

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305558

WILLIE L. DAVEY, EMPLOYEE	CLAIMANT
RICELAND FOODS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE, CARRIER	RESPONDENT

OPINION FILED OCTOBER 6, 2004

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

Claimant represented by the HONORABLE MIKE ETOCH, Attorney at Law, Helena, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

This case was submitted on the record in lieu of a full hearing to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is the reasonable necessity of additional medical treatment pursuant to 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.

STATEMENT OF THE CASE

The parties have agreed to the following stipulations: An employer-employee-carrier relationship on March 29, 2003 at which time the claimant sustained a compensable back injury at a compensation rate of \$226.00/\$170.00. Medical expenses and temporary total disability benefits were paid.

The claimant contends he remains symptomatic and wishes to undergo surgery as recommended by Dr. Bauer, an orthopaedic surgeon in Indiana. The claimant seeks payment of medical expenses and attorney's fees.

Respondents contend all appropriate benefits have been paid. Additional medical treatment is unreasonable and unnecessary. The respondents rely on Dr. Saer's opinion of June 30, 2004.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits, incorporated by reference.

The claimant, age 40 (D.O.B. June 21, 1964), injured his back at work on March 29, 2003. He came under the care of general practitioner, Dr. Hord and orthopaedic surgeon, Dr. Edward Saer. The claimant was diagnosed with a lumbar strain and treated conservatively with medications and physical therapy. He was also returned to work at light duty, which the respondent-employer provided.

An MRI scan taken April 21, 2003 showed mild desiccation at L4-5 with a right protrusion and annular tear. The radiologist, Dr. Kusenberger, commented that the "desiccation (was) in keeping with disc degeneration." Dr. Hord (see his report of April 24, 2003) and Dr. Saer (see his report of May 19, 2003) opined that the claimant was not a surgical candidate based on his physical examinations and the results of diagnostic testing.

The claimant remained symptomatic with complaints of low back and right leg pain and numbness in his right foot and was referred to Dr. Ackerman for epidural steroid injections on May 28, 2003. The claimant returned to Dr. Hord complaining that his symptoms were worse. The claimant also complained to Dr. Hord that his condition prevented him from driving or performing light duty, however Dr. Hord felt the complaints were unfounded (see his report of May 1, 2003).

Dr. Saer saw the claimant again on June 24, 2003 and reiterated his opinion that the claimant was not a surgical candidate. The claimant complained of back and right leg pain and an inability to do his light duty work. He commented that the claimant "literally wiggles with discomfort" when his muscles were palpated during the physical examination. Dr. Saer continued the claimant on light duty and referred him to Dr. Safman on July 30, 2003. Dr. Safman agreed with Dr. Saer's diagnosis of a lumbar strain and symptom magnification.

The claimant moved to Indiana and came under the care of orthopaedic surgeon, Dr. Patrick Bauer. A repeat MRI scan conducted February 5, 2004 showed the same findings as those on the April 21, 2003 MRI scan. The claimant was diagnosed with degenerative disc disease and a protrusion at L4-5. Dr. Bauer repeated the claimant's earlier course of treatment with physical therapy and injections but the claimant remained symptomatic.

Dr. Bauer referred the claimant to another orthopaedic surgeon, Dr. Holt, who authored a report dated February 5, 2004. He commented, "the patient has difficulty with communication and some of the answers (sic) gives to me are sort of inappropriate." The claimant complained of back and right leg pain with numbness in his foot. Dr. Holt commented that the "compression distraction test" was negative. Dr. Holt recommended medication and consultation with Dr. Louis Williams for rehabilitation.

Dr. Bauer issued a letter dated January 6, 2004 opining there was a causal connection between the claimant's injury and the MRI findings of disc "trauma," based on the claimant's history of symptoms since the accident. Although Attorney Etoch refers in correspondence to Dr. Bauer and Dr. Holt's recommendations for surgery, I was unable to find a report from either doctor in the exhibit packet recommending surgery.

Dr. Saer authored a letter dated June 30, 2004 commenting on the claimant's present condition:

I have reviewed the MRI that was done at Stuttgart on April 21, 2003 and compared it to the MRI films that were provided that were done in Jeffersonville, Indiana in the open MRI there on October 17, 2003. There were no T1 axial images provided with the more recent MRI.

It appears that he has some desiccation at L4-5 with a small right-sided annular tear or disc protrusion. This is basically unchanged from the MRI in Stuttgart.

If Mr. Davey is still having problems, I would recommend a current MRI in a closed unit for better resolution, or a CT myelogram.

The "degenerative disc disease" that you (Attorney Ryburn) reference was not caused by the injury at work. That would not be the basis for any recommendation for surgery. Certainly, if he had a disc protrusion and some evidence of nerve root compression, surgery

might be an option. I do not think there is enough evidence of that on the current studies to warrant a recommendation for surgery though.

FINDINGS AND CONCLUSIONS

As this claim 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.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission, February 17, 1989 (Claim No. D612291). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

In summary, the evidence shows that the claimant was diagnosed with a right disc protrusion, annular tear and disc degeneration. He was treated conservatively with medication, physical therapy and epidural steroid injections. Drs. Hord, Saer, and Safman all recorded symptom magnification. The claimant was not considered a surgical candidate.

The claimant then moved out-of-state and repeated the earlier course of treatment with more medication, physical therapy and epidural steroid injections. A repeat MRI scan showed no change in his condition. The claimant was referred from one orthopedic surgeon, Dr. Bauer, to another, to Dr. Holt who recommended medication and rehabilitation. The claimant is now requesting surgical intervention.

Dr. Saer reviewed the claimant's latest MRI scan and opined that the claimant's status was unchanged and there was still no medical evidence to warrant surgical intervention.

Accordingly, I find the respondents have provided adequate medical care with treatment, diagnostic testing and consultation with a specialist. The claimant is not a surgical candidate. By his own admission, the recommended course of conservative treatment has not been helpful. Therefore, I find further medical treatment is not reasonably necessary.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on March 29, 2003 at which time the claimant sustained a compensable back injury. Respondents paid medical expenses and temporary total disability benefits.
2. The claimant has received appropriate medical care and respondents have paid all necessary medical expenses.
3. The claimant has failed to prove by a preponderance of the credible evidence of record that further medical treatment is reasonably necessary.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge