

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510174

LARRY J. BOKSA, EMPLOYEE	CLAIMANT
TRI-COUNTY REGIONAL SOLID WASTE, EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 7, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on June 23, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Jarrod S. Parrish, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 23, 2006, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on April 5, 2006, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the parties at all relevant times, including October 20, 2003; that the claimant sustained an injury as the result of a specific incident identifiable in time and place of occurrence on said date; that respondents paid all medical and related treatment

through on or about August 11, 2005; and that respondents had controverted all benefits beyond those previously paid. Respondents also proposed an average weekly wage of \$380.00, which would yield compensation rates of \$253.00 per week for temporary total disability and \$190.00 per week for permanent partial disability; however, entitlement to indemnity benefits was not at issue because the claimant has continued working for the employer herein at all times since the date of the injury. However, as will be reflected further below, the record reflects that respondents failed and/or refused to pay for an MRI directed by respondents and completed on July 28, 2005. Accordingly, the stipulation that respondents have paid all medical and related treatment through August 11, 2005, is not accepted as fact.

By agreement of the parties, the issue presented for determination was whether the claimant's current need for medical treatment was causally related to the October 20, 2003, admitted incident.

Claimant contended, in summary, that all his current medical problems arose out of the admitted injury; that he was entitled to payment of any outstanding medical and related treatment, together with continued, reasonably necessary medical treatment.

The respondents contended that it had paid all appropriate benefits with regard to the claimant's work-related injury; that claimant's current need for medical treatment was related to medical conditions that have been deemed unrelated to

the work-related injury and was not the responsibility of the respondents; that medical documentation did not support entitlement to additional benefits, either medical or indemnity; and, further, that medical documentation did not support an aggravation of an underlying, pre-existing condition.

The claimant was the only witness to testify at the hearing. The record consists solely of the transcript of the June 23, 2006, hearing containing numerous exhibits.

From a review of 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 made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On October 20, 2003, the claimant sustained a compensable back injury which arose out of and during the course of his employment with Tri-County Regional Solid Waste.
3. The claimant did not miss sufficient time from work to qualify for temporary total disability. The claimant has continued working for the employer since the date of his injury.

4. Respondents paid all medical and related treatment through on or about August 11, 2005, save the cost of an MRI diagnostic study completed on July 28, 2005.
5. The claimant has failed to prove that his medical problems and need for treatment after August 11, 2005, are causally related to the October 20, 2003, admitted injury.
6. Respondents remain responsible for the outstanding medical bill, specifically, the MRI completed on July 28, 2005, taken at the direction of respondents.
7. Respondents have controverted all benefits beyond those previously paid.

DISCUSSION

The facts in this claim are basically undisputed. The claimant, Larry J. Boksa, began working for respondents in July, 2001. The employer is a solid waste recycling operation funded, in part, by Sharp, Fulton, and Iazard Counties. Although the claimant is the manager of the operation and is responsible for all the reports and paperwork, he also performs some of the physical activities, including the loading and unloading of materials dropped off at the recycling center. The claimant sustained an admitted back injury on October 20, 2003. He stated that he reached down to pick up a box of newspapers and when he stood up, felt a hard twinge in his back, causing his knees to buckle. The claimant promptly reported the injury to the chairman of the board, Morris Street, and was immediately sent to the company doctor, Dr. George Jackson of Cherokee Village, Arkansas. Dr. Jackson

is also the claimant's family physician. The claimant was initially examined and treated by Dr. Jackson on October 21, 2003. Dr. Jackson treated the claimant with medications and physical therapy. The physical therapy ended in late 2003. Thereafter, the claimant continued to see Dr. Jackson, but received no further treatment. The claimant continued working for the employer at all times. In fact, the claimant was working for the employer at the time of the within hearing. The claimant stated that he continued to see Dr. Jackson for follow-up examinations approximately every six (6) months. However, again, the record reflects that the claimant did not receive any further treatment from Dr. Jackson for his work injury. The record reflects that Dr. Jackson treated the claimant for a number of non-work related problems. However, the claimant acknowledged that following the initial treatment with physical therapy and medications, he did not require any further prescription medications for his back, but took over-the-counter Ibuprofen. Although on direct-examination claimant maintained that he did not experience back problems prior to October 20, 2003, on cross-examination, claimant acknowledged that he occasionally experienced back problems prior to his admitted injury. In fact, Dr. Jackson's medical records confirm that the claimant was seen on January 14, 2000, complaining of persistent low back pain, as well as tingling in his lower extremities. (Tr.23-24)(Resp. Ex. A, p.1)

The claimant's injury occurred on October 20, 2003. The claimant maintained that his back condition had grown progressively worse. However, on

further cross-examination, the claimant candidly acknowledged that following the injury, he did not experience any numbness or tingling in his lower extremities until on or about June or July, 2005, and that the symptoms have progressed since that time. Indeed, the medical records from Dr. Jackson reflect that the claimant returned to his office on July 8, 2005, complaining about new and increased problems with his back, at which time the respondent-insurance carrier authorized the claimant to undergo an MRI, as well as referred the claimant to Dr. Stephen Eichert for an evaluation of the claimant's complaints, and to determine whether they were causally related to the October, 2003, injury. (Tr.24)(Cl. Ex. A, p.3)

The MRI taken July 28, 2005, was normal with no indication of disc protrusion noted but only minor changes of degenerative disc disease. (Resp. Ex. A, p.4)

Again, following the MRI, the claimant was examined by Dr. Stephen J. Eichert, D.O. with Mid-South Neurosurgery, Inc., in Jonesboro, Arkansas, at the request of the respondents. Dr. Eichert's August 11, 2005, report is set out below:

I examined Larry Boksa today. He was, and remains to be, an employee of Tri-County Regional Solid Waste Disposal. On or about October 20, 2003 while reaching into a box and picking up a bag of disposable he felt a snap in his back and has had low back pain since then. It is non-radiating and worse standing and it has progressed over the years. For the past year and a half he has had numbness in his feet and hands. In fact, he does not know where his feet are at times. He has been receiving Hytrin for some urinary tract symptoms. He is on no other medicines currently. He has no allergies. Surgeries include tonsillectomy. He smokes an occasional cigar. He has three drinks a day. Review of systems is as mentioned above. He has had physical therapy for this in the past, but currently is not receiving treatment. He is married with one child.

Physical exam is significant for a height of 5'11", weight 234 lbs, and equivocal Romburg's test. Straight leg raising is unremarkable, except for some back pain. His deep tendon reflexes are brisk. Planter responses are flexor. There is no focal weakness. Vibratory sense is diminished in all four extremities.

I reviewed plain x-rays of the lumbar spine performed at Eastern Ozarks Regional Health Center and also a CT of the lumbar spine performed at Eastern Ozarks Regional Health Center both on October 22, 2003. The plain films reveal degenerative changes at L5-S1 and T11, T12, L1, and L2. The CAT scan shows a degenerative spondylosis at multiple lumbar levels. There is no discrete nerve root compression or evidence of instability or disk herniation.

Larry Boksa has had an episode of acute low back pain, which was most likely a lumbar strain and sprain. He has degenerative lumbar spondylosis. He also has clinical evidence of a new onset peripheral neuropathy.

He is at MMI with respect to his original injury. He does have degenerative spondylosis, which apparently is progressing. This is unrelated to his original injury. He has a peripheral neuropathy and I have advised him to seek the care of a neurologist for this. This neuropathy is unrelated to the original injury. (Resp. Ex. A, p.5)

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury.

A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

It is well-settled that claimant has the burden of proving the job-relatedness

of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

Respondents exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt, reasonably necessary medical treatment. As reflected by the stipulations, respondents paid for medical treatment through on or about August 11, 2005, when Dr. Eichert opined that the claimant's continued symptoms were unrelated to the acute low back injury of October 22, 2003, but, rather, were the result of degenerative lumbar spondylosis and clinical evidence of new onset peripheral neuropathy. The claimant candidly admitted that these new symptoms did not manifest themselves until on or about June or July, 2005, almost two (2) years after the admitted injury. The medical

evidence and the record as a whole simply does not support claimant's entitlement to continued medical treatment.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that his continued problems are causally related to the October 20, 2003, injury. Accordingly, claimant's entitlement to continued medical treatment after August 11, 2005, is respectfully denied and dismissed.

However, the claimant's undisputed testimony reflects that the MRI taken July 28, 2005, remains unpaid. Further, the undisputed testimony is that this diagnostic study was authorized by the respondent-insurance carrier. Accordingly, said medical remains the responsibility of the respondents. The doctrine of estoppel applies to these medical charges. Our Courts have held that when respondents direct claimants for specific medical expenses, they are estopped from denying responsibility for the cost of treatment notwithstanding the fact that the charges may ultimately be deemed to be non-compensable. *See, Southern Hospitalities vs. Britain*, 54 Ark. App. 318, 925 S.W.2d 81 (1996).

In view of the foregoing, I hereby make the following:

AWARD

Respondent, AIG Claim Services, Inc., is hereby directed and ordered to pay the charges related to claimant's July 28, 2005, MRI. Said charges are to be paid in accordance with the fee schedule established by Commission Rule 30.

Because this is a medical only Award, no attorney's fee are proper pursuant to A.C.A. §11-9-715.

Respondents are not responsible for any medical or related treatment after August 11, 2005.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge