

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F200443**

**JON D. MOORE, EMPLOYEE**

**CLAIMANT**

**L A DARLING COMPANY, EMPLOYER**

**RESPONDENT**

**MANAGEMENT CARE CLAIMS SOLUTIONS,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 26, 2004**

Hearing before Chief Administrative Law Judge David Greenbaum on December 5, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Philip M. Wilson, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Mark A. Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted December 5, 2003, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this case on October 29, 2003, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. 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 at all relevant times, including July 26, 2000; that claimant sustained a compensable back

injury on said date; that he earned sufficient wages to entitle him to a compensation rate of \$257.00 per week for temporary total disability; that respondents initially paid medical treatment, as well as indemnity benefits for the claimant's time off work; and that respondents had controverted all benefits beyond those previously paid.

The primary issue presented for determination was whether the claimant's physical problems beginning on or about September, 2001, were causally related to the admitted injury, entitling the claimant to additional workers' compensation benefits.

Claimant contended, in summary, that all of his physical problems, need for treatment, including surgery, and disability were directly and causally related to the July 26, 2000, admitted injury; that respondents should be held responsible for all medical treatment, including surgery during September, 2001, together with continued, reasonably necessary medical treatment; that the claimant was entitled to temporary total disability for the period beginning September 28, 2001, and continuing through November 15, 2001; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability.

The respondents contended that claimant sustained a minor injury on July 26, 2000, for which it paid appropriate benefits and that the benefits the claimant now seeks were not the result of the admitted injury. Alternatively,

respondents maintained that the claimant failed to give timely notice that the work-related injury was the cause for his need for surgery in September, 2001, and that claimant was consequently not entitled to receive benefits or compensation prior to belated notice being given. In addition, if benefits were awarded, respondents contended that it was entitled to a credit for any benefits the claimant received from the employer's group health insurance carrier and/or short-term disability policy provided by the employer pursuant to A.C.A. §11-9-411.

The claimant testified in his own behalf. Linda Edwards and Earl Wruck were called as witnesses for the respondents. The record is composed solely of the transcript of the December 5, 2003, hearing containing numerous exhibits.

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. 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 evidence, that all of his physical problems, need for treatment, including back surgery, and resulting disability were directly and causally related to the July 26, 2000, admitted injury.
4. Respondents are responsible for all medical treatment related to the claimant's compensable back injury, including, but not limited to surgery performed during September, 2001, and respondents remain responsible for continued, reasonably necessary medical treatment. Respondents are to reimburse the appropriate medical providers which paid for the claimant's medical treatment, including reimbursing the claimant any out-of-pocket expenses, if applicable.
5. The claimant has proven, by a preponderance of the credible evidence, that he is entitled to temporary total disability for the period beginning September 28, 2001, and continuing through November 15, 2001, at which time the claimant returned to work for the employer herein.
6. The claimant's healing period ended December 17, 2001.
7. The issue of claimant's entitlement to permanent disability has been specifically reserved.
8. Respondents are entitled to a credit or offset for benefits the claimant has previously received for medical services and disability benefits paid under the employer's group health care plan and short-term disability

policy pursuant to A.C.A. §11-9-411.

9. Respondents have controverted all benefits beyond those previously paid. Claimant's attorney is entitled to the maximum statutory attorney's fee on all additional benefits pursuant to, and limited by, A.C.A. §11-9-715.

### DISCUSSION

The facts in this case are basically undisputed. The claimant, Jon D. Moore, age twenty-six (26) began working for the respondent, L A Darling Company, in August, 1999. He was required to undergo a pre-employment physical prior to being hired. The claimant denied experiencing any back problems prior to sustaining an admitted injury on July 26, 2000. The claimant promptly reported his back injury. The next morning, Linda Edwards, a human resources (H.R.) clerk, escorted the claimant to the company doctor, Dr. Mack Shotts, in Paragould, Arkansas. Dr. Shotts treated the claimant for several months. Dr. Shotts eventually admitted the claimant for an MRI which revealed disc herniations at various levels. (Jt. Ex. A, p.5)

Dr. Shotts then referred the claimant to Dr. Ron Schechter, an orthopedic specialist in Paragould, Arkansas. Dr. Schechter evaluated the claimant on November 28, 2000, at which time he issued the following assessment and plan:

Back pain. I spent approximately 1 hour face to face with Mr.

Moore today. I discussed the case with him, the nurse from Darling Store Fixtures as well as the Human Resources Manager for Darling Store Fixtures. I advised them all that I think Mr. Moore's problem involves a chronic problem with an acute exacerbation. I think the radiographic findings described above including the Par's defect, the degenerative disc disease and some of the osteophytes are all suggestive of chronic changes and congenital developmental changes that Mr. Moore has likely had for a long time. There is no evidence of any instability at the L5, S1 level. I feel like these changes overall have set Mr. Moore up for a weakened back and given him the potential to easily strain his back. I think that this is probably what has happened with the recent injury in July in that he had an acute sprain on an already weakened back. Therefore, I think he has a new problem on a pre-existing problem. I advised Mr. Moore and his employers that overall I think that he can return to work full duty without formal restrictions, but both the patient and the employer need to understand that based on his development and chronic problems has a weakened back and is going to be at a high risk for re-injury to the back over time. He and his employer were advised that the more heavy lifting, bending and twisting he does with his back the more likely he is to have repeated strains and "giving way" of the back. I did give the patient a prescription for physical therapy to include a back and abdominal strengthening program as well as some back and lower extremity strengthening and stretching. Overall I am a little bit concerned if there could be some potential secondary gains here, but I have nothing objective to support these findings. My concerns are based off #1 in talking to the Human Resources Nurse she reports that both of the patient's parents are on disability and she is concerned that the patient is trying to get on disability as well. My other concern is that some of the exam findings were somewhat inconsistent in that the patient had no apparent discomfort with straight leg exam in a seated position with the hip 90 degrees and the leg 10 degrees short of full extension. However when a straight leg was performed with him lying down, he complained of radicular pain. Nonetheless, the treatment plan will be as above. I have written the appropriate information down for Jon's employer and his primary care physician. I think that at this point, as long as he takes care of his back and avoids further injury, he can follow-up with me on an as needed basis and follow-up with his primary

care physician from here. (Jt. Ex. A, p.18)

I found the claimant to be a credible witness. The claimant's undisputed testimony was that the company's H.R. manager, Pam Steele, told him that his physical problems were not job-related, but, rather, a genetic problem and that the employer would no longer be responsible for his medical treatment. Clearly, respondents were not justified in unilaterally terminating the claimant's right to continued medical treatment. The record reflects that the claimant returned to work performing his regular job activities despite Dr. Schechter's clear admonition to avoid such work. It is further undisputed that the claimant complained to his immediate supervisor, Scott Ryan, that the work caused him to experience exacerbations of his injury. Because the claimant's condition grew progressively worse, and because respondents terminated all workers' compensation benefits, the claimant then sought additional medical treatment from his family physician, Dr. Kevin Diamond. Claimant's additional medical treatment was paid under the employer's group health and accident plan. All of the claimant's subsequent course of medical treatment has been paid under claimant's health insurance. It is possible that the respondents, who are self-insured for workers' compensation, may also have a self-insured health plan. Dr. Diamond first referred the claimant to Dr. Roy Tyrer, Jr., for a neurosurgical consultation and then to Dr. Reza Shahim, a neurosurgeon with Neurological Surgery Associates, P.A., in Little Rock, Arkansas. The claimant

underwent surgery performed by Dr. Shahim for which he was taken off work beginning September 28, 2001, and continuing through November 15, 2001, at which time the claimant returned to work for the employer herein. The claimant was apparently paid short-term disability benefits during the aforementioned period. The claimant eventually left the respondent's employment voluntarily because of continuing problems and the fact that the employer did not have permanent, light-duty work available. The period of claimant's total disability is undisputed. Permanent disability has been specifically reserved.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C. Cavanaugh's*,

298 Ark. 363, 768 S.W.2d 521 (1989); Fowler vs. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has proven, by a preponderance of the evidence, that all of his physical problems, need for treatment, including surgery and disability were directly and causally related to the July 26, 2000, injury which aggravated his pre-existing condition. Accordingly, respondents are responsible for all appropriate workers' compensation benefits. Respondents were not justified in unilaterally terminating the claimant's medical treatment based upon its erroneous interpretation of Dr. Schechter's report and recommendations.

Respondents' alternative defense that the claimant failed to give timely notice that the work-related injury was the cause for his need for surgery in September, 2001, is without merit. Respondents were aware of the claimant's injury, his continued complaints, and his need for medical treatment. The claimant was required to seek benefits through the employer's health insurance plan and short-term disability policy. The employer knew, or should have known, that the claimant's need for medical treatment was related to the admitted injury. They cannot avoid responsibility for appropriate benefits by forcing the claimant to elect an alternative form of benefits. However, respondents are entitled to a credit or offset for benefits paid under these plans

pursuant to A.C.A. §11-9-411.

AWARD

Respondent, L A Darling Company, and its third-party administrator, Management Care Claims Solutions, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$257.00 per week beginning September 28, 2001, and continuing through November 15, 2001.

All accrued benefits shall be paid in lump sum and without discount; however, respondents may claim credit for benefits paid under its short-term disability policy.

Respondents are further directed and ordered to pay and/or reimburse to the claimant and appropriate medical providers for any and all medical treatment, including surgery performed in September, 2001, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. Philip M. Wilson, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715; Coleman vs. Holiday Inn, 31 Ark. App. 224, 792 S.W.2d 345 (1990); and Chamness vs. Superior Industries and Sedgwick James of Arkansas, Inc., Arkansas Workers' Compensation Claim #E019760, (March 5, 1992).

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge