

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F307328

RICKY L. EPPE, EMPLOYEE	CLAIMANT
ARKANSAS HOMECARE, INC., EMPLOYER	RESPONDENT
COMPANION PROPERTY & CASUALTY COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 7, 2005

A hearing in this case was conducted on February 23, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Little Rock, Pulaski County, Arkansas.

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

Respondents were represented by Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on December 7, 2004; a Prehearing Order was filed in this matter on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to four stipulations. These stipulations are set forth in the Prehearing Order, were confirmed by the parties at the hearing, and are hereby accepted.

1. The employee-employer-carrier relationship existed on June 19, 2003 and at all other relevant times.
2. Claimant sustained a compensable head and neck injury on June 19, 2003.
3. Respondents controvert Claimant's entitlement to any benefits after September 17, 2003.

4. Respondents have paid medical benefits as well as temporary total disability benefits to September 17, 2003.

_____At the February 23, 2005 hearing, the parties discussed the issue set forth in the Prehearing Order. The parties agreed that the sole issue to be litigated and resolved is limited to the following:

1. Whether Claimant is entitled to additional medical treatment.

All other issues are reserved.

Claimant contends that his current need for medical treatment is connected to his June 19, 2003 compensable injury. Claimant notes the absence of evidence of any other cause for his need for treatment. Respondents argue that there is no evidence suggesting a causal connection between Claimant's compensable injury and his current need for treatment, other than his own testimony. Respondents contend that Claimant's testimony is not credible and is not reliable. Given the length of time between Claimant's release and his current request for treatment, Respondents argue that it would be speculation to connect his current problems and need for treatment with his June 19, 2003 incident.

DISCUSSION

_____In the course of his employment Claimant delivered medical supplies such as wheelchairs, recliners, and oxygen to homebound patients. He described how he was injured on June 19, 2003.

I was delivering a HELiOS reservoir, which is liquid oxygen, and they are big containers that they use to fill up their little containers. And I had gone into a house that had a patio on it with steps, and I had come out.

We use a ramp, aluminum ramps to put up to the ramps and the dolly to get the HELiOS up, because they're real heavy. And when I come out, I had started down the ramp, and the ramp folds, and it buckled. So I stopped,

and I went -- I left it sitting up there on top, and I went down and picked up the bottom of the ramp to get the buckle out of it. And when I did, the HELIOS container topped over and hit me on top of the head.

Claimant began to experience headaches and neck pain; he testified that he had never experienced problems with his neck prior to this incident. He reported the injury to the Respondent employer and began to receive treatment.

Dr. Krishna Reddy initially treated Claimant. A radiology report prepared following a "five views cervical spine" procedure performed on June 30, 2003, records an impression of "[n]ormal cervical spine." On a physician's report dated July 7, 2003, Dr. Reddy indicated that Claimant suffered no permanent impairment due to his injury.

Claimant was ultimately referred to Dr. John Waller, who first examined Claimant on July 11, 2003. Dr. Waller noted that Claimant "has normal sensation, normal motor function to his upper extremities." He reviewed and summarized Claimant's studies:

X-rays are reviewed. A cervical spine series which is read as normal by the radiologist and I would concur. I obtained new x-rays today of flexion/extension lateral views which shows no evidence of any instability. Also I got an AP lateral skull which is within normal limits.

Dr. Waller recorded an impression of concussion and cervical sprain; he prescribed anti-inflammatory medication and physical therapy. He also took Claimant off work.

Claimant completed an eighteen-visit course of physical therapy. In a July 23, 2003 evaluation and treatment plan report, the physical therapist noted Claimant's report of a severe headache. The physical therapist also noted: "Bilateral UE gross AROM is WNL; however, patient does report increased discomfort in cervical region with shoulder flexion and abduction at end ranges." The physical therapist prepared a progress report at the end of Claimant's treatment; it is dated September 11, 2003. The physical therapist

reported “varied” progress, noting that Claimant’s pain level varied “depending on his level of physical activities.”

Dr. Waller continued to treat Claimant. On August 1, 2003, Claimant reported that “he is not much improved. His headaches are gone but his neck pain is still as bad as it was.” Upon examination, Dr. Waller noted that Claimant “still has reduced range of motion in cervical spine, particularly left lateral tilt and left lateral gaze. He has more pain on the left than on the right. Neurologically, he is normal in the upper extremities.”

Claimant again presented to Dr. Waller on August 22, 2003. The physician noted: “[Claimant] is continuing to improve. He is not having any more headaches. He is still getting some pain in his neck but he feels that the therapy is helping immensely.” Dr. Waller again noted “a normal neurologic in the upper extremities.” He observed that Claimant was “moving in his neck much better than before.”

Dr. Waller examined Claimant for the last time on September 12, 2003. Claimant reported “that he is feeling much better but still has pain at times with weather changes and at the end of the day depending on his level of activity.” Upon examination, Dr. Waller noted complete flexion and extension and that “his range of motion in the cervical spine continues to improve.” He concluded:

I think that [Claimant] is consistently improving from his response to my questions and he should be completely well within a year. These hyperextension/flexion type injuries require anywhere from six months to a year to fully recover. At this point I have advised him to stop the use of his cervical collar due to his improvement and for him to continue with his stretching of his cervical spine several times a day. Return to see me as needed.

Dr. Waller released Claimant from physical therapy and allowed him to return to work without restrictions.

Claimant testified that he believed his condition never got better and that he continued to have pain during the course of his treatment.

Q. What kind of problems were you having then? And tell the Judge -- fill the Judge in on September the 12th through when you saw Dr. Blackmon on July the 29th, '04.

A. I had went to Dr. Waller on my regular checkup, and he was asking me how I felt. And I told him that I still had discomfort in my neck and just didn't feel like it was just really getting altogether better.

He looked at my head movement, and his statement to me was, you know, "It will take a year for your neck to get well, and I'm going to release you today to go back to work." And I said, "You're going to release me?" I said, "Is there going to be any restraints?" He said, "No, fully released." And I asked him, "Well, you know, I'm not well." He said, "Well, no, but it's going to take a year for your neck to heal."

...

Q. What about your condition from September of '03 up until -- I mean, what was the next time you saw a doctor after that?

A. Seemed like it was June or July, and I was just at the point where I was hurting if I sat in my recliner, I was hurting if I sat at my desk at my home where I had my office. And I started feeling numbness in my -- or pain in my left arm and then tingling in my fingers.

And I just felt like it wasn't getting any better, so that's when I called. And the insurance company denied me any more service.

Claimant denied that he had been hurt anywhere else during this time. He continued to work as a minister, which he agreed was a lighter duty job.

Dr. Sumpter Blackmon's July 29, 2004 note records Claimant's complaint of "[p]ain in the neck radiating down the left upper extremity. Hit his head about a year ago with an oxygen container; was treated with PT and a hard neck collar. Pain has gotten worse." Dr. Blackmon noted that Claimant's pain was worse with extension. He prescribed Vioxx and Neurontin and suggested a referral.

Claimant underwent an MRI of his cervical spine on August 16, 2004. The study revealed a broad disc bulging at C6-7 as well as minimal posterior spurring at C3-4 and C4-5. The study states the following impression: "C5-6 [sic] left parasagittal disc protrusion with moderate encroachment upon the thecal sac and extension also into the left neural foramen."

Dr. Donovan Kendrick examined Claimant on September 28, 2004. After noting Claimant's June 19, 2003 incident, he recorded that Claimant's "pain had persisted, but then about May of 2004 it started radiating down his left arm." Upon examination, Dr. Kendrick recorded a full range of motion in Claimant's extremities. Upon review of Claimant's MRI, he opined that "the patient does have a disc herniation at C6-7 on the left." He believed Claimant "is going to have to have a fusion."

Upon cross-examination, Claimant confirmed that he worked for the Clinton Insurance Agency at the time he was drawing temporary total disability benefits after his compensable injury. A copy of Claimant's business card was admitted into evidence as Respondents' Exhibit #2. Claimant worked at the insurance agency for four months. He confirmed that he did not undergo any treatment between his September 12, 2003 release and his initial visit with Dr. Blackmon. In January 2005 Claimant passed a physical examination for a CDL to drive a church bus. Claimant denied some of his prior statements to Dr. Waller.

Q. You've indicated that your condition pretty much stayed the same, correct?

A. Correct.

Q. Now, in Respondents' Exhibit No. 1, page nine, which is an August 22nd, 2003 note from Dr. Waller, according to his report, you were continuing to

improve. You deny that, don't you?

A. I think so, yeah.

Q. And you also deny that you told him that you felt therapy was helping immensely?

A. Yes, sir.

Upon examination by the Commission, Claimant explained why he did not seek treatment from the date of his release by Dr. Waller, September 12, 2003, until the date of his first visit with Dr. Blackmon, July 29, 2004.

Q. And in between then, you did not seek treatment for your neck?

A. No, sir, because Dr. Waller had told me it would be a year before I would get well. And the only reason I went then was because I was starting to feel the pain in my arm, the tingling in my fingers when I sit at my desk or sit in my recliner. And I thought, well, this is even getting worse all of a sudden, you know, and I've got to do something.

Upon further examination by Respondents, Claimant confirmed that the tingling down his left arm occurred after his employment with the Respondent employer; that he had not experienced this problem before; and that it began in May of 2004.

Claimant now seeks additional medical treatment. Specifically, he would like to have the surgery recommended by Dr. Kendrick.

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). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

The issue presented by this claim is whether there is some “connection” between Claimant’s June 19, 2003 compensable injury and his current need for medical treatment. As noted elsewhere by the Commission, “the respondent is only responsible for medical services which are causally related to the compensable injury.” Scott v. Middleton Drywall, Full Workers’ Compensation Commission Opinion filed February 9, 2005 (F212233 and F307562) (citations omitted); compare Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004) (reversing for an award of additional medical benefits where a claimant demonstrated that her compensable injury was “a factor in her resulting inability to work and need for knee-replacement surgery”).

I find that Claimant has not sustained his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. Specifically, the evidence does not establish that Claimant’s current need for medical treatment is causally related to his June 19, 2003 compensable injury.

Because Claimant’s testimony is not consistent with the contemporary medical records in a key aspect, his testimony is not reliable and therefore not credible. Claimant

testified at the hearing that his condition never improved: "I don't feel like it ever got better." This is inconsistent with the physical therapist's September 11, 2003 observation that Claimant's "progress has varied." Significantly, it is much more inconsistent with Dr. Waller's August 22, 2003 report that Claimant "is continuing to improve.... [H]e feels that the therapy is helping immensely." Likewise, Claimant's testimony is inconsistent with Dr. Waller's September 12, 2003 report that Claimant "is stating that he is feeling much better" despite occasional weather- or activity-related pain

Further, the 2003 medical records do not establish that Claimant's compensable injury bears some causal relation to his current need for treatment. Claimant's 2003 studies - admittedly, x-rays - did not reveal any problems in his cervical spine. Dr. Waller recorded "normal motor function to his upper extremities" on July 11, 2003; that "[n]eurologically he is normal in the upper extremities" on August 1, 2003; and that "[h]e has a normal neurologic in the upper extremities" on August 22, 2003. Through the date of Claimant's September 12, 2003 release, there are no complaints of pain or tingling in Claimant's left arm; this condition did not arise until May of 2004, and is not documented until July 29, 2004.

In light of the foregoing, it would be speculation to relate Claimant's left arm pain and documented bulging disc to his earlier compensable injury. Apart from recording Claimant's history, none of the medical records subsequent to May of 2004 establish a causal relationship between the compensable injury and his current need for medical treatment. And, as noted, Claimant's history is not reliable; contrary to his current statements, his 2003 medical records establish that his condition improved prior to his September 2003 release. Thus, Claimant has not sustained his burden of proving by a

preponderance of the evidence that he is entitled to additional medical treatment.

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 June 19, 2003 and at all other relevant times.
3. Claimant sustained a compensable head and neck injury on June 19, 2003.
4. Respondents controvert Claimant's entitlement to any benefits after September 17, 2003.
5. Respondents have paid medical benefits as well as temporary total disability benefits to September 17, 2003.
6. Claimant failed to establish by a preponderance of the evidence that the requested medical treatment is reasonably necessary in connection with the compensable injury he received on June 19, 2003. Claimant's 2003 medical records indicate that his condition improved prior to his September 12, 2003 release. Because his current statements concerning causation are inconsistent with these contemporary medical records, Claimant's testimony is not reliable. Apart from Claimant's testimony, none of the medical records subsequent to May of 2004 establish a causal relationship between his compensable injury and his current need for medical treatment, including the pain or tingling in his left arm that did not begin until May 2004 and his documented bulging disc.

ORDER

Claimant failed to sustain his burden of proving that he is entitled to additional medical treatment. Therefore, the above claim is respectfully denied.

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml