

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214138

MARSHA GULLETT,  
EMPLOYEE

CLAIMANT

MAD BUTCHER 2,  
EMPLOYER

RESPONDENT

ROYAL INSURANCE CO OF AMERICA,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED JANUARY 10, 2005**

Hearing conducted before ADMINISTRATIVE LAW JUDGE C. MICHAEL WHITE, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

The respondents was represented by HONORABLE JOHN WEBSTER, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 23, 2004 in Little Rock, Arkansas. A prehearing order was entered in this case on August 25, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined an issue to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record. Subsequent to the hearing this case was transferred to Administrative Law Judge Mark Churchwell for a decision on the record developed by the parties.

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

1. The employer/employee/carrier relationship existed on December 4, 2002.
2. The claimant sustained a compensable injury on December 4, 2002.
3. The claimant was earning sufficient wages to entitle her to a total disability compensation rate of \$260.00, and a partial disability compensation rate of \$195.00.
4. The respondents have controverted the claimant's entitlement to a discogram.

By agreement of the parties, the issue originally to be litigated and resolved at the hearing was limited to the following:

1. Whether a discogram is reasonably necessary for treatment of the claimant's compensable injuries.

However, after the hearing the claimant underwent an additional evaluation by Dr. Sunder Krishnan, her authorized treating physician, and in a report dated September 27, 2004, Dr. Krishnan now proposes alternative conservative treatment as a prerequisite to determining whether a discogram would be appropriate.

By agreement of the parties in a telephone conference conducted on December 27, 2004, the issue to be determined and resolved at the present time is now limited to the following:

1. Whether the additional conservative treatment proposed by Dr. Krishnan in his report dated September 27, 2004 is reasonably necessary for treatment of the claimant's compensable injuries.

The record consists of the September 23, 2004 hearing transcript and the exhibits contained therein. In addition, I have supplemented the record by "blue-backing" Dr. Krishnan's September 27, 2004 medical report.

#### **DISCUSSION**

The employer must 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). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present case, I find that a preponderance of the evidence establishes that the course of additional conservative and diagnostic treatment proposed by Dr. Krishnan in his September 27, 2004 report is reasonably necessary in connection with the claimant's admittedly compensable December 4, 2002 back injury.

In reaching that conclusion, I note, as did the respondents' attorney at the hearing that (1) on September 23, 2003, Dr. Krishnan indicated that no further interventions were necessary for the claimant and (2) the claimant did not see a doctor again for her back after July of 2003 until the hearing held on September 23, 2004. These two pieces of evidence might normally support a strong inference that the claimant does not need additional diagnostic procedures or additional treatment.

However, in the present case, the evidence also establishes that Dr. Krishnan was proposing a discogram shortly before September of 2003, and proposed no additional interventions when the claimant declined a discogram in the summer of 2003. The evidence establishes that the claimant declined a discogram at that time for fear of the risks of the procedure making her back worse than it already is. However, the record also establishes that her pain never

resolved, and she has been receiving prescriptions on her own from Dr. Howard.

The record also establishes that, in addition to the diagnostic testing proposed by Dr. Krishnan in the summer of 2003 and in September of 2004, Dr. Schlesinger also recognized in December of 2002 numerous etiologies that could be responsible for the back pain caused by the claimant's work related injury. Finally, I note that, although Dr. Krishnan originally proposed a discogram, Dr. Krishnan currently proposes less invasive diagnostic and therapeutic treatment first, including diagnostic facet medial branch nerve injections (and possible rhizotomies if the injections are effective) before proceeding with a discogram.

In finding that the additional treatment proposed by Dr. Krishnan is reasonably necessary, I am particularly persuaded by the persistent nature of the claimant's back pain and the apparent agreement by the relevant physicians that the precise anatomical cause of the pain precipitated by the work injury is as yet undetermined.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer/employee/carrier relationship existed on December 4, 2002.

2. The claimant sustained a compensable injury on December 4, 2002.
3. The claimant was earning sufficient wages to entitle her to a total disability compensation rate of \$260.00, and a partial disability compensation rate of \$195.00.
4. The respondents have controverted the claimant's entitlement to a discogram.
5. I find that a preponderance of the evidence establishes that the course of additional conservative and diagnostic treatment proposed by Dr. Krishnan in his September 27, 2004 report is reasonably necessary in connection with the claimant's admittedly compensable December 4, 2002 back injury.

**AWARD**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge