

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F011651

JENNINGS WRIGHT	CLAIMANT
CRAWFORD COUNTY JUDGE	RESPONDENT
AAC RISK MANAGEMENT SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 4, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by GAIL MATTHEWS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 24, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 2, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on September 18, 2000.

4. The claimant is entitled to a weekly compensation rate of \$287.00 for temporary total disability and \$215.00 for permanent partial disability.

5. Medical expenses have been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Is the diskogram reasonable and necessary medical treatment?

2. Claimant's entitlement to additional medical treatment by Dr. Andrew Revelis.

In regard to the foregoing issues the claimant contends that during and within the scope of his employment on September 10, 2000, he sustained a compensable injury to his lumbar spine. The claimant has been treated by Dr. Joseph Queeney, Dr. Bradley Short, and was subsequently referred to Dr. Andrew Revelis of Tulsa Spine Hospital in October 2003. The claimant continued with his treatment through January 6, 2004. Subsequent medical treatment was scheduled by Dr. Revelis but was denied by the respondents. The claimant is requesting additional medical treatment either through Dr. Revelis or through a new treating physician, Dr. Arthur Johnson, a neurosurgeon in Fort Smith, Arkansas.

In regard to the foregoing issues the respondents contend that the diskogram is not needed in this case.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical records marked Claimant's

Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1 and additional documentary evidence marked Respondents' Exhibit No. 2. The parties submitted a report from Karen Podgornik and Dr. Standefer marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and it has been stipulated that he sustained a compensable injury while working for the respondent on September 18, 2000. The claimant testified that he was initially treated by his family physician, Dr. Robert Baker. The claimant agreed that Dr. Baker referred him to Dr. Gile for pain management. The claimant testified that he then was referred to Dr. Joseph Queeney, a neurosurgeon, who did surgery on his back on July 11, 2001. The claimant agreed that Dr. Queeney referred him to physical therapy after his surgery. The claimant testified that he returned to work for the respondent in March 2002 but continued to have problems with his low back.

The claimant testified that the respondents assigned Karen Podgornik as his case manager and she arranged an appointment with Dr. Boxell in Tulsa. The claimant testified that he saw Dr. Boxell only one time. The claimant testified that he then was sent to Dr. Bradley Short in Fort Smith as well as Dr. Standefer, a neurosurgeon. The claimant agreed that Dr. Standefer recommended a course of treatment which Ms. Podgornik arranged. The claimant agreed that Ms. Podgornik set up an appointment for him with a doctor in Tulsa by the name of Andrew Revelis. The claimant agreed

that he was seen by Dr. Revelis about four times and the doctor administered a series of injections in his back. The claimant testified that these injections did not improve his symptoms and that at his last appointment on January 6, 2004, Dr. Revelis recommended that he have a diskogram. The claimant agreed that Dr. Revelis was prepared to perform this procedure but that the respondent had denied this course of recommended treatment.

The claimant testified that he has continued to have pain in his low back, legs and feet. The claimant testified that the pain goes down into his legs, primarily in his right leg, and down into his right foot. The claimant testified that his pain sometimes is sharp pain but that he also feels numbness in his leg and foot. The claimant testified that he has a little bit of pain in his left leg. The claimant testified that he has been off only on sick days and vacation days since January 6, 2004, but he has not been off for any long periods of time as a result of his back.

The claimant testified that he understood from Dr. Revelis that the diskogram is used to determine if he might need additional back surgery. The claimant testified that if surgery is recommended he is willing to undergo a second surgery. The claimant testified that the pain in his low back and numbness into his legs is getting worse every day. The claimant stated that his pain is getting to the point where he can hardly get in and out of his road grater and he must take frequent breaks in order to do his job. The claimant testified that he takes medications for his discomfort explaining that initially he would take his pain

medications just when he was off work but that within the last couple to three months he has been taking the medications in order to be able to work. The claimant testified that he has made his supervisor aware that he is taking medications. The claimant testified that operating a road grader jars him around quite a bit and he has to stop, get out of the grader and stand for a while or walk around to ease the pain in his back, legs and feet.

The claimant testified that he has only seen Dr. Standefer one time and that was in 2003. The claimant testified that when he was seen by Dr. Standefer his examination and time with the doctor was approximately fifteen minutes, explaining that the doctor rolled a deal across his foot and pecked him with a little hammer. The claimant agreed that since he has undergone injections and has been seen by Dr. Revelis, he has not seen Dr. Standefer. The claimant testified that he currently weighs 252 pounds and is losing weight, noting that he has lost 35 pounds. The claimant testified that he is six feet tall and that it has been recommended by his doctors that he lose weight. The claimant testified that he sees Dr. Baker for his medications, remembering that he last saw Dr. Baker approximately three weeks before this hearing and the doctor had given him another prescription. The claimant agreed that when he was seen by Dr. Baker in March 2004 the doctor had suggested that he needed to have another MRI but this has not been done.

On cross examination, the claimant testified that he has not lost any weight since he had seen Dr. Barker on March 17, 2004. The claimant testified that it has been recommended to him that he

quit smoking but he has not been successful at this either. The claimant agreed that the doctor who operated on him told him that he should not have any more surgery. The claimant also agreed that he was referred to Dr. Revelis for injections for his pain and that these injections have not been helpful to him. The claimant testified that he is hurting worse now than before his first surgery and that the injections which he has received have not helped his pain. The claimant testified that if a fusion would help his symptoms he would undergo this procedure. The claimant was asked, "Has any doctor told you he thought it would really help you on your pain?" The claimant responded, "No, Sir." The claimant testified that he has continuously worked since his release in 2002 with the exception of some days off which he took as vacation days or sick days. The claimant testified that he has a forty-pound weight limitation and that the respondent provides someone to help him change out the blade and tires on his grader as well as help with the yearly maintenance on the grader. The claimant testified that he does the oil changing and grease jobs when needed.

Karen Podgornik testified that she was a registered nurse and a certified case manager assigned to the claimant's case. This witness testified that a diskogram is a diagnostic test that is done prior to proceeding with surgery. Ms. Podgornik testified that the claimant has been seen by three neurosurgeons, Dr. Queeney, Dr. Standefer and Dr. Boxell and these three surgeons have stated that they would not recommend additional surgery for the

claimant. Ms. Podgornik agreed that the claimant was last seen by Dr. Queeney on March 7, 2002, and he saw Dr. Boxell one time on April 29, 2002, and one time by Dr. Michael Standefer on August 4, 2003. On cross examination, Ms. Podgornik agreed that the claimant has clinical changes since he was seen by these three neurosurgeons in that he has lost weight and that his pain has increased. Ms. Podgornik also agreed that she has attempted to try and get the claimant seen by another neurosurgeon but that Dr. Johnson as well as Dr. Standefer have refused to see him. This witness agreed that the only available physician that the claimant has seen that is willing to see him again is Dr. Revelis.

The medical records set forth that the claimant has had ongoing treatment for his left leg and knee as a result of a workers' compensation injury in 1993 or 1994. These left extremity problems are not the subject matter of this particular claim.

The claimant began by being seen by Dr. Joseph Queeney on February 26, 2001, on referral from Dr. Gile for a surgical evaluation. Dr. Queeney initially treated the claimant conservatively but by May 24, 2001, Dr. Queeney, after reviewing the claimant's mylograms, determined that the claimant was a candidate for right L4-S1 micro laminotomy and micro diskectomy. Dr. Queeney writes that he would probably explore the right L4-5 during surgery. Dr. Queeney writes on August 13, 2001, that he has seen the claimant following his surgery, noting that it was one month since he underwent a right L5-S1 micro laminotomy and micro diskectomy. Dr. Queeney notes that the claimant has a recurrence

of his right lower extremity pain and that the claimant does not think that the surgery has improved his situation. Dr. Queeney recommended medications as well as physical therapy. On October 15, 2001, Dr. Queeney notes that the claimant continues to have right lower extremity pain and that the conservative treatment and medications have not really improved his symptoms. Dr. Queeney writes that the pain tends to be located primarily in the claimant's right gluteal region and does involve the right medial upper thigh but does not radiate past his knee. The doctor writes that the claimant should have another MRI to determine if another piece of a disc has herniated. Dr. Queeney writes that if there is not further herniations they will send him to a pain clinic for injections. On March 7, 2002, Dr. Queeney assessed the claimant with having a 10 percent whole body impairment rating as it relates to his lumbar spine and set him up for a functional capacity evaluation to see what his working restrictions should be. Dr. Queeney notes that at this point from a surgical standpoint he had nothing more or unique to offer the claimant since the injections he had undergone were of little relief. Dr. Christopher Boxell writes on April 29, 2002, that he has seen the claimant for his failed back syndrome. After a review of the claimant's past medical history and examination, Dr. Boxell assesses the claimant with having failed back surgery syndrome with significant psychosomatic overlay. Dr. Boxell writes that he does not believe that there is any additional surgery that would be of benefit to the claimant and recommended that he lose forty to fifty pounds and stop smoking.

The claimant was seen by Dr. Bradley Short on June 18, 2002, for an evaluation of his back problems. Dr. Short sets forth a detailed account of the claimant's past medical history as it relates to his back problems and after examination, Dr. Short recommended medications and physical therapy. The claimant was seen by Dr. Short four other times and on September 24, 2002, Dr. Short writes that the claimant has reached maximum medical improvement agreeing with Dr. Queeney's impairment rating of 10 percent to the body as a whole. Dr. Short continued his restrictions, refilled the claimant's medications and recommended that he follow up with his family physician. An MRI of the claimant's lumbar spine made on September 10, 2002, revealed post laminotomy or laminectomy findings at L5-S1 with fat graft in place as well as mild deformity of the thecal sac and enhancing epidural scar. This report notes that the claimant has a tiny right para central disc bulge or protrusion at L4-5 unchanged.

The claimant was seen on March 25, 2003, by Dr. Robert Baker for complaints of cervical pain as well as low back pain. Dr. Baker prescribed medications, physical therapy and if not better to return and an MRI would be considered. Dr. Baker writes on May 20, 2003, that the claimant's MRI showed some slight enhancement through the posterior aspect of L4-S1 but these were felt to be post surgical change but there was a possibility that there might be some infection so a SAID rate was taken. Dr. Baker writes on June 9, 2003, that the claimant's MRI showed post surgical changes and his SAID rate was only fifteen. Dr. Baker notes that the

claimant has been to the pain clinic and physical therapy as well as had back surgery. The doctor notes that the claimant has lost about five pounds and in the doctor's opinion this is probably a key to him getting any long term improvement. A diet was suggested as well as some medications. The claimant was seen by Dr. Michael Standefer on August 4, 2003, and after a review of the claimant's medical history as well as examination, Dr. Standefer diagnosed the claimant with having chronic low back pain secondary to multiple factors. Dr. Standefer writes that the claimant overall is detoned, deconditioned and in very poor general health. Dr. Standefer writes that the claimant's occupation is of the nature that would tend to cause him to aggravate his back pain and the doctor recommended lumbar epidural steroid injections although he was skeptical that it would provide the claimant with significant long term relief.

The claimant began being seen by Dr. Andrew Revelis on October 29, 2003, for epidural steroid injections. Dr. Revelis writes to Dr. Standefer on October 29, 2003, that he is going to proceed with epidural steroid injections as well as continue the claimant on his medications. The claimant underwent epidural steroid injections by Dr. Revelis on November 19, 2003, as well as December 24, 2003. Dr. Revelis writes on January 6, 2004, that at the present time the claimant has had a poor response to the epidural steroid injections and continues to have pain. It is noted that the patient's surgeon has brought up the subject of a possible fusion at L5-S1 and prior to proceeding with a fusion, Dr. Revelis recommended a diskogram in

order to delineate disc pathology and rule out disease at L4-5.

Dr. Robert Baker writes on March 17, 2004, that he has seen the claimant for follow up for his low back pain which has been worse over the past two to three months. Dr. Baker notes that the claimant has pain radiating into his leg and great toe and has been constipated over a period of time. Dr. Baker notes that the claimant has not lost any more weight but notes that he had lost about thirty pounds and that this has not helped his back any. Dr. Baker increased his Lorcet, prescribed Vioxx and writes that if his pain continues they may need to consider a new MRI.

Dr. Christopher Boxell writes on April 2, 2004, to Karen Podgornik in response to Ms. Podgornik's letter requesting his opinion regarding additional diagnostic testing for the claimant, specifically a lumbar diskogram. Dr. Boxell agrees that a diskogram would certainly confirm degenerative disc at L4-5 and L5-S1. Dr. Boxell writes that his concern in the claimant's case is the fact that he has a number of functional findings on his examination which suggest psychosomatic illness. Dr. Boxell notes that such patients typically do poorly with surgery and he would not be anxious to offer this individual surgical treatment. Dr. Boxell concludes by writing that, therefore, he did not see any need to pursue further diagnostic testing unless someone was willing to proceed with another operation with the claimant. Dr. Michael Standefer writes to Chris Hunter with Risk Management concerning the claimant on April 6, 2004. Dr. Standefer writes that the claimant's records and previous radiographic studies have

been reviewed and that records of his previous radiographic studies also reviewed and at this juncture he would not advise a diskogram for the claimant.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that undergoing a diskogram for further diagnosis of his low back problems are reasonable and necessary medically for the claimant. Dr. Revelis in his recommendation indicates that the claimant's surgeon has suggested a fusion and, in light of this suggestion, a diskogram might be prudent. This medical record does not set forth that a fusion has been recommended for the claimant. Therefore, I find that a diskogram is not reasonable and necessary for the claimant's medical treatment of his compensable injury at this time. I further find that the claimant is entitled to additional medical treatment for his compensable low back injury. The claimant has had an admitted compensable injury and has undergone back surgery as well as extensive conservative and evasive treatment. The claimant reports and it is not questioned that he has continuing complaints of low back pain with radiation for which he is entitled to additional treatment by Dr. Revelis for the management of his pain. Therefore, the respondents should pay for additional medical treatment for this claimant's pain management for his compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on September 18, 2000.

4. The claimant is entitled to a weekly compensation rate of \$287.00 for temporary total disability and \$215.00 for permanent partial disability.

5. Medical expenses have been paid.

6. The claimant has failed to prove by a preponderance of the evidence that a diskogram is reasonable and necessary for the treatment of his compensable low back injury. See discussion above.

7. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment by Dr. Revelis for pain management for his compensable low back injury. See discussion above.

8. The respondents have controverted the claimant's entitlement to additional medical treatment.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the additional benefits awarded herein.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to a diskogram at this time as recommended by Dr. Revelis.

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. Therefore, the respondent shall pay for continuing and additional medical treatment for this claimant's compensable injury with Dr. Revelis.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE