

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F102848

DANIEL WEAVER,
EMPLOYEE

CLAIMANT

MEYER ROOFING & SHEET METAL,
EMPLOYER

RESPONDENT NO. 1

UNITED PACIFIC INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED JUNE 30, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 were represented by HONORABLE ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the findings of an Order filed October 20, 2004, this case comes before the Commission for a determination as to whether Respondent No. 1 is liable for L5-S1 disc surgery proposed for Mr. Weaver's lower back. [T. 6].

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

1. Employer-employee relationship existed on or about 12-6-99.
2. That the low back claim was accepted as compensable.
3. That some benefits have been paid.

Pursuant to the findings of the Order I filed on October 20, 2004, the record shall consist of the following: The September 1, 2004 hearing transcript and the exhibits contained therein, the 2004 post-hearing briefs filed by the parties which I have previously "blue-backed" for identification purposes, the February 15, 2005 deposition transcript of Dr. Michael Calhoun, the transcript of the oral deposition of Dr. Ron Williams taken on April 5, 2005, Respondent No. 1's Post-Hearing Brief filed on May 10, 2005, and the Order I filed on October 20, 2004. I have "blue-backed" the Order filed on October 20, 2004 and Respondent No. 1's Supplemental Post-Hearing Brief for identification purposes.

DISCUSSION

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). Injured employees have the burden of proving by a preponderance of the

evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In addition, the Full Commission explained in Wells v. Wal-Mart Associates, Full Workers' Compensation Commission, Opinion filed May 22, 2002 (W.C.C. No. F100849):

[W]e note that an injured worker is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). However, we note

that the presence or absence of ongoing objective pathology can be a relevant factor.

In the present case, there appears to be no dispute that Mr. Weaver requires surgery to treat a bulging L5-S1 disk impinging on his left S1 nerve root. However, the respondents contend that symptoms of an S1 nerve root impingement did not begin until several years after Mr. Weaver's 1999 injury at work. The respondents therefore contend that the S1 nerve root compression identified by post-myelogram CT in 2004 is not causally related to the admittedly compensable 1999 back injury that Mr. Weaver sustained at work.

Dr. Ron Williams, also a neurosurgeon, has opined that Mr. Weaver's 1999 back injury at work is the reason for Dr. William's proposed surgery to treat the S1 nerve root compression identified in 2004. Dr. Williams testified that his opinion is based on the history provided to him by Mr. Weaver. Dr. Williams testified that if Mr. Weaver had no back problems prior to the injury in 1999, then the 1999 injury would be the cause of the need for medical treatment and surgery at issue.

However, Dr. James Calhoun, a neurosurgeon, has identified problems with Dr. Williams' causation opinion

reasoning. For example, Dr. Calhoun noted that Mr. Weaver's symptoms after the 1999 injury were primarily back pain. Dr. Calhoun noted that the medical reports in the record indicate that Mr. Weaver told Dr. Bruffett that his symptoms then gradually changed, and he started having more leg pain. Dr. Calhoun testified that disk herniations can occur spontaneously.

Dr. Calhoun also identified other problems with the claimant's contention that his 2004 S1 nerve root compression is causally related to his 1999 injury. The medical reports indicate that Mr. Weaver did not initially have a change of reflexes after the 1999 injury. Mr. Weaver did not experience a change in sensations after the 1999 injury. In addition, the medical reports do not indicate that Mr. Weaver experienced any leg symptoms for several years after the 1999 back injury.

In addition to Mr. Weaver's documented change in clinical symptoms over several years, the medical record also indicates that Mr. Weaver underwent three lumbar MRIs, two lumbar discograms and one lumbar CT scan which failed to indicate any L5-S1 disk abnormality prior to the 2004 post-myelogram CT which indicated the L5-S1 abnormality and S1 nerve compromise. With regard to the new finding, Dr.

Williams explained that the most accurate study is the post-myelogram CT, so that the earlier three MRIs may have simply missed the finding. However, Dr. Williams also testified that MRIs miss only 2% to 4% of disk herniations.

In light of the change in Mr. Weaver's pain pattern over time, in light of the length of time between the initial 1999 injury and the 2004 myelogram finding of L5-S1 abnormality, and in light of the several other diagnostic studies and clinical examinations preceding the myelogram which indicated no abnormality or symptoms associated with L5-S1 until late 2003, I find that the claimant has failed to prove by a preponderance of the evidence that a causal connection exists between his 1999 work injury and the L5-S1 disk abnormality and nerve root compression for which Dr. Williams proposes surgery. Consequently, I find that the claimant has failed to prove by a preponderance of the evidence that the medical treatment and surgery proposed to treat his L5-S1 abnormality is reasonably necessary for his work-related 1999 back injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Employer-employee relationship existed on or about 12-6-99.
2. That the low back claim was accepted as

compensable.

3. That some benefits have been paid.

4. I find that the claimant has failed to prove by a preponderance of the evidence that a causal connection exists between his 1999 work injury and the L5-S1 disk abnormality and nerve root compression for which Dr. Williams proposes surgery.

5. Consequently, I find that the claimant has failed to prove by a preponderance of the evidence that the medical treatment and surgery proposed to treat his L5-S1 abnormality is reasonably necessary for his work-related 1999 back injury.

ORDER

For the reasons discussed herein, this claim for L5-S1 disk surgery must be, and hereby is, denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge