

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F305035 & F302654**

<b>JOHN A. RAGLAND, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MAVERICK DEVELOPMENT, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN INTERSTATE INSURANCE COMPANY, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 1, 2005**

A hearing in this case was conducted on November 9, 2004, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Mountain Home, Baxter County, Arkansas.

Claimant was represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held on this claim on July 20, 2004; a Prehearing Order was filed in this matter on July 22, 2004. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to four stipulations. Two of these stipulations are set forth in the Prehearing Order and were confirmed as amended by the parties at the hearing; the parties agreed to the other two stipulations at the hearing. The stipulations that follow are hereby accepted.

1. The employee-employer-carrier relationship existed on September 19, 2002; February 28, 2003; and at all other relevant times.

2. Claimant suffered compensable injuries on September 19, 2002 and February 28, 2003.

3. Respondents controvert additional benefits.

4. If called to testify, Claimant's wife would corroborate the testimony of Claimant.

At the November 9, 2004 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the second and third issues listed in the Prehearing Order should be reserved, and further agreed that the only remaining issue to be litigated and resolved is limited to the following:

1. Whether Claimant is entitled to additional reasonable and necessary medical treatment.

Claimant contends that his current need for medical treatment is connected to his September 19, 2002 and February 28, 2003 compensable injuries. Respondents observe that the initial MRI taken after Claimant's second injury did not show an annular tear; a second MRI taken in January of 2004 does refer to an annular tear. Thus, Respondents argue, Claimant's need for treatment is not connected to his injury at work.

### **DISCUSSION**

On September 19, 2002, Claimant and a co-worker, Matthew King, were lifting heavy wooden trusses. King recalled that each truss weighed "a couple of hundred pounds, if not more." As they lifted one truss, Claimant felt a burning sensation in his low back; as they carried the truss, Claimant told King that he thought he had hurt his back. Claimant told his supervisor, who completed an accident report; the respondent employer made an appointment for Claimant to see a doctor the next day.

Dr. George Lawrence's September 20, 2002 office note records that Claimant "was

carrying some heavy trusses and soon after he had severe pain in his back.” Dr. Lawrence noted “a lot of muscle spasm throughout the paraspinous muscles in the back particularly in the right upper rhomboid area and also in the lumbar area.” He diagnosed Claimant with a back strain and took Claimant off work for three days.

Claimant returned to work performing light duty. As his “soreness started going away,” Claimant resumed his regular duties. He sustained a second injury while lifting floor trusses on February 28, 2003. Dr. Lawrence’s note of that same date records the following history: “[Claimant] hurt his back today on the job. He builds trusses and was lifting some heavy lumber. He had immediate pain in his lower back that has persisted.” Dr. Lawrence diagnosed an “[a]cute lumbosacral strain” and prescribed medications.

Claimant presented to Dr. Lawrence on March 4, 2003, reporting no improvement despite the medications. Dr. Lawrence noted some tenderness in Claimant’s low back and diagnosed a lumbar strain. An x-ray of Claimant’s lumbar spine taken that same date produced an impression of “unremarkable lumbar spine.” Claimant again returned to Dr. Lawrence on Mach 11, 2003. Claimant reported pain in his low back as well as “some numbness down the anterior thigh”; upon examination, Dr. Lawrence noted tenderness and “some spasm.” Claimant was scheduled for an MRI.

Claimant underwent an MRI of his lumbar spine on March 14, 2003. The following impression was recorded: “Small protruding disc at the L5-S1 level that indents the anterior aspect of the thecal sac, but does not cause marked central canal or neuroforaminal stenosis. The vertebral bodies appear essentially normal.”

Claimant’s employment was terminated sometime in March of 2003; he was not able to return to Dr. Lawrence for follow-up treatment. Claimant denied that he was ever pain-

free in his back: “Sometimes it’s mild, and, at least one week out of every month, it’s pretty severe. At least two days out of every month, it’s hard for me to even get out of bed.” He attempted to work at three other jobs since March 2003, but has not held any one of these jobs for longer than two weeks. He blames his medical condition for his inability to work. He is thirty-one years of age, and seeks treatment for his medical condition.

Upon cross-examination, Claimant denied any accidents involving, or treatment for, his back prior to going to work for the respondent employer. He denied having any injuries, accidents, or falls after leaving the respondent employer in March 2003, but added that “I’ve still got the pain.” Claimant clarified that he never got over his first injury.

Q. Okay. How often did you have the back pain, after the first injury and before the second one?

A. Quite often, but I thought it was just the muscle, like the doctor said the first time.

Q. Okay. But it wasn’t always there? It would come and go?

A. Just about. I mean, I’d say at least two, three days out of the week, because I was still working and putting a strain on it.

Claimant insisted that “[m]y back keeps me from working.”

A Change of Physician Order dated November 3, 2003, granting Claimant a one-time change of physician to Dr. Ron Williams, was admitted into evidence. Unfortunately, none of Dr. Williams’ notes or reports were offered into evidence.

On January 20, 2004 Claimant underwent a “[n]oncontrast MRI lumbar spine.” This study’s findings are recorded as follows:

There is normal anatomic alignment of lumbar spine. The marrow signal intensity is within normal limits. There is disk desiccation in the L5-S1 intervertebral disk. At L5-S1, there is a mild diffuse disk bulge with a posterior anular tear. There is no evidence for central canal stenosis or

nerve root compromise.

The study recorded an impression of “[d]egenerative disc disease at L4-5 and L5-S1 with findings worse at L5-S1. There is a posterior anular tear at L5-S1.”

An employer shall 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). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Workers’ Compensation Commission Opinion filed February 14, 2003 (E906565) (citations omitted). Medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Lewis v. WSD Turner, Full Workers’ Compensation Commission Opinion filed July 12, 2004 (F212623) (citations omitted). Claimant need not establish that his compensable injury is the major cause for his need for medical treatment; rather, it is sufficient if his compensable injury is a factor in his resulting inability to work and need for medical treatment. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, \_\_\_ S.W.3d \_\_\_ (2004); Ballance v. K. C. Contracting, Full Workers’ Compensation Commission Opinion filed August 30, 2004 (F204392).

The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Patchell v. Wal-Mart Stores, Inc., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (May 19, 2004). “Preponderance of the evidence” means

evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant has sustained his burden of proving by a preponderance of the evidence that additional medical treatment in connection with his compensable injuries is reasonably necessary. Claimant credibly testified, without contradiction, that he has experienced pain since sustaining his second compensable injury; that he is unable to work due to his medical condition; and that he has not suffered any injuries, accidents, or falls after leaving his employment with the respondent employer in March 2003. Dr. Lawrence's February and March 2003 medical records support Claimant's testimony, noting Claimant's complaints of pain and recording findings of spasm upon examination. The record therefore demonstrates that Claimant's compensable injuries are at least a factor in his resulting inability to work and need for medical treatment, thereby satisfying the "connection" or causation requirement in Ark. Code Ann. § 11-9-508(a). See Williams, 85 Ark. App. at 10-11, \_\_\_ S.W.3d at \_\_\_.

I note Respondents' argument that the L5-S1 annular tear reported on Claimant's January 20, 2004 MRI is not reported on the study taken immediately after his second compensable injury. The studies do note similar findings at L5-S1: the March 14, 2003 study makes reference to a "[s]mall protruding disc," while the January 20, 2004 study makes reference to "a mild diffuse disk bulge." In light of this similarity between the two studies, and in light of Claimant's credible testimony (that he has experienced continuing pain, and that he has not suffered any intervening injuries, accidents, or falls), I find that Claimant's current need for treatment is connected to his injuries at work.

I also find that medical treatment for Claimant is reasonably necessary. As noted above, Claimant testified to continuing pain; further treatment to reduce Claimant's pain or to enable him to cope with chronic pain constitutes reasonably necessary medical treatment. See Lewis, supra. This opinion specifically does not limit Claimant to medical treatment solely for the purpose of treating his pain; it may be that some additional reason would justify additional reasonably necessary medical treatment in connection with Claimant's two compensable injuries.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on September 19, 2002; February 28, 2003; and at all other relevant times.
3. Claimant suffered compensable injuries on September 19, 2002 and February 28, 2003.
4. Respondents controvert additional benefits.
5. If called to testify, Claimant's wife would corroborate the testimony of Claimant.
6. Claimant sustained his burden of proving by a preponderance of the evidence that he is entitled to additional reasonably necessary medical treatment in connection with his compensable injuries. Claimant established that his compensable injuries are at least a factor in his need for medical treatment: he has been in pain since the date of his second injury; he is not able to work due to his medical condition; and he has not sustained any injuries, accidents, or falls since March 2003 that would explain his current condition. Further medical treatment to address Claimant's pain is reasonably necessary.

**AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law as set forth herein.

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

DFA/ml