

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309925

JAMES MITCHELL, JR.	CLAIMANT
GUARDIAN BUILDING PRODUCTS	EMPLOYER NO. 1
ROYAL INDEMNITY COMPANY, INSURANCE CARRIER	CARRIER NO. 1
BRADCO SUPPLY CORP	EMPLOYER NO. 2
LIBERTY MUTUAL INSURANCE, INSURANCE CARRIER	CARRIER NO. 2

OPINION FILED DECEMBER 28, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville,
Arkansas.

Respondents represented by BRETT WATSON, Attorney, Little Rock,
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 3, 2005, in Springdale, Arkansas. A pre-hearing order was entered in this case on July 19, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On July 8, 2003, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$391.00 for total disability and \$293.00 for permanent partial disability.

3. On July 8, 2003, the claimant sustained a compensable injury to his low back.
4. There is no dispute over the payment of accrued medical expenses.
5. There is no dispute over the payment of temporary disability benefits through the present.
6. The respondents have accepted and paid permanent partial disability benefits for a 10% permanent physical impairment.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional medical services.

In regard to these issues, the claimant contends that he was injured in July of 2003, and underwent surgery. Claimant is asking for additional medical.

In regard to these issues, the respondents contend that all appropriate benefits have been paid.

DISCUSSION

_____The only issue in this case is the claimant's entitlement to additional medical services, in the form of a lumbar MRI, as recommended by Dr. Mark Greenberg. The burden rests upon the claimant to prove that the medical services in dispute represent "reasonably necessary medical services," within the meaning of Ark. Code Ann. §11-9-508.

Clearly, the claimant sustained a significant compensable injury to his lumbar spine on July 8, 2003. This injury ultimately resulted in two separate surgeries. The first of these surgeries was a microdiscectomy of the L5-S1 intervertebral disc in November of 2003. The second surgery was in the form of a fusion of the L5-S1 vertebra with the surgical placement of required hardware or instrumentation. This second surgery was performed on January 29, 2004.

The claimant was initially released by Dr. Greenberg to return to light duty and was subsequently released without restrictions. On June 2, 2004, Dr. Greenberg opined that the claimant had achieved MMI (maximum medical improvement) and assessed a permanent physical impairment of 10% to the body as a whole. However, he scheduled the claimant for follow up in one month.

The claimant initially returned to employment with the respondent at light duty. Following his subsequent release to return to employment without restriction, the claimant was returned to his pre-injury position. Clearly, this position would be considered strenuous and involved repetitive heavy lifting and twisting or turning with heavy bundles of shingles.

The claimant continued to be seen by Dr. Greenberg through September 29, 2004. Although Dr. Greenberg notes that the claimant's symptoms had substantially improved, he also records continuing residual symptoms both in the lumbar area and the lower extremities. Sometime during this period, the claimant changed his position back to a warehouse job, which was less strenuous on his

lower back. The claimant has remained in this position ever since and continues to be so employed at the present time.

According to the claimant's testimony, he experienced an exacerbation or increase in the magnitude of his low back and radicular difficulties in early June of 2005 (approximately June 12, 2005). He stated that this increase in his complaints occurred while he was unloading shingles for Cannon Ashley Building Products, Inc. Following this increase in difficulties, the claimant consulted Dr. Greenberg.

The medical evidence shows that the claimant was evaluated by Dr. Greenberg on June 15, 2005. On this visit, he was complaining of increased low back pain and radicular difficulties. The claimant's radicular difficulties also appear to have been more prevalent in his left lower extremity. His previous complaints had been more on the right.

Following this evaluation, Dr. Greenberg recommended a lumbar MRI scan with and without enhancement. Clearly, the purpose of this study was to determine if the claimant's present episode of difficulties was attributable to new or increased physical damage to the lumbar spine or were merely a natural continuation or progression of his previous compensable lumbar injury.

The respondents have refused to provide this recommended testing. It is their contention that such testing was only necessitated by or connected with a "new injury" that occurred after the claimant's actual employer, Cannon Ashley Building Products, Inc., changed ownership from Guardian Building Supply to

Bradco Supply.

The respondents may well be correct in their contention that the claimant's lower back and lower extremity difficulties during and after June of 2005, were the result of a "new" employment related injury in June of 2005. However, it is equally possible that these difficulties were due to a recurrence, continuation, or progression of the admittedly compensable injury of July 8, 2003. It is also possible that the claimant's difficulties and need for medical services during and after June of 2005, were the result of both his prior compensable injury and a subsequent employment related aggravation in June of 2005. The MRI study recommended by Dr. Greenberg, would appear to be critical in making such a determination.

Once a compensable injury has been established, this Commission has the authority to order the claimant to undergo, at the respondents' expense, any evaluation or testing reasonably necessary for the Commission to make a knowledgeable and informed opinion on the liability for benefits provided by the Act, Ark. Code Ann. §11-9-207 and §11-9-511. In the present case, it is my opinion that the MRI testing which has been recommended by Dr. Greenberg, is, to that extent necessitated by or connected with the claimant's compensable injury of July 8, 2003. The Act does not require that the compensable injury be the sole or even major cause for the need of this recommended testing. It is my further finding that this recommended testing has a reasonable expectation of accomplishing its intended purpose of determining whether the

claimant's current lumbar difficulties (including radicular complaints) are solely the result of a "new" employment related injury in June of 2005, or merely a recurrence of continuation of the prior compensable injury of July 8, 2003, or a combination of both.

Therefore, I find that the respondents are liable for the expense of this testing, under the provisions of Ark. Code Ann. §11-9-502 and §11-9-511. Any decision on the claimant's entitlement to further medical services for his episode of lumbar difficulties, which began in June of 2005, is reserved for future determination (if necessary).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 8, 2003, the relationship of employee-employer-carrier existed between the parties.
3. On July 8, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$391.00 for total disability and \$293.00 for permanent partial disability.
4. On July 8, 2003, the claimant sustained a compensable injury to his low back or lumbar spine.
5. There is no dispute over the payment of accrued medical expenses.
6. There is no dispute over the payment of temporary total disability benefits, at the present time.

7. The respondents have accepted liability for and have paid permanent partial disability benefits for a permanent physical impairment of 10% to the body as a whole.
8. The testing recommended by Dr. Greenberg, in the form of MRI studies with and without enhancement, are necessitated by and connected with the claimant's compensable injury of July 8, 2003. These studies further have a reasonable expectation of accomplishing the purpose or goal for which they are intended. Pursuant to the Act, the respondents are liable for the expense of this testing.
9. The respondents have denied liability for the expense of the MRI studies recommended by Dr. Greenberg.
10. As no controverted benefits have herein been awarded directly to the claimant, no controverted attorney's fee can be awarded to his attorney.

ORDER

The respondents shall be liable for the MRI testing, as recommended by Dr. Greenberg. This liability shall be subject to the medical fee schedule established by this Commission.

The respondents liability for any additional medical services is reserved for future determination, if necessary.

All benefits herein awarded, which have heretofore accrued are payable in a lump sum without discount.

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This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge