

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402183

JUNIS W. BLAKE, EMPLOYEE	CLAIMANT
URRUTIA, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED AUGUST 8, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on May 11, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

Respondents represented by HON. CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 11, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on December 14, 2005, and a Prehearing Order was entered that same day. A copy of the December 14, 2005, Prehearing Order was marked as Commission Exhibit "1", and made a part of the record herein without objection. At the hearing, the parties confirmed the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier relationship existed at all relevant times, including January 26 2004; that on January 26, 2004, the claimant

sustained a compensable low back injury for which some benefits were paid; and that the claimant's applicable compensation rates are \$320.00 and \$240.00 for temporary total disability and permanent partial disability per week, respectively. The parties also agreed that any issues related to permanent impairment would be reserved.

The parties agreed the issues to be presented were whether the claimant is entitled to additional temporary total disability benefits for the period of May 14, 2004, to a date yet to be determined; whether additional medical treatment from Dr. Thomas Hart is reasonably necessary in connection with the claimant's compensable injury, and attorney's fees.

The claimant contended at the full hearing that he suffered a compensable injury on or about January 26, 2004, and has never reached maximum medical improvement. The claimant contends he has been denied additional medical treatment, and that he is entitled to additional medical treatment. The claimant contends he is willing to undergo rehabilitation. Claimant contends he is entitled to additional temporary total disability benefits from May 14, 2004 to a date yet to be determined, and attorney's fees.

The respondents contended at the full hearing that the claimant has received all benefits to which he is entitled in connection with his compensable injury, and that such related benefits have been paid by the respondents. Respondents contend claimant was afforded additional medical care through May 14, 2004, when he was released to work by Dr. Carle with no impairment rating. Respondents contend claimant reached maximum medical improvement on May 13, 2004. Respondents contend the medical

documentation does not support a need for additional medical treatment or indemnity benefits subsequent to May 13, 2004. Respondents further contended that they did pay for Dr. Hart's initial visit, which occurred after May 13, 2004, but do controvert all other treatment from Dr. Hart. Respondents contend that the discogram recommended by Dr. Hart is not reasonable or necessary. Respondents further contended that the claimant's current need for medical treatment, if any, is associated with his multi-level degenerative disc disease as opposed to any acute or traumatic incident that may have been caused by the work related injury of January 26, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from May 14, 2004 to a date yet to be determined.
- 4) The claimant has therefore failed to prove by a preponderance

of the evidence that he is entitled to temporary total disability benefits from May 14, 2004, through a date yet to be determined.

- 5) The claimant has proven by a preponderance of the evidence that the medical treatment from Dr. Thomas Hart after May 14, 2004, has been reasonably necessary in connection with his January 26, 2004, compensable injury; including, but not limited to, the discogram now recommended by Dr. Hart.

DISCUSSION

I. History

The claimant, age 58, worked for the respondent-employer as a sanitation worker in January of 2004. The claimant was picking up the trash at the Jacksonville Air Force Base when he attempted to pick up an entertainment center. The claimant testified that while attempting to lift the entertainment center into the garbage truck he immediately felt that he had injured his back.

The respondents accepted the claimant's back injury as compensable and paid for various medical treatment. The claimant testified at the full hearing about the different doctors he saw after the January 26, 2004, compensable injury. First, the claimant went to the Cabot Medical Center and saw Dr. Jason Merrick on the day of the accident. The claimant testified Dr. Merrick took an x-ray of his back and gave him various medications for pain and muscle relaxers. The claimant followed up six days

later with Dr. Merrick, but then went to Jacksonville Physical Therapy. The claimant testified the physical therapy actually made his back condition worse.

The claimant testified he then was referred to Dr. Bruffett, who did another x-ray and prescribed Vioxx. Still not improving, the claimant testified he went to Dr. Ackerman once and was given a steroid injection. The claimant testified his condition did not improve with the steroid injection. Subsequently, the claimant stated he saw Dr. Merrick again and then went to Dr. Safman. According to the claimant, Dr. Safman administered trigger point injections and prescribed pain medication.

Still with no improvement, the claimant testified he went to see Dr. Wilbourne, who did nerve conduction studies, and then saw Dr. Carle. Dr. Carle conducted an independent medical evaluation on May 13, 2004, and found the claimant to be at maximum medical improvement with a zero percent permanent impairment. Dr. Carle also suggested the claimant's problem could be psychological and the claimant was referred to Dr. Judy White-Johnson. On February 9, 2006, the claimant underwent a second independent medical evaluation with Dr. Steven Cathey.

The medical records indicate the claimant has treated with Dr. Thomas Hart from June 10, 2005 through March 6, 2006. Dr. Hart has recommended a discogram in order to continue helping the claimant with pain management.

The claimant testified that he had never had any back problems prior to his compensable injury. The claimant contended his condition has not improved since his compensable injury and that he remains within his healing period and totally incapacitated to earn wages.

II. ADJUDICATION

A. Additional Temporary Total Disability Benefits.

An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. Arkansas State Highway & Transportation Dept. v. Breashears, 272 Ark. 244, 613 S. W. 2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. **Mad Butcher, Inc. v. Parker**, 4 Ark. App. 124, 628 S.W. 2d 582 (1982).

The respondents stopped paying indemnity benefits after Dr. Carle's independent medical evaluation of May 13, 2004. The claimant contends he is entitled to temporary total disability benefits from May 14, 2004, to a date yet to be determined. I find the claimant has failed to prove by a preponderance of the evidence that he remained within his healing period and was unable to earn wages during the period in which he requests TTD benefits.

The evidence does not preponderate in favor of the claimant for several reasons. The claimant has seen a number of doctors, none of which opine the claimant is totally unable to earn wages, and several state the claimant is at maximum medical improvement. Dr. Bruffett, as early as February 26, 2004, stated "the patient will be released to light sedentary work." (CIX-1, pg. 47) No doctor has recommended any surgery. Dr. Wilbourne did nerve conduction studies on May 12, 2004, and found "normal study." (RX-1, pg. 11) On May 13, 2004, Dr. Carle stated as follows in his

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report:

"He is at his technical MMI date and has 0% permanent impairment. (RX-1, pg. 27)

Dr. Carle went on to conclude that the claimant could return to work on May 13, 2004, with no restrictions. (RX-1, pg. 29) Dr. Steven Cathey stated the following with regard to the claimant's ability to work:

"As far as future employment is concerned, I believe it would be in Mr. Blake's best interest to try and find some type of employment. " (RX-1, pg. 37)

The overwhelming medical evidence leads this examiner to conclude that the claimant has failed to prove by a preponderance of the evidence that he remains within his healing period and totally incapacitated to earn wages. Therefore, the claimant's request for additional temporary total disability benefits is hereby denied.

B. Additional Medical Treatment.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. Ark. Department of Correction v. Holybee, 46 Ark. App. 232, 878 S.W. 2d 42. (1994)

Treatment for pain management can be awarded by the Commission after the end of the claimant's hearing period. Georgia Pacific Corp. v. Dickens, 56 Ark. App. 266, 950 SW. 2d 462 (1997). Still, the pain management must be reasonably necessary in

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connection with the compensable injury. It must be recognized that the claimant never had any back problems prior to his admittedly compensable injury. Based on these factors, coupled with the medical exhibits contained in the record, I find the claimant has proven by a preponderance of the evidence that the additional medical treatment for pain management from Dr. Hart is reasonably necessary in relation to the compensable injury.

Dr. Cathy was clear in his February 9, 2006 report that pain management from Dr. Hart was recommended:

"I suggest the patient continue to see Dr. Hart for comprehensive pain management." (RX-1, pg. 37)

Dr. Hart was equally as clear in his March 6, 2006, report that for him to continue comprehensive pain management, a discogram would be needed. (CX-1, pg. 2)

Dr. Cathy did recommend continued pain management with Dr. Hart, but advised against a discogram. Dr. Cathy stated in his February 9, 2004 report that even if the discogram came back abnormal, surgery would still not be recommended. Based on that conclusion, Dr. Cathy seemed to opine a discogram would be useless. However, Dr. Hart stated that a discogram followed with post CT imaging would be useful to see if other non surgical procedure would be helpful in managing the claimant's pain.

Since Dr. Hart is the claimant's pain management physician, I find Dr. Hart's opinion to have more weight regarding the claimant's pain management, and the diagnostic tests needed for him to perform his job.

Dr. Cathy goes on to opine about claimant's pre-existing condition. (i.e.

degenerative disc disease.) I find those statements to be more relative to the issue of compensability. Here, the respondents have already agreed to compensability. No doctor ever recommended pain management before January 26, 2004, to the claimant, and the claimant credibly testified he never had any back problem prior to the compensable injury. These facts were not disputed by the respondents at the hearing. It is clear to this examiner that the need for pain management is connected to the claimant's compensable event; and Dr. Hart and Dr. Cathy has reported pain management is reasonably necessary.

Therefore, I find the claimant has proven by a preponderance of the evidence that the additional medical treatment from Dr. Hart is reasonably necessary in connection with his compensable injury; including, but not limited to, a discogram now recommended by Dr. Hart.

AWARD

The claimant has proven by a preponderance of the evidence that the additional medical treatment in the form of pain management from Dr. Thomas Hart is reasonably necessary in connection with his compensable injury; including, but not limited to, discography now recommended by Dr. Hart. The said treatment is the responsibility of respondents. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge