

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F210805

JOHN C. DOWNS, EMPLOYEE	CLAIMANT
GDX AUTOMOTIVE, EMPLOYER	RESPONDENT
PACIFIC EMPLOYERS INSURANCE, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 26, 2005

A hearing in this case was conducted on July 8, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Batesville, Independence County, Arkansas.

Claimant was represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by Bill H. Walmsley, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held in this claim on June 14, 2005; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as State's Exhibit #1.

The parties agreed to three stipulations. These stipulations are found in the Prehearing Order and were confirmed by the parties at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on May 13, 2002 and at all other relevant times.
2. Claimant sustained a compensable left wrist injury on May 13, 2002.
3. Claimant was granted a one-time change of physician on March 17, 2004 from

Dr. Dennis Davidson to Dr. Clifford Boswell.

At the beginning of the July 8, 2005 hearing, the parties discussed the issue set forth in the Prehearing Order. There, the issue is stated as follows: whether Claimant is entitled to additional reasonably necessary medical treatment. The parties addressed this issue again at the conclusion of the hearing:

JUDGE AREY: Gentlemen, the question is whether this is a referral to Dr. Allen for further treatment or whether it is a referral, and I use the term referral loosely in the second part of the question; a referral to Dr. Allen for permanency. That's the issue, correct, Mr. Spencer?

MR. SPENCER: Yes, your Honor.

JUDGE AREY: Mr. Walmsley?

MR. WALMSLEY: Yes, but, Judge, I wouldn't use the characterization on a referral. If a second opinion I think is the language that Dr. Boswell uses.

Claimant contends that Dr. Boswell's March 16, 2004 note constitutes a referral to Dr. J. D. Allen for additional medical treatment. Respondents contend that Dr. Boswell's note refers Claimant to Dr. Allen for a second opinion on his disability rating; Respondents contend that they should not be liable for a second opinion on permanency.

DISCUSSION

At the time of his May 13, 2002 compensable injury, Claimant was engaged in molding car parts for the Respondent employer. The parties stipulated that Claimant sustained a compensable left wrist injury on that date. He was initially treated by Dr. Davidson, but on March 17, 2004 Claimant was granted a one-time change of physician to Dr. Boswell.

Claimant testified that he has consistently experienced pain in his left arm and wrist since the date of his injury. Though he may tolerate much of the pain, "it's all the time."

He testified to swelling in his left upper extremity, difficulty gripping objects, and difficulty sleeping due to the pain. Claimant explained what he is seeking in this proceeding:

Q. Are you hoping to be able to get some kind of pain management, professional pain management help to be able to take care of the level of pain that you have without having to resort to over-the-counter medications?

A. That or get something done where you can move it better.

Q. You hope that there's an operation that can help you, is that correct?

A. Well, I don't know, maybe. I'm not going to do surgery on it again; I don't know. That's a questionable deal there.

Q. But you want something done.

...

A. Yes.

Claimant's wife essentially corroborated Claimant's testimony.

On cross-examination, Claimant conceded that he doesn't "go complaining every day about my wrist." Dr. Allen referred Claimant to a hand specialist, Dr. Thomas Frazier, in 2002. Making reference to Dr. Allen's note dated August 29, 2002, Respondents' attorney questioned Claimant:

Q. And that's the last time you saw Dr. Allen, wasn't it?

A. Yes.

Q. And Dr. Allen made it clear to you that it would be much better for you to be seen by someone who was a hand specialist, didn't he?

A. Yes.

Claimant agreed that, from that point on, he never saw Dr. Allen again. Dr. Allen's August 29, 2002 note states in part: "I am going to recommend that his workmen's comp people approve a visit with the Arkansas Hand Group ... to handle this problem. He does not need

to be followed here by us.”

This testimony sets the context for Dr. Boswell’s March 16, 2004 note. In recording Claimant’s history, Dr. Boswell wrote: “John is here for second opinion. He hurt his wrist at work and has had surgery on it requiring some screws. He states that now he has been listed as having 20% disability on the wrist.” After examining Claimant and assessing left wrist pain, Dr. Boswell then wrote:

I have given him a note saying that we need to refer him to see Dr. Allen for a second opinion. I believe that he has much more than 20% disability on this wrist but would welcome Dr. Allen’s opinion. [Dr. Boswell gave Claimant some medication, discussed its side effects, and encouraged Claimant to get into church.] Patient left the clinic in stable condition.

I do not find any other testimony in the record concerning Dr. Boswell’s intent.

An employer shall 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). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Workers’ Compensation Commission Opinion filed February 14, 2003 (E906565) (citations omitted). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, ___ Ark. App. ___, ___ S.W.3d ___ (March 16, 2005).

However, Ark. Code Ann. § 11-9-508(a) expressly provides for “medical ... services.” The Full Commission has held that an examination for the purpose of addressing

permanent impairment does not fall within the scope of this statute.

[The doctor] only examined the claimant and provided an impairment rating, he did not actually treat him. Moreover, [the doctor's] ratings did not comply with Arkansas law. Accordingly, we cannot find that the claimant's examination by [the doctor] which was simply an attempt to increase his permanent impairment is reasonably necessary medical treatment. Therefore, we find that the claimant has failed to prove entitlement to medical benefits for the examination conducted by [the doctor].

Le v. Simmons Foods, Inc., Full Workers' Compensation Commission Opinion filed July 19, 2004 (E815277).

I find that Claimant failed to prove that Dr. Boswell's March 16, 2004 note refers Claimant to Dr. Allen for additional medical treatment. Dr. Boswell wants Claimant "to see Dr. Allen for a second opinion"; the context of this second opinion relates to Claimant's "20% disability on this wrist." Dr. Boswell does not suggest in his note what additional treatment Claimant may need from Dr. Allen; indeed, Dr. Allen declined to provide Claimant additional treatment in August of 2002. Thus, this does not appear to be a referral for additional medical treatment, but a referral for the purpose of obtaining a second opinion to increase Claimant's disability rating. This does not constitute additional medical treatment for which the Respondents can be held liable. See Le, supra.

I specifically note that this Opinion makes no finding concerning Claimant's entitlement to additional medical treatment. It may be that Claimant is entitled to a referral for additional medical treatment, but I specifically find that such a referral was not made by Dr. Boswell in his March 16, 2004 note.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on May 13, 2002 and at all

other relevant times.

3. Claimant sustained a compensable left wrist injury on May 13, 2002.

4. Claimant was granted a one-time change of physician on March 17, 2004 from Dr. Dennis Davidson to Dr. Clifford Boswell.

5. Claimant did not sustain his burden of proving by a preponderance of the evidence that Dr. Boswell's March 16, 2004 note makes a referral to Dr. Allen for additional medical treatment. Dr. Boswell's March 16, 2004 note seeks a second opinion from Dr. Allen in the context of Claimant's disability rating, which is not a responsibility of Respondents under Ark. Code Ann. § 11-9-508(a).

ORDER

Claimant failed to sustain his burden of proving that on March 16, 2004, Dr. Boswell referred him to Dr. Allen for additional medical treatment. Therefore, his request is respectfully denied.

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml