

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F103814

ERIC PRATT

CLAIMANT

B & B DIRECTIONAL BORING

RESPONDENT

AMERICAN STATES INSURANCE COMPANY  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 7, 2005

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

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondent represented by GUY WADE ALTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above claim on October 18, 2004 in Springdale, Arkansas. The deposition of Dr. Mark Powell was taken on July 13, 2004 and has been admitted as Respondent's Exhibit No. 1. The deposition of Dr. Mark Sewell was taken on September 28, 2004 and has been admitted as Respondent's Exhibit No. 2.

A pre-hearing conference was previously held in this claim, and as a result thereof, a pre-hearing order was entered in the claim on June 30, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to be litigated and resolved at the present time, and the respective parties contentions in regard thereto. A copy of this Prehearing Order was made Commission's Exhibit No. 1 at the hearing.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 4, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The appropriate weekly compensation rates are \$293.00 for total disability and \$220.00 for permanent partial disability.
4. On January 4, 2001, the claimant sustained a compensable injury to his right knee.
5. There is no dispute, at present, over the benefits due the claimant directly for his compensable right knee injury.

By agreement of the parties the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether the claimant's back difficulties represent a compensable complication or consequence of the claimant's compensable right knee injury.
2. The claimant's entitlement to the payment of medical expenses for his low back complaints.
3. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

1. Due to ongoing knee problems the claimant contends he now has back problems associated with his irregular gait. He has sought but has been refused any medical treatment dealing with this back. The claimant will contend that but for the loose bodies that have been determined to be work related he would not currently have the back trouble he experiences.

In regard to these issues, the respondent contends:

1. Respondent contends that claimant's back complaints are unrelated to his knee condition and is not entitled to benefits.

### DISCUSSION

\_\_\_\_\_The central issue in this case is the question of whether the claimant's difficulties with this low back represent a "compensable consequence" of his initial compensable right knee injury. The burden rests upon the claimant to prove that his back difficulties are, in fact, compensable. In order to meet this burden, the claimant must prove that his lower back difficulties satisfy all of the requirements for compensability that are set out in the Act.

The first of these requirements are found in A.C.A. §11-9-102 (4) (D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury or condition alleged to be compensable. It further requires that the actual existence of this physical injury or condition must be supported by "objective findings," (i.e. the independent observation of physical findings beyond the claimant's voluntary control).

The claimant's lower back difficulties have been diagnosed by Dr. Sewell and has been in the form of a soft tissue injury to the musculature of the area in the claimant's lumbosacral spine. The actual existence of this diagnosed condition is supported by the presence of muscle spasms in this area, which have been observed by Dr. Sewell on various occasions.

I find the reports and records of Dr. Sewell sufficient to "establish" the actual existence of a physical injury or condition involving the claimant's lumbosacral spine. I further find that the medical record contains ample objective findings to support this

diagnosis. Therefore, the claimant has satisfied the requirements for compensability, which are set out in A.C.A. §11-9-102 (4) (D).

Next, the claimant must show that this medically established and objectively documented physical injury or condition is causally related to his compensable right knee injury of January 4, 2001. Although certainly relevant, medical evidence is not absolutely necessary to prove the existence of this causal relationship. It is also not necessary for the claimant to prove that his compensable right knee injury was the sole or even the “major” cause of his subsequent lower back difficulties. Finally, it is not necessary that the claimant prove the existence of this causal relationship to an absolute or mathematical certainty. However, he must prove that the existence is more than a mere possibility. He must show that the compensable injury to his right knee was the probable or likely cause of his subsequent back difficulties.

Dr. Sewell has indicated that the claimant’s difficulties with the muscles in his lumbosacral spine are the result of added stress on this portion of his body that is due to either both his antalgic gait (i.e. favoring his right leg) and to a discrepancy in the length of his right leg (i.e. his right leg being six millimeters shorter than his left).

Dr. Powell has no specific opinion on the cause of the claimant’s lower back difficulties and has indicated that he would defer to the opinion of Dr. Sewell. However, in his deposition, Dr. Powell does note that the claimant has an antalgic gait and walks with a limp favoring his right leg. He also testified that it is quite common among his patients with antalgic gaits to develop lower back difficulties. There is no indication in the reports or records of Dr. Powell that he observed the claimant having a length discrepancy in his right leg (i.e. it was shorter than his left). Nor do the reports of Dr. Powell indicate that he has observed any narrowing of the claimant’s right knee joint, as indicated in x-rays taken by Dr. Sewell.

This case is complicated by the fact that the claimant is suffering from two separate conditions involving his right knee. The first is the traumatic injury of January 4, 2001 and its resulting sequelae. The second is pigmented villonodular synovitis (PVS). The PVS was incidentally noted during the corrective surgery for the claimant's traumatic right knee injury. However, this is a progressive systemic condition that can, itself, result in damage to the knee joint.

After consideration of all of the evidence presented, it is my opinion that the claimant's antalgic gait is a substantial cause of his difficulties with his lumbosacral spine. The fact that leg length discrepancy may also be playing a causal role in these difficulties is of no consequence. Thus, it is immaterial as to the cause of the claimant's leg length discrepancy or even if it exists.

After consideration of all of the evidence presented, it is my further opinion that the physical damage produced by the claimant's compensable injury of January 4, 2001, is also a substantial cause of this antalgic gait. As stated by Dr. Powell, the trauma from this compensable injury and from the two surgeries it required, has caused extensive damage to the claimant's right knee joint. In fact, Dr. Powell has assigned 23% permanent physical impairment to the claimant's lower extremities attributable solely to the claimant's compensable injury. The record further shows that the claimant had no difficulties with his right knee prior to the compensable injury, but has experienced significant continuous difficulties thereafter.

In light of this fact, it is immaterial that the claimant's PVS, by this time, may also be playing some causal role in his antalgic gait. As previously indicated, it is not necessary that the compensable injury be the sole or even the major cause of this gait disorder.

In summary, I find that the claimant has shown that his lower back difficulties are the natural and probable consequence of this compensable right knee injury of

January 4, 2001. Thus, these difficulties are also “compensable” and the claimant would be entitled to appropriate benefits provided by the Act for these difficulties.

A.C.A. §11-9-508 would entitle the claimant to reasonably necessary medical services for this compensable consequence. However, the claimant must still show that the medical services in dispute are, in fact, reasonably necessary for this compensable consequence.

Clearly, chiropractic treatment is commonly recognized as an appropriate treatment modality for soft tissue injuries to the back, such as those being experienced by the claimant in the present case.

The treatment modalities provided by Dr. Sewell would seem to be those commonly recognized as appropriate for the type of difficulties being experienced by the claimant. There is no indication that any of Dr. Sewell’s services are inappropriate or excessive. However, I would note that Dr. Sewell has now treated the claimant for approximately one year. Even otherwise appropriate medical services may become unnecessary, if they fail to show any significant benefit after a reasonable period of time.

However, I find that, at the present time, the greater weight of the credible evidence establishes that the medical services provided to the claimant for his lower back difficulties by and at the direction of Dr. Sewell represent “reasonably necessary medical services” for his compensable lower back difficulties. Therefore, under the provisions of A.C.A. §11-9-508, the respondent would be liable for the expense of these services, subject to the Medical Fee Schedule established by this Commission.

#### FINDINGS & CONCLUSIONS

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

2. On January 4, 2001, the relationship of employee-employer-carrier existed between the parties.
3. On January 4, 2001, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$293.00 for total disability and \$220.00 for permanent partial disability.
4. On January 4, 2001, the claimant sustained a compensable injury to his right knee.
5. The claimant has proven by the greater weight of the credible evidence that his difficulties with his lower back represent a “compensable consequence” of his compensable right knee injury.
6. There is no dispute, at the present time, over the payment of any benefits provided by the Act specifically for the claimant’s compensable right knee injury.
7. The medical services provided to the claimant for his lower back difficulties by and at the direction of Dr. Sewell represent reasonably necessary medical services for a compensable consequence of the claimant’s compensable injury. Thus, the respondent is also liable for the expense of these services, subject to the Medical Fee Schedule established by this Commission.
8. The respondent has controverted the claimant’s entitlement to any benefits under the Act for his lower back difficulties.
9. As the compensable injury giving rise to this claim occurred prior to July 1, 2001, the claimant’s attorney is entitled to

the maximum statutory attorney's fee, in effect that time,  
on the controverted medical expenses herein awarded.

ORDER

The respondent shall be liable for the expense of the medical services provided to the claimant for his lower back difficulties by and at the direction of Dr. Mark Sewell, subject to the Medical Fee Schedule established by this Commission.

The respondent shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on the controverted medical expenses awarded herein. The claimant's attorney is hereby authorized to receive from any benefits which may hereinafter become due and payable to the claimant the remaining one-half of this maximum statutory attorney's fee.

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

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

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE