

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005412

MELANIE KELLEY, EMPLOYEE

CLAIMANT

**COOPER ENGINEERED PRODUCTS,
SELF-INSURED EMPLOYER**

RESPONDENT

CROCKETT ADJUSTMENT, TPA

RESPONDENT

OPINION FILED MARCH 9, 2004

Hearing before Administrative Law Judge J. Mark White on February 17, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by Mr. Norwood Phillips and Mr. Casey Castleberry, Attorneys at Law, El Dorado, Arkansas.

STATEMENT OF THE CASE

On February 17, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on January 12, 2004, and a Prehearing Conference Order was entered the following day. A copy of the January 13, 2004, Prehearing Conference 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 Conference 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 February 7, 1999; and that on February 7, 1999, the claimant sustained a compensable injury.

The parties agreed that the issues to be presented were whether additional medical treatment, specifically the percutaneous discectomy procedure recommended by Dr. Tom Hart, is reasonably necessary in connection with the compensable injury; and controversion and attorney's fees.

The claimant contends that the percutaneous discectomy procedure as requested by Dr. Tom Hart is reasonable and medically necessary.

Respondents contend that the percutaneous discectomy procedure as requested by Dr. Tom Hart is neither reasonable nor necessary regarding treatment of the claimant's compensable 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 claimant and to observe her 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 opinions of Drs. Vernon Mark and Bill Mastrodimos are entitled to more weight than the opinion of Dr. Thomas Hart.
4. The claimant has failed to prove by a preponderance of the evidence that the percutaneous discectomy procedure recommended by Dr. Thomas Hart is reasonably necessary in connection with the compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

The primary issue herein is whether the L5-S1 percutaneous discectomy proposed by Dr. Thomas Hart is reasonably necessary in connection with the claimant's compensable injury. It should first be noted that this claim was also the subject of an Administrative Law Judge's Opinion filed May 7, 2003, wherein the ALJ found in relevant part that the claimant had sustained a compensable low back injury and that she was entitled to additional medical treatment for her low back

from several doctors including Dr. Hart. That Opinion was initially appealed by the respondents, but the appeal was dismissed at their request on July 17, 2003.

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).

Lumbar percutaneous discectomy “involves the percutaneous introduction of a suction trephine into the disc space under local anesthesia with the removal of the intradiscal nucleus pulposus.” Raymond M. Wolfe, et al, *Low Back Pain* § 8-9(B) (3rd ed. 1989). *Dorland’s Illustrated Medical Dictionary* (26th ed.) defines the intradiscal nucleus pulposus as, “a semifluid mass of fine white and elastic fibers that forms the central portion of an intervertebral disk.”

Dr. Hart has diagnosed the claimant with “intervertebral disc disruption, i.e. discogenic pain at the 5-S1 level.” He recommended the claimant undergo “a percutaneous discectomy, which is a minimally invasive outpatient, nonsurgical procedure in debulking her nucleus pulposus and providing her some relief for her continuing discogenic back pain complaints.”

The respondents submitted Dr. Hart’s recommendation for two peer review

analyses, both of which determined that a percutaneous discectomy was not medically appropriate for the claimant. The first reviewer, Dr. Bill Mastrodimos, offered the following rationale:

This claimant has long standing back pain that has not responded to a course of conservative therapy. She underwent a discography which showed normal disc architecture, no annular tear or extravasation of dye. However, she reported concordant pain with the L5-S1 injection. In my opinion, given that the disc appears normal on MRI and CT, and the lack of improvement with intradiscal steroids, makes the positive results suspect. However, if we assume that the discogram is valid and that she has discogenic pain at L5-S1, then she is not a candidate for a percutaneous discectomy. Percutaneous discectomy is indicated for the treatment of contained disc herniations in patients with radicular pain secondary to root impingement, not for the treatment of discogenic pain.

The second reviewer, Dr. Vernon Mark, offered a similar rationale for concluding that the proposed procedure is not medically appropriate. Citing an article in the journal *Neurosurgery*, Dr. Mark stated that percutaneous discectomy is appropriate for patients “presenting with radicular symptoms, with radiological studies confirming a herniated soft disc, who have experienced failure of conservative nonsurgical treatment.” The claimant meets only the last of these three criteria. Dr. Mark added, “The claimant’s [sic] are selected on the basis of clinical symptoms and radiological evidence, that removal of the nucleus pulposus would

decompress the affected nerve root.” Dr. Mark added that the claimant “does not have a bulging disc on to a nerve root.”

It is true that neither of the reviewing physicians physically examined the claimant. However, the dispute between the doctors appears to have nothing to do with their assessment or diagnosis of the claimant’s condition; rather, their dispute is more precisely about what criteria should be used to determine when a percutaneous discectomy is medically appropriate. The fact that these physicians have not examined the claimant is thus entirely irrelevant, because all three physicians agree on what the claimant’s current condition is. They disagree only as to what abstract criteria should be used to determine when a percutaneous discectomy is medically appropriate.

Dr. Hart has determined that a percutaneous discectomy is appropriate in this case, but nothing in the record explains his rationale for this conclusion, nor the criteria he used to make this conclusion. The two reviewing physicians, however, have provided detailed explanations of the criteria used to make their determinations, and the criteria they outline appears reasonable. Given the conclusory nature of Dr. Hart’s opinion, and the detailed explanations provided by the reviewing physicians, I find that the opinions of the reviewing physicians are entitled to more weight than the opinion of Dr. Hart.

Moreover, the record contains nothing to explain why a removal of disc material would be of any benefit for a disc that is neither bulging nor herniated. I take judicial notice of the previous ALJ's finding that the claimant has a bulging disc at L4-L5, but nothing in the record identifies any objective abnormality at L5-S1, the level on which Dr. Hart proposed to perform this procedure. The only evidence of an abnormality at L5-S1 is the claimant's subjective response to the discogram performed by Dr. Hart.

Though objective findings are not required to prove a claim for additional medical treatment, the absence of such findings can be a fact of at least some probative value. *Cf. Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W.2d 1 (1999). Given the lack of any objective finding of abnormality or injury at L5-S1, given Dr. Hart's conclusory recommendation, given the detailed criteria and objections raised by the two reviewing physicians, and given the greater weight I assign to the opinions of the two reviewing physicians, I find that the claimant has failed to prove by a preponderance of the evidence that the percutaneous discectomy procedure recommended by Dr. Tom Hart is reasonably necessary in connection with her compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that the percutaneous discectomy procedure recommended by Dr. Tom Hart is reasonably necessary in connection with her 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