessary in relation to the August 27, 2001, injury. At the hearing, respondents pointed out that Dr. Kornblum

conducted an additional MRI which indicated that the disc the physicians were treating had resolved itself and that any supplemental medical, including the nerve conduction study would not be reasonable.

The claimant was the only lay witness to testify. The record in this case is composed of the transcript of the August 13, 2004, hearing containing a joint medical exhibit consisting of seventy-eight (78) pages, together with the evidentiary depositions of Dr. Calin Savu and Dr. Terence P. Braden, introduced as "Joint Exhibit B" and "Respondent's Exhibit 1," respectively, and retained in the Commission file in bound form. Subsequent to the hearing, both parties submitted letter briefs arguing how the medical evidence supported their respective contentions.

From a review of 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence,

that he is entitled to additional medical treatment necessary to diagnose and maintain his condition. Specifically, the claimant has established, by a preponderance of the evidence, that a repeat EMG study recommended by Dr. Kornblum is reasonably necessary. In addition, the claimant has shown, by the greater weight of evidence, that he is entitled to further treatment in the form of medical management to assist him in getting off addictive pain medication.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that surgery is reasonable or necessary treatment.
5. Respondents have controverted all benefits beyond those previously paid.
6. Additional issues are, by necessity, specifically reserved.

HISTORY

The claimant, Garry G. Christopher, is forty-eight (48) years old. It is undisputed that the claimant sustained a compensable injury on August 27, 2001. The claimant was pushing a unit of boxes on a conveyor line which was extremely heavy when he felt his back pop, which, apparently, caused his left leg to give way. The claimant was immediately taken to the emergency room at St. Bernard's Medical Center in Jonesboro, Arkansas. While at the hospital, the claimant was examined by Dr. Jeffrey A. Kornblum for a neurosurgical consultation. A CT scan taken at the hospital indicated a small HNP at L5-S1

on the right without nerve root compression. Dr. Kornblum's notes reflect that the claimant had been seen by Dr. Kyle in the past for a disc herniation at the same level which had resolved and that the claimant had done well since that time until the incident on August 21, 2001. Dr. Kornblum prescribed physical therapy and medication and took the claimant off work until October 1, 2001, at which time he was to return to Dr. Kornblum's office. (Tr.9)(Jt. Ex. A, pp.12-16)

The record reflects that the claimant sustained a prior back injury with the employer on August 21, 1998, at the same level as the within claim. The claimant was treated primarily by the company doctor, Dr. Steve Swyden at Occupational Health Partners in Jonesboro, Arkansas. The claimant was treated conservatively with physical therapy and medication, and released to full-duty employment on October 2, 1998. As previously noted, the claimant did not require additional medical treatment between October 2, 1998, and his admitted injury, aforementioned. (Tr.15-16)(Jt. Ex. A, pp.5-9)

Following his emergency room treatment, the claimant was next examined and evaluated by the company physician, Dr. Michael Lack, with Occupational Health Partners in Jonesboro, Arkansas. Dr. Lack evaluated the claimant on the day of the injury. He noted that although the claimant initially experienced tingling in the left leg, that he was now having right leg pain and numbness. Dr. Lack diagnosed a lumbar strain. He continued the claimant on

the medications prescribed by Dr. Kornblum and scheduled a follow-up exam the next day. The claimant was released to return to work following the August 28, 2001, examination with significant restrictions, including no lifting, pulling, or pushing more than five (5) pounds, no stooping, crawling, or bending, and to avoid operating hazardous equipment or driving. The claimant was scheduled to return on September 4, 2001. The claimant returned to Dr. Lack on September 4, noting some improvement. The claimant was permitted to return to work with the same restrictions with follow-up the next week. On September 11, 2001, the claimant reported additional pain for no known reason. Dr. Lack noted that the claimant complained of pain in the neck with axial loading of the spine and that the claimant had a positive Waddell's sign. Dr. Lack commented that he was still awaiting results of the CT of the back. Again, he permitted the claimant to return to work with the same restrictions and scheduled a follow-up on September 18, 2001. On his return, on September 18, claimant reported low back pain, as well as increased neck pain. Dr. Lack reported that the CT reflected a bulge which abuts the right S1 nerve without apparent compression, as well as a bulge at L3-L4. Dr. Lack noted that he was going to ask for referral to Dr. Savu or Dr. Gipson. (Jt. Ex. A, pp.17-31)

The claimant was next seen in follow-up by Dr. Kornblum on October 1, 2001. At that time, surgical options were discussed with the claimant. The

claimant expressed a desire to proceed with surgery, and, in fact, Dr. Kornblum planned to schedule the claimant for a discectomy at L5 on the right without requiring any further diagnostic studies. (Jt. Ex. A, p.32)

Respondents then sent the claimant to Dr. Reginald Rutherford for a neurological evaluation. Dr. Rutherford evaluated the claimant on October 17, 2001. Because of the lack of clinical findings to warrant surgery, Dr. Rutherford recommended a MRI of the lumbar spine and EMG/nerve conduction studies while allowing the claimant to continue working under Dr. Lack's restrictions. The claimant was seen for follow-up on October 31, 2001. Dr. Rutherford's final diagnosis was lumbar strain. He pointed out that although there was a small bulge on the right, it was without nerve root or foraminal compromise and that the EMG/nerve conduction studies proved normal. He opined that the claimant was not a candidate for lumbar spinal surgery and recommended continued, conservative treatment, including referral to a local specialist for lumbar epidural steroid injections. (Jt. Ex. A, pp.33-36)

The claimant then came under the care and treatment of Dr. Calin Savu, a pain management specialist in Jonesboro, Arkansas. Dr. Savu first evaluated the claimant on November 12, 2001. Initially, Dr. Savu released the claimant to return to regular work activities on November 14, 2001. Because of the claimant's continued complaints of pain, and, after a failed course of aggressive, conservative treatment, and following additional diagnostic studies,

specifically, a discogram, Dr. Savu recommended surgery in the form of a fusion at L5-S1 on May 13, 2002. (Jt. Ex. A, pp.39, 47, 54-63)

On August 21, 2002, the claimant was seen for a neurosurgical IME by Dr. Jim J. Moore, a neurosurgeon in Little Rock, Arkansas. In addition to his examination and evaluation, Dr. Moore reviewed the discogram relied upon by Dr. Savu. While Dr. Moore noted some very minor prominence of the disc, he did not interrupt it as a herniation. Dr. Moore opined that the claimant was not a surgical candidate. He diagnosed the claimant's problems as a sacroiliac sprain/strain with radiculitis. Dr. Moore noted that the claimant inquired as to the ongoing use of Morphine which Dr. Moore felt might require further management and possible detoxification. (Jt. Ex. A, pp.64-65)

The claimant was next examined and evaluated by Dr. Terrence P. Braden, a physical medicine and rehabilitation specialist. Dr. Braden's examination indicated questionable testing on range of motion. He found a normal neurological examination. Dr. Braden further questioned the use of narcotic analgesia on an ongoing basis and opined that the claimant could return to regular work duty, and that his subjective complaints of pain were limiting his functional capabilities. Dr. Braden opined that the claimant could return to the medium-demand level of work, previously outlined by Dr. Lack. His finding of permanent impairment, if any, was somewhat confusing; however, claimant's entitlement to permanent impairment, if any, was not at

issue. (Jt. Ex. A, pp.66-71)

The record reflects that the claimant has also undergone a functional capacity evaluation at American Physical Therapy Center, Inc., in Jonesboro, Arkansas. The report reflects that the claimant appeared confused throughout the testing, although the claimant denied having taken any medications on the day of testing. The report further reflected that the claimant tested positive on three (3) out of five (5) Waddel's sign and that the claimant failed the motivation test which resulted in the testing being terminated early. The evaluator, Dr. Jim Keller, did recommend that the claimant receive medical care for his drug addictions. (Jt. Ex. A, pp.72-73)

The record reflects that the claimant returned to Dr. Kornblum for yet another neurosurgical consultation on May 17, 2004, at the request of Dr. Joe Hughes. Prior to the referral, Dr. Hughes had the claimant undergo a repeat MRI of the lumbar spine on March 15, 2004. As pointed out by respondents in its contentions at the hearing, Dr. Kornblum noted that the claimant's disc herniation may well have resorbed since the admitted injury of August 27, 2001, because he did not see any soft disc herniation on the most recent MRI. The only additional recommendation made by Dr. Kornblum was that the claimant again undergo EMG/nerve conduction studies which respondents have also resisted. (Jt. Ex. A, pp. 76-77)

ADJUDICATION

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The employee has the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary. *Wal-Mart Stores, Inc., vs. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, the Commission must analyze both the proposed procedure and the condition it is sought to remedy. *Debra Jones vs. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989, (WCC #D512553).

At the hearing, the claimant candidly admitted that he had developed a dependence on prescription medication. (Tr.15)

The claimant continues to request back surgery, as well as a

detoxification program. It is apparent that the claimant needs help with his drug dependency regardless of the ultimate decision concerning his request for surgery. In addition, at the hearing, claimant's attorney amended his contentions to include additional diagnostic testing, specifically, a repeat EMG/nerve conduction study recommended by Dr. Kornblum. A portion of claimant's testimony is set out below:

BY JUDGE GREENBAUM:

Q Who is prescribing your prescription medication, Mr. Christopher?

A Dr. Savu.

Q And how often do you see Dr. Savu?

A He's referred me to go to the general practitioner. I haven't seen him in several months, but –

Q For your medication?

A Yeah, to – he's asked me to get a general practitioner to start filling my prescription. I haven't seen him. Last time I saw him was – it's been a while since I've seen him, but the last medication –

Q So who is the general practitioner you're seeing?

A I just started seeing Dr. Hines.

Q And is Dr. Hines prescribing your medication?

A The very last or the time before Dr. Savu did. Okay? And then Dr. Savu did, because Dr. Hines is wanting me to set up more appointments with Dr. Savu, and, of course, I can't pay for it.

Q Well, who's paying for the medication?

A Me.

Q And –

A Oh, I'm sorry, I'm sorry, I lied. The last two times I got medication, I got it on a card that workmen's comp sent me.

Q So workers' comp is still paying for your medication?

A Yes, the last two times.

Q What medication are you taking?

A Methadone.

Q Is that the only medication you're taking?

A Yes.

Q How often are you taking it?

A Three times a day.

Q And that's for pain?

A Yes, sir.

Q What exact medical treatment are you asking this Commission to award you, Mr. Christopher? What are you wanting that you haven't been provided before?

A Back surgery.

Q You're wanting back surgery?

A Yes, sir.

Q And what doctor has recommended back surgery to you?

A Dr. Savu and Dr. Kornblum.

Q And is that what you're asking this Commission to award you, is back surgery?

A Yes, sir.

Q Anything else?

A Yes, sir. Well, after the back surgery and everything is all right, I want off the drugs. I want rehab, you know, or even if you didn't give me back surgery, I still don't need to be on drugs the rest of my life. I need help getting off. I mean, they sent me to this doctor, and he put me on drugs, and they ought to be responsible for getting me off of them.

Q So your first request is back surgery, and if that's denied, you want help in getting off the drugs?

A At least that, yes, sir. (Tr.34-36)

As reflected by the medical evidence, the claimant has been examined and evaluated by numerous physicians, including two (2) neurosurgeons, a neurologist, a physical medicine and rehabilitation specialist, general practitioners, and a pain specialist. The overwhelming weight of medical opinion of record does not support the claimant's request for experimental back surgery. Dr. Savu is the only physician that continues to recommend back surgery. His recommendation is based primarily upon the claimant's continued complaints of pain. Dr. Savu has recommended a lumbar fusion while acknowledging that it may improve the claimant's condition, make him worse, or offer no relief whatsoever. I find Dr. Savu's recommendations to be unreasonable, especially in view of the fact that the claimant is a heavy smoker and would not be a good candidate for a fusion. (Jt. Ex. B, pp.41-46)

Admittedly, Dr. Kornblum initially suggested surgery, specifically, a discectomy which is different than the fusion recommended by Dr. Savu. As previously pointed out, Dr. Kornblum made these recommendations without the benefit of any additional diagnostic studies beyond the CT scan performed on August 27, 2001. No further explanation was offered by Dr. Kornblum for the recommendation. Further, as pointed out at the hearing, Dr. Kornblum has opined that the small disc herniation previously observed appears to have resorbed over the last few years and that he did not see any disc herniation based upon the MRI study conducted on March 15, 2004. There is no competent evidence that Dr. Kornblum continues to recommend surgical intervention. His only recommendation is that the claimant undergo EMG/nerve conduction studies. From a review of all the medical evidence, it is herein concluded that the claimant has failed to prove, by a preponderance of the evidence, that he is entitled to back surgery recommended by Dr. Savu.

The next issue is whether the claimant is entitled to treatment in the form of a detoxification program or some other means to get the claimant off narcotic analgesics.

Contrary to respondents' assertion that such treatment is not reasonably necessary in relation to the August 27, 2001, injury, I find that the claimant has proven, by a preponderance of the credible evidence, that he requires assistance in getting off medication which he has clearly developed a

dependence upon. This dependence is noted by several physicians, including Drs. Moore, Braden, and Keller, and is clearly related to the treatment prescribed for the August 27, 2001, admitted injury.

When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is compensable, unless it is the result of an independent intervening cause. *Jeter vs. B.R. McGinty Mechanical*, 62 Ark. App. 53, 965 S.W.2d 53 (1998).

I, likewise, find that the claimant has proven, by a preponderance of the credible evidence, that he is entitled to a repeat EMG/nerve conduction study recommended by Dr. Kornblum. Repeat diagnostic studies are reasonably necessary to ascertain the nature and extent of injury. The fact that the claimant had a normal study in 2001 does not preclude entitlement to a repeat study. I feel compelled to point out that it was a repeat MRI study which reflected that the claimant's disc herniation initially observed, was no longer present which, in part, eliminated the need for surgery initially recommended by Dr. Kornblum. In view of the foregoing, I hereby make the following:

AWARD

Respondent, Crawford & Company, is hereby directed and ordered to pay continued medical treatment consistent with the foregoing findings and conclusions.

Because this is a post-July 1, 2001, injury, and because claimant's

entitlement to indemnity benefits was not an issue, no attorney's fees are appropriate in a medical only claim.

By necessity, claimant's entitlement to further benefits, if any, must be specifically reserved.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge