

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F210860

DAVID TATE, Employee	CLAIMANT
WAL-MART STORES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED AUGUST 24, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by ANDREW HATFIELD, Attorney, Rogers, Arkansas.

Respondents represented by J. DAVID WALL, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 28, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 2, 2004, and a pre-hearing order was filed on the same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his right wrist on March 2, 2001.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant is entitled to surgery proposed by Dr. Benafield.
2. Attorney fee.

The claimant contends he is entitled to surgery as recommended by Dr. Benafield for his compensable injury.

The respondents contend the claimant has received all benefits to which he is entitled under the Arkansas Workers' Compensation Act. The claimant's treating physician, Dr. Benafield, has proposed surgery in the form of a hemiresection of the distal ulna. The respondent contends that the procedure proposed by Dr. Benafield is not reasonable and necessary for the claimant's compensable injury and is not supported by objective and measurable physical findings as is required under Arkansas law. Additionally, Dr. Benafield's proposed procedure is contrary to the opinion of Dr. Michael Moore who has evaluated the claimant and recommends no further surgical treatment unless there is objective evidence that could explain the claimant's ongoing symptoms.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 2, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that the surgical procedure proposed by Dr. Benafield is reasonable and necessary and causally related to his compensable injury. Accordingly, respondent is liable for payment of the surgery proposed by Dr. Benafield.

3. Respondent has controverted claimant's entitlement to surgery from Dr. Benafield.

FACTUAL BACKGROUND

The claimant has worked for the respondent for more than eight years. At the time of his injury the claimant worked for the respondent as a cutter operator, a job which required claimant to cut stacks of paper used to make signs in the respondent's stores. The parties have stipulated that claimant suffered a compensable injury to his right wrist while working for respondent on March 2, 2001.

After some initial medical treatment to his wrist the claimant subsequently came under the care of Dr. Benafield, an orthopaedic surgeon, who has performed two surgical procedures on the claimant's right wrist. Based upon claimant's continued complaints of pain, Dr. Benafield has recommended a third surgical procedure. Based upon the opinion of Dr. Michael Moore, an orthopaedic surgeon, respondent contends that the recommended surgical procedure is not reasonable and necessary. As a result, claimant has filed this claim requesting payment for the surgery proposed by Dr. Benafield.

ADJUDICATION

Following claimant's compensable injury, he was initially treated at St. Mary's Hospital in Rogers. Thereafter, claimant was evaluated by Dr. Gary Moffitt who diagnosed him as suffering from a right wrist strain. Following claimant's continued complaints of pain and additional x-rays, Dr. Moffitt referred claimant to Dr. Benafield for further evaluation. Dr. Benafield ordered an MRI scan which revealed findings consistent with a possible triangular fibrocartilage complex tear. Based upon those findings Dr. Benafield recommended an arthroscopic procedure which was performed on May 9, 2001.

Following claimant's surgery he underwent physical therapy and was released to return to work at light duty on May 21, 2001. On July 27, 2001 Dr. Benafield released the claimant to return to work with no restrictions and ordered one more month of therapy. On September 7, 2001 Dr. Benafield released the claimant from his care with no

restrictions.

Claimant continued to work for the respondent and on May 16, 2002 sought medical treatment for additional complaints relating to his right wrist from Max Beasley, a nurse practitioner in Dr. Moffitt's office. On May 24, 2002 Beasley referred claimant back to Dr. Benafield for additional evaluation. Following an injection and therapy, Dr. Benafield noted that claimant still had significant pain and recommended a second arthroscopic procedure which was performed on August 2, 2002. The surgical notes indicate that Dr. Benafield performed a debridement to repair scarring in the triangular fibrocartilage area which had inflammation and inflammatory changes. Following the second surgical procedure Dr. Benafield again released the claimant to return to work with restrictions and ordered physical therapy.

On October 18, 2002 Dr. Benafield released the claimant to full duty and noted that claimant would continue to have limitations regarding lifting and a significant impairment. Dr. Benafield indicated that he would see the claimant in six weeks for a final visit and an impairment rating. By the time of claimant's next visit with Dr. Benafield on November 22, 2002 claimant was having a recurrence of pain in his right wrist. Dr. Benafield's medical report of that date indicates that x-rays revealed degenerative changes at the distal radial ulna with flattening and squaring off of the joint articulation. Based upon these findings Dr. Benafield recommended a distal ulnar resection and possible excision of the claimant's triangular fibrocartilage complex.

In response to Dr. Benafield's recommendation for this third surgical procedure, respondent requested a second opinion from Dr. Michael Moore. Claimant was initially evaluated by Dr. Moore on January 23, 2003 and his medical report indicates that claimant's clinical history and physical exam are consistent with chronic right ulnar wrist pain. He also noted that claimant might suffer from carpal tunnel syndrome. Dr. Moore indicated that he would not recommend any additional surgery unless an objective study

explained claimant's persistent symptoms. As a result, Dr. Moore recommended that claimant undergo a bone scan, CT scan, and MRI. Dr. Moore also recommended a nerve conduction and EMG for evaluation of possible carpal tunnel syndrome. [It should be noted that testing revealed bilateral carpal tunnel syndrome and benefits associated with bilateral carpal tunnel syndrome are not at issue in this claim.]

Following the bone scan and CT scan, Dr. Moore authored a report dated March 25, 2003. Dr. Moore again indicated that he would not recommend any further surgical treatment for claimant's right wrist pain unless there was an objective study explaining the pain symptoms. Dr. Moore noted that the CT scan was unremarkable except for a mild increased activity at the radioulnar joint. He also noted that the prior MRI scan from April 12, 2001 did not detect an abnormality at the radioulnar joint. Dr. Moore also noted that two bone scans revealed only possible minimal increased activity near the radioulnar joint. Dr. Moore subsequently stated that claimant had reached maximum medical improvement and recommended continued conservative treatment. He also ordered a functional capacities evaluation and assigned the claimant a permanent physical impairment rating for his right wrist.

Despite Dr. Moore's opinion, Dr. Benafield has continued to state in his medical reports that he is of the opinion that claimant is in need of an additional surgical procedure. Dr. Benafield indicates that his examination has reproduced consistent findings over a period of time. He also noted that there is a permanent grind sound and feel when the claimant's distal radioulnar joint is "balloted."

Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Gallaway*, 74 Ark. App. 13, 45 S.W. 3d 396

(2001).

The respondent relies upon the opinion of Dr. Michael Moore who has recommended no further surgical treatment unless there is objective evidence that would explain claimant's continued symptoms. Respondent contends that the procedure proposed by Dr. Benafield is not reasonable and necessary and is not supported by objective measurable physical findings as required by Arkansas law. However, an injured worker is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. *Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W. 2d 1 (1999).

I find that claimant has met his burden of proving by a preponderance of the evidence that the surgical procedure proposed by Dr. Benafield is reasonable and necessary for treatment of his compensable injury. While objective findings are not required with respect to ongoing medical treatment, objective findings may be considered in determining whether additional medical treatment is reasonable and necessary. Here, Dr. Moore has opined that claimant does not need additional surgical treatment based upon a lack of objective findings explaining claimant's symptoms. On the other hand, I note that Dr. Benafield stated in his report of November 22, 2002 that x-rays taken that day revealed degenerative changes at the claimant's distal radioulnar joint with a flattening and squaring off of that joint articulation. In addition, Dr. Benafield notes that claimant's pain has been reproducible in each of his prior visits "with pain over the DRUJ especially with ballottement of the DRUJ where there is a prominent grind sound and feel when the DRUJ is balloted." "Ballottement" is defined by *Webster's Medical Dictionary* as "the return to original shape of an area when pressure is released from that area." I believe this is an important finding because it indicates that Dr. Benafield is not simply speculating that claimant is in need of additional medical treatment, but instead is basing his decision upon x-rays taken in November 2002 and a grinding sound and feel which is reproduced with his

pressing on the claimant's distal radioulnar joint. It is those findings which have led Dr. Benafield to recommend an additional surgical procedure.

I believe it is also important to note that at the time of his initial evaluation of claimant on January 23, 2003, Dr. Moore recommended an MRI scan of the claimant's right wrist. There is no indication that this MRI scan was performed.

In summary, claimant has the burden of proving by a preponderance of the evidence that proposed medical treatment is reasonably necessary for treatment of his compensable injury. In this particular case, we have a difference of opinion between two very qualified orthopaedic surgeons. Under the circumstances presented in this case, I find that the opinion of Dr. Benafield is entitled to greater weight than that of Dr. Moore. While Dr. Moore has stated that he would not recommend additional surgery unless objective testing revealed an explanation for claimant's continued symptoms, I note that Dr. Benafield has based his opinion on objective findings including x-rays in November 2002 and a grinding sound and feel which he has observed during his examination of the claimant's right wrist. Thus, this is not a situation where Dr. Benafield is simply speculating as to claimant's need for additional surgical treatment. In addition, I note that Dr. Moore did indicate in his report of March 25, 2003 that claimant's clinical history and physical examination were consistent with chronic right ulnar wrist pain. Finally, I note that Dr. Benafield has been claimant's treating physician since April 2001 and has evaluated the claimant on a number of occasions. On the other hand, claimant has seen Dr. Moore on only two or three occasions.

Accordingly, for the foregoing reasons, I find that Dr. Benafield's opinion is entitled to greater weight than that of Dr. Moore under the circumstances presented in this case. Therefore, I find that claimant has met his burden of proving by a preponderance of the evidence that the surgery proposed by Dr. Benafield is reasonable and necessary for treatment of his compensable right wrist injury.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that the surgery proposed by Dr. Benafield is reasonable and necessary in relation to his compensable right wrist injury. Respondent has controverted claimant's entitlement to payment of the proposed surgery.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half to be paid by the respondents but with no fee forthcoming from the claimant since no benefits are being paid directly to the claimant.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE