

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406645

JIMMY EDMUNDS, EMPLOYEE	CLAIMANT
MEDLIN'S HARDWARE, INC., EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., CARRIER	RESPONDENT

OPINION FILED MARCH 31, 2005

This matter comes before Administrative Law Judge J. Mark White on a stipulated record.

Claimant represented by Mr. Steven McNeely, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed herein on January 31, 2005, the parties agreed to submit consideration of this claim on the record. The stipulated record is comprised of the Prehearing Order filed January 31, 2005; a brief submitted by the claimant, dated February 15, 2005; and a brief with attached medical records submitted by the respondents on February 10, 2005.

The parties stipulate that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed at all relevant times, including May 5, 2004; that on May 5, 2004, the claimant sustained a compensable injury to his neck; that respondents accepted the May 5,

2004, injury as compensable and paid some benefits; and that the claimant earned an average weekly wage of \$488, entitling him to a compensation rate of \$325 for total disability benefits and \$244 for permanent partial disability benefits.

The parties agree that the sole issue to be presented is whether the claimant is entitled to an independent medical evaluation.

The claimant contends that he is entitled to an independent medical evaluation (IME) by a doctor of the Commission's choice.

The respondents contend that all appropriate benefits have been paid with regard to this claim; that the claimant was released to full duty on August 16, 2004, by Dr. Steven Cathey, a neurosurgeon; that an IME is not warranted in this matter and should not be the liability of the respondent-carrier; and in the event the claimant is seeking an additional opinion regarding his medical status, he should be required to pursue the avenues available through a change of physician request to the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, briefs, and other matters properly before the Commission, 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 claimant has failed to prove by a preponderance of the evidence that an independent medical examination is reasonable and necessary in connection with the compensable injury.

DISCUSSION

The claimant sustained a compensable injury to his neck on May 5, 2004. The respondents accepted the injury as compensable and provided treatment, and the claimant eventually came under the care of neurologist Dr. Steven Cathey. An MRI exam performed May 6, 2004, revealed "mild bulging" at C5-6 "posteriorly on the left that does not appear to encroach on neural structures." The radiologist listed his conclusion as a "small left posterior herniation of nucleus pulposus" at C5-6. Dr. Cathey, however, opined that the MRI was negative and that it did not reveal a herniation.

Dr. Cathey treated the claimant with medication and physical therapy. He released the claimant from care on July 26, noting that the physical therapy had

"helped." The claimant now seeks an independent medical examination (IME) to determine what future treatment would be appropriate.

Ark. Code Ann. § 11-9-511 (a) provides:

An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the commission may require from time to time if reasonable and necessary.

The threshold question is whether the examination is reasonable and necessary. *King v. Willow Oaks Acres*, A.W.C.C. E903202 (Jan. 25, 2001).

The claimant argues an IME is appropriate to resolve an alleged conflict in the medical evidence -- the fact that a radiologist interpreted the claimant's MRI to show a herniation, while Dr. Cathey considered the MRI to be negative. However, I do not find this conflict to be significant. Though Dr. Cathey was unwilling to call the claimant's injury a herniation, the record is clear that the radiologist and Dr. Cathey agreed on the details of the claimant's condition -- that he has mild bulging at C5-6 without neural compromise. As this is the only supposed conflict in the medical evidence, I am not convinced that an IME is reasonably necessary to resolve conflicting medical evidence.

The basic problem is that the claimant is unhappy with Dr. Cathey's treatment and release, and he now seeks a second opinion. In other words, this is the

type of situation for which the change of physician procedures were adopted by the Legislature. I cannot conclude that the Legislature intended to allow an IME simply because a claimant is unhappy with his treatment. I am not convinced that an IME is appropriate at this time.

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that an independent medical examination is reasonable and necessary in connection with the compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that an independent medical examination is reasonable and necessary in connection with the 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