

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400662

BILLY DEWITT

CLAIMANT

RYERSON TULL, INC.

RESPONDENT EMPLOYER

TRAVELERS

RESPONDENT CARRIER

ORDER AND OPINION FILED DECEMBER 8, 2004

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE DONALD S. RYAN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on November 10, 2004. A prehearing conference was held on October 6, 2004 and a prehearing order was filed on October 7, 2004. The prehearing order was introduced into evidence as Commission Exhibit No. 1 and made a part of the record without objection

At the prehearing conference, the parties agreed there was a compensable injury on December 18, 1999.

The claimant contends he is entitled to prescription medication recommended by his authorized treating physician. The claimant was on Vioxx and that drug was taken off the market and the substitute drug has been denied.

The respondents contend the prescription medication is no longer reasonable and necessary for the injury occurring five years ago.

Issues to be litigated:

1. Prescription medication.

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 witnesses and to observe their 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. There was a compensable injury on December 18, 1999.
2. The claimant has proven by a preponderance of the evidence that the prescription medication he has requested is reasonable and necessary and the responsibility of respondents.

DISCUSSION

The claimant sustained a compensable injury on December 18, 1999, to his back while performing heavy lifting activities. The claimant has had continued medical care and treatment since that injury, with his last doctor being Dr. Harold Betton. The claimant's most recent medical care was hot pads on the back and Vioxx prescription medicine. The claimant took one or two Vioxx per day depending on his pain level during the past five years for pain in his low back. Vioxx was taken off the market and the claimant's treating physician prescribed Celebrex and the insurance company

denied additional medication. The claimant contends he is without pain medication and his condition has worsened. The claimant has been working at the vinyl factory during the past year in a job that does not require lifting.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 849 (1983).

In the present matter, I find that claimant has proven by a preponderance of the evidence that the prescription medication is reasonable and necessary and the

responsibility of respondents to provide such. The claimant has treated with Dr. Harold Betton as his authorized treating physician and his care and treatment of the claimant has been paid by the respondent insurance company. The claimant has been taking the prescription medicine Vioxx, which has been permanently taken off the market. According to the claimant, his doctor prescribed a substitute medicine for Vioxx and the insurance company denied payment. The only medical record in evidence is a letter from the claimant's doctor, Dr. Harold Betton dated August 19, 2004, stating pain medication was necessary for the claimant to help cope with pain. There is no contra report in evidence that might persuade me otherwise. I found the claimant to present credible testimony about his condition and his need to continue working and Vioxx had previously helped him deal with pain and be able to work.

ORDER

The claimant has proven by a preponderance of the evidence that the prescription medication he has requested is reasonable and necessary and the responsibility of respondents.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715, *Coleman v. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990) and *Chamness v. Superior Industries*, W.C.C. E019760 (Opinion filed March 4, 1992).

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**