

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F404765

CARLTON JORDAN, EMPLOYEE	CLAIMANT
SMI JOIST, EMPLOYER	RESPONDENT
PACIFIC INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 14, 2005

This matter comes before the HONORABLE DALE DOUTHIT, Administrative Law Judge, for a decision on the record.

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, of Texarkana, Arkansas.

Respondents represented by HONORABLE NELSON V. SHAW, Attorney at Law, of Texarkana, Texas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed June 24, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the following documents:

- 1) The Prehearing Order filed June 24, 2004. (Comm. Ex. 1);
- 2) The parties' Joint Stipulations of Fact filed July 13, 2005, (JX-1);
- 3) Medical records from April 17, 2003, through August 23, 2004, totaling 120 pages submitted as a Joint Exhibit, (JX-2);
- 4) The hearing brief, with attached exhibits, submitted by claimant on July 22, 2005 and July 13, 2005, (CX-1) and,
- 5) The hearing briefs with attached exhibits submitted by the respondents

on July 22, 2005 and July 25, 2005, (RX-1).

The parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of the claim.
- 2) That the employer/employee/carrier relationship existed at all relevant times, including April 11, 2003.
- 3) That the claimant sustained a compensable injury to his back on or about April 11, 2003.
- 4) That, pursuant to a Change of Physician Order dated July 29, 2004, claimant's primary treating physician is now Dr. Thomas Hart.
- 5) The parties agree the only issue for determination at this time is whether the discogram being recommended by Dr. Thomas Hart is reasonable and necessary. All other issues are reserved.
- 6) That the Table of Contents prepared by the claimant covering the medical records beginning with Dr. George Garrett on April 17, 2003, through the medical records of Dr. Thomas Hart dated August 23, 2004, are submitted as a joint exhibit for consideration.

The parties agreed the sole issue to be presented for determination was whether the discogram recommended by Dr. Hart is reasonably necessary in relation to the claimant's compensable injury.

The claimant contends the discogram being recommended by Dr. Hart is reasonably necessary, and that the respondents should be ordered to pay for the test.

The respondents contend the discogram recommended by Dr. Hart is not

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reasonable or necessary in relation to the claimant's compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of the record as a whole, to include medical reports, claimant's and respondents briefs; and all other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with A.C.A.

§11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The Joint Stipulations submitted by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the evidence that the discogram recommended by Dr. Thomas Hart is reasonably necessary in relation to his admittedly compensable injury.

DISCUSSION

On April 11, 2003, the claimant sustained a compensable injury to his back. As the medical records indicate, the claimant has repeatedly reported to his doctors unrelenting symptoms of pain since the injury, through the last report from Dr. Thomas Hart on August 23, 2004. According to the medical records, the claimant never reported any difficulty with his back until the work related injury in April of 2003. The claimant was treated conservatively with physical therapy and epidural steroid injections; however, the claimant's complaints were never solved. Twice, Dr. Bud Dickson

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recommended facet joint injection (August 5, 2004 and January 15, 2004), however, they were never performed. (JX-2, pgs. 36 & 108)

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury.

A.C.A. §11-9-508; American Greetings Corp. v. Garey, 61 Ark. App. 17, 963 S.W. 2d 613 (1998). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Geo. Specialty Chem. Inc. v. Clingan, 69 Ark. App. 269, 13 S.W. 3d 218 (2000). The answer to the issue of what constitutes reasonable and necessary treatment under A.C.A. §11-9-508 turns on the sufficiency of the evidence. Gansky v. Hi-Tech Eng'g, 325 Ark. 163, 924 S.W. 2d 790 (1996).

The evidence contained in this record indicates that the claimant needs some additional treatment. As stated earlier, Dr. Dickson previously recommended facet joint injection prior to the change of physician order to Dr. Hart. As noted in Dr. Hart's report, (JX-2, pgs. 114-120), for some reason those injections were never done.

Additionally, as early as May of 2003, Dr. Dickson noted the claimant's symptoms sounded more discogenic than they had in the past. Dr. Dickson's feelings at that time seem to coincide with the recommendation from Dr. Hart regarding the discogram. Dr. Hart's detailed report (JX-2, pgs. 114-120) cannot be arbitrarily overlooked. The claimant's symptoms, as explained by Dr. Hart, point to the need for the additional diagnostic test, especially in light of the other medical records from Dr. Dickson

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previously mentioned.

It is undisputed that the claimant sustained a compensable injury to his back, therefore, the issue of objective findings is moot; however, the respondents seem to argue the issue in their brief. Also, disc bulges were noted at claimant's L3-L4 and L4-L5 level. The only issue is whether the additional medical request is reasonably necessary in relation to the compensable injury. I find the overwhelming evidence shows that the proposed discogram followed by post CT imaging is reasonably necessary due to claimant's admittedly compensable injury.

Respondents also argue that since the claimant has returned to work, and been able to preform his duties, that additional treatment is not necessary. The issue at present is whether the claimant is entitled to the discogram, not TTD benefits. The claimant should not be denied the diagnostic test because he has returned to work with pain. Also, the respondents alluded to another falling incident after the compensable injury. The respondents state the unrelated fall casts questions on whether the pain is due to the job related accident. The medical records submitted convince this examiner that the claimant's reports to his physician were consistent following his compensable back injury.

The Court, in Smith v. Country Market/Southwest Foods, 73 Ark. App. 333, 44 S.W. 3d 737 (2001), alluded to the discogram as a useful diagnostic test. I find the discogram in this instance to be a necessary tool in determining the reasons for the

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claimant's discogenic symptoms as discussed by Dr. Dickerson and recommended by Dr. Hart.

The respondents argue that since previous diagnostic testing has not revealed anything, that the discogram is not warranted. The Commission has opined that "whether previous treatment has afforded a claimant relief is not dispositive of the question of whether a claimant is entitled to additional medical treatment." Wal-Mart Stores, Inc. v. Woods, No. CA 00-1419 (June 6, 2001). Further, Dr. Hart thoroughly explained why the discogram would be a more probative tool in treating the claimant's compensable injury. (JX-2, pgs. 114-120).

Obviously the claimant needs some additional medical, either the facet joint injections recommended by Dr. Dickson, the discogram recommended by Dr. Hart, or both. Accordingly, I find the claimant's request to be reasonably necessary and make the following award.

AWARD

Respondent, Pacific Employers Insurance Company, is hereby directed and ordered to pay for the discogram recommended by the claimant's authorized treating physician. As stipulated, all other issues are reserved.

IT IS SO ORDERED.

DALE DOUTHIT
ADMINISTRATIVE