

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F011769

JOE GILL	CLAIMANT
GNB TECHNOLOGIES (EXIDE)	RESPONDENT
ZURICH AMERICAN INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 19, 2005

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

Claimant represented by AARON MARTIN, Attorney, Fayetteville, Arkansas.

Respondents represented by NEAL HART, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 4, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 8, 2005. 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. All prior opinions are res judicata and the law of this case.

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

1. Additional medical.

2. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to additional medical treatment, specifically, a recommended MRI, prescription medications, and additional treatment from Dr. Carson in connection with his compensable back injury that occurred on August 14, 2000. The claimant will contend that he is entitled to payment of any and all outstanding medical bills incurred for the treatment of his compensable injury, and a dollar for dollar reimbursement to the claimant for all out of pocket expenses. Next, because the respondent has controverted the claimant's entitlement to additional medical treatment, the claimant will contend that he is entitled to appropriate attorney's fees for all present and future benefits.

In regard to the foregoing issues the respondents contend that the claimant's need for additional medical care is not reasonably necessary, and claimant's current spine problems, if any, are not related to his compensable injury of August 14, 2000. Respondents respectfully reserve the right to alter and/or update the above defenses as discovery continues.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties jointly submitted documentation marked Joint Exhibit No. 1 and Joint Exhibit No. 2. The respondents submitted the deposition of Dr. Randall Carson which is marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

It has been stipulated by the parties and testified to by the claimant that on August 14, 2000, he sustained a compensable injury to his low back while working for the respondent. In the prior opinion dated March 7, 2003, it was stipulated by the parties that as of that date all temporary total disability and medical expenses had been paid. In the March 2003 opinion, the claimant's request for a 10 percent whole body impairment was denied.

The claimant testified that at the time of his compensable injury, he experienced excruciating pain in his low back which went down into his right leg all the way to his toes. The claimant testified that he was initially treated by Dr. Joe Carson who sent him to physical therapy and used hot packs as well as electricity on his lower back. The claimant testified that after this treatment program he felt worse than he had before the treatment was administered. The claimant testified that Dr. Carson initially prescribed anti-inflammatories but eventually put him on Celebrex and Ultram. The claimant testified that about a year prior to the present hearing, Dr. Carson put him on Hydrocodone as well. The claimant testified that he had a series of three antibiotic steroid shots in his low back. The claimant testified that these shots would help his discomfort for about thirty to forty days and then would wear off. The claimant testified that, in his opinion, his symptoms over the years have progressively gotten worse. The claimant explained that the pain is more intense and when it flairs up it just buckles him to his knees.

The claimant testified that he has undergone one MRI and that in the year 2004 he underwent a nerve conduction test prescribed by Dr. Carson. The claimant testified that he has continued to see Dr. Carson for a variety of problems, one of them including a vascular problem which was not related to his compensable injury. The claimant testified that he underwent an MRI about one year ago and that is when he found out that his workers' comp carrier was no longer paying his medical bills. The claimant testified that he is still taking medications prescribed by Dr. Carson in the form of Ultram, Celebrex and Hydrocodone. The claimant testified that Dr. Carson has recommended another MRI for his back. The claimant testified that currently if he twists or turns the wrong way pain shoots down his leg and around his back like someone is sticking an ice pick in him. The claimant testified that basically the pain is there all the time. The claimant testified that on a scale of one to ten, one being the mildest and ten being the worst, a good day for him would be a seven and if he takes his medications it might bring it down to a five. The claimant testified that on a bad day he is not even able to go to work. The claimant testified again that his pain is pretty much all the time because his work activities require twisting and turning which seems to antagonize his symptoms.

On cross examination, the claimant agreed that he has been off work some but that has been due to his vascular problem which is not work related. The claimant testified that he has made Dr. Carson his family physician because he has seen Dr. Carson for

several of his physical problems. The claimant testified that he is aware of what Dr. Carson said in his deposition concerning his back problems but he does not agree with the doctor's opinion.

The medical records set forth the claimant's history for his lumbar strain from the date of his injury. An MRI of the claimant's low back done on August 24, 2000, reveals that the claimant has degenerative disc disease at L5-S1 with some posterior spur formation and infused disc bulging but no central stenosis as well as the claimant having bilateral foraminal stenosis at L5-S1 level. By January 11, 2001, Dr. Carson had diagnosed the claimant with having acute lumbar strain which had resolved although he was having lumbar pain syndrome which had stabilized for the past six weeks. Dr. Carson notes that after his last LESI a decision will be made whether he has reached MMI. On April 12, 2001, Dr. Carson writes that he feels the claimant has reached maximum medical improvement. Dr. Carson notes that his acute lumbar strain of September 14, 2000, is resolved and that he has degenerative disc disease and degenerative arthritis in his lumbar spine. He was released to return to work and that his specific restrictions would be permanent. Dr. Carson writes on September 21, 2001, that the claimant has a 10 percent disability to the body as a whole as a result of multiple levels of degenerative disc disease of his lumbar spine as well as degenerative arthritis at multiple levels in his lumbar spine. Dr. Carson writes on March 11, 2002, concerning the claimant, that he can state within a reasonable degree of medical certainty that at least 50 percent of the cause

of the claimant's impairment stems from chronic, degenerative changes related to the normal aging process. Dr. Carson writes that these same changes occur in most people to some degree depending on heredity and type of activity over one's lifetime. Dr. John Landherr writes on March 13, 2002, that he had evaluated the claimant on one occasion in his office on October 13, 2000, at which time the claimant's compensable injury was discussed. Dr. Landherr notes that he has reviewed the claimant's MRI and a neurological examination and found nothing requiring surgery. Dr. Landherr writes that in his medical opinion the claimant did not suffer any ratable permanent impairment stemming from his lumbar condition which he evaluated on October 13, 2000. Dr. Landherr opines based on information from the claimant that the August 14, 2000, accident exacerbated the claimant's pain from his degenerative lumbar disc disease. The claimant continued to be seen by Dr. Carson for a variety of reasons including heart problems, chest pain and high blood pressure. Dr. Carson writes in a note dated September 19, 2003, that the claimant is complaining about something attributable to his injury of August 14, 2000. April 15, 2004, Dr. Carson writes that the claimant is having worse pain in his arms and lower back, noting that he has had to do more at his work. The claimant was diagnosed with chronic back pain and degenerative disc disease in his lumbar spine. The medical records continue up to shortly before the hearing with the claimant having complaints of back pain for which he was continually diagnosed with having degenerative disc disease in his lumbar spine, chronic back

pain and sciatica. An MRI apparently was recommended which was not authorized by his workers' comp carrier and not done. The medical records also set forth that the claimant had other very severe problems not related to his back pain or back complaints.

In Dr. Randall Carson's deposition he stated that he began treating the claimant in 1998 but saw the claimant for his compensable injury on August 17, 2000. Dr. Carson testified that at the time he saw the claimant on August 17, 2000, he diagnosed the claimant with having lumbar muscle strain and that the claimant's x-rays revealed degenerative disc disease of the lumbar spine and sciatica. Dr. Carson explained that sciatica is pain going down into the legs. Dr. Carson testified that, in his opinion, the claimant's lumbar strain was work related but that the degenerative disc disease was not. Dr. Carson explained that degenerative disc disease is basically wear and tear of the disc over time. Dr. Carson stated that as the disc becomes thinner there is much less space between the bones and you can get pressure on the nerves that come off the spinal cord which can result in sciatica or leg pain such as the claimant was experiencing or complaining about. The doctor agreed that degenerative disc disease can be exacerbated by a lifting injury. Dr. Carson was asked about the claimant's MRI which indicated that he had bone spurs. Dr. Carson explained that spurs are little points of bone off the edge of the vertebral bodies that have to do with degenerative disc disease. Dr. Carson also explained that foraminal stenosis is also a condition which is a byproduct of

degenerative disc disease. Dr. Carson testified that the claimant continued to work for the respondent and that he, Dr. Carson, in fact went out to the respondent's plant and approved a couple of jobs which the claimant could do. The doctor testified that on April 12, 2001, he felt as though the claimant had reached maximum medical improvement and released him with some permanent restrictions as well as to follow up as needed. Dr. Carson testified that due to the claimant's various medical problems, he had recommended that the claimant look into pursuing a claim for disability. The doctor stated that at this same time he had indicated on his office note that the claimant's lumbar strain of August 14, 2000, had resolved. Dr. Carson testified that the term mechanical lumbar pain syndrome is a term he learned from Dr. Landherr years ago, noting that this term has to do with all of the picture of degeneration of the spine involving discs as well as the bones of the spine and any neuropathic symptoms that can come along with it. Dr. Carson testified that mechanical lumbar pain syndrome has to do with the degenerative process of the spine. Dr. Carson agreed that from the time that he rated the claimant with a 10 percent whole body impairment for his degenerative disc disease on September 24, 2001, he has continued to prescribe medication for the claimant's degenerative problems. Dr. Carson testified that on March 20, 2002, he again saw the claimant for his mechanical lumbar pain syndrome, degenerative disc disease of his lumbar spine and sciatica which are the same diagnosis as he has had before. Dr. Carson testified that he saw the claimant on June 7, 2002, for

complaints of carpal tunnel syndrome. Dr. Carson testified that on July 17, 2002, he saw the claimant for his continuing complaints of chronic back pain, carpal tunnel syndrome, degenerative disc disease and degenerative arthritis of the lumbar spine. The doctor stated that at this time he was treating the claimant as the claimant's primary care physician and this was the first time he began addressing the claimant's hypertension. The doctor agreed that after the July 2002 visit the claimant developed cardiovascular problems as well as high blood pressure and began receiving treatment for these problems. Dr. Carson testified that in March 2003 the claimant came to him and asked that he remove all of his physical restrictions so he could work overtime. The doctor testified that he agreed with the claimant since the claimant had had two years of rest and had been stable symptomatically as far as his back was concerned. Dr. Carson testified that the next time he treated the claimant for any back problems was on or about April 15, 2004. Dr. Carson testified that there were no objective findings to indicate anything different from his chronic back pain and degenerative disc disease of his lumbar spine. Dr. Carson testified that he continued the claimant on the same medications and he got better over time. Dr. Carson agreed that when he saw the claimant in May 2004 the claimant's complaints of chronic back pain were the same as they had been in the past. Dr. Carson agreed that when he saw the claimant on October 6, 2004, he again diagnosed him with degenerative disc disease of the lumbar spine, chronic back pain and sciatica which was the same diagnosis he had

been giving the claimant from day one. Dr. Carson testified that he did not think that the claimant's condition had gotten worse but the claimant's pain level had gotten worse. Dr. Carson testified that the reason he scheduled the claimant for a repeat MRI was because from what he could see from his examination, everything was consistent with previous examinations. Dr. Carson states that in his November 15, 2004, notes the claimant is complaining of bilateral leg pain, left worse than the right, with the pain all the way to his heel, noting that his left great toe is purple and he is having difficulty walking sixty to seventy feet from the parking lot into work without having to stop to let the pain subside. Dr. Carson was asked if having a degenerative back condition and having sciatica cause his foot to turn purple and Dr. Carson responded, "No. That has to be vascular." Dr. Carson agreed that vascular problems can cause a person not to be able to walk very well and to have pain in their legs. Dr. Carson testified that after the claimant was reevaluated by Dr. Hernandez and Dr. Jagers, he now would say that the claimant's current problems are caused by vascular problems not his degenerative disc disease. Dr. Carson testified that the claimant has had extensive cardiovascular treatment which has even involved surgery. Dr. Carson stated that the claimant is still taking medications for his back and that his diagnosis of the claimant has not changed. Dr. Carson was asked if from an objective standpoint if the claimant's condition has changed any and Dr. Carson responded that he did not see anything to indicate any change. Dr. Carson stated that, in

his opinion, he thinks an MRI may be helpful in determining if the claimant has any change with regard to his degenerative disc disease but did not think it was necessary unless he had more localized sciatica type pain.

On cross examination, the doctor was asked that if in his opinion the claimant did not need to undergo an MRI at the present time and Dr. Carson responded that he thought that an MRI would help if the claimant was still having a lot of leg pain, noting that it might help resolve any question as to where the pain is coming from. Dr. Carson was asked that if the claimant reports that he has had leg pain after his bypass surgery did the doctor think an MRI would be necessary and Dr. Carson responded, "Yes." Dr. Gill was asked what lumbar strain is and the doctor responded, "It just means muscles and ligaments get stretched or over worked that result in pain and inflammation." Dr. Gill was then asked if lumbar strain can cause sciatica and the doctor responded, "Not in my experience." The doctor was asked if, in his opinion, it is more likely than not that the claimant's accident at work was the cause of his foraminal stenosis and doctor Gill responded, "No, I can't say that with any degree of certainty." Dr. Gill then explained that it is generally accepted that degenerative arthritis and degenerative disc disease occurs over time. Dr. Gill agreed that lumbar strain normally resolves itself over time. The doctor testified that any leg pain that the claimant is having or any sciatica or radicular pain is related to the claimant foraminal stenosis.

On redirect examination, Dr. Gill agreed that the claimant's lumbar strain resolved itself several years earlier. The doctor testified that it was his opinion that the claimant's sciatica is related to his foraminal stenosis. The doctor was asked if, in his opinion, the claimant's work injury caused the foraminal stenosis and Dr. Gill responded, "In general I would say no." The doctor also agreed that the claimant's mechanical lumbar pain syndrome is another way to characterize problems that stem from degenerative disc disease which is not related to the claimant's accident at work. Dr. Gill agreed that the medications which he is currently prescribing for the claimant are related to his degenerative disc problems. Dr. Gill testified that the claimant might still have some pain with respect to his vascular problems. The doctor agreed that the claimant currently is not complaining of leg pain and stated that if the claimant is not complaining of leg pain, he did not think an MRI would be necessary.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury of August 14, 2000. The medical records set forth that the claimant reached maximum medical improvement for his compensable injury on April 12, 2001. It has previously been found that the claimant's permanent partial impairment was due to his degenerative disc disease which was not work related and Dr. Carson has testified in his deposition that the claimant's need for ongoing medication is due to his degenerative disc problems and

that any symptoms he expresses are a result of his long-standing non work related back problems. Therefore, this claim for additional medical should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. All prior opinions are res judicata and the law of this case.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to any additional medical treatment for his compensable back injury. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE