

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502563

MICHAEL BROWN	CLAIMANT
RHEEM MANUFACTURING	RESPONDENT
OLD REPUBLIC INSURANCE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 20, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by NEAL HART, Attorney, Little Rock, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 24, 2006, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on November 16, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced that a new stipulation could be offered, which would eliminate two of the issues previously identified. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On January 30, 2005, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$456.00 for

total disability and \$342.00 for permanent partial disability.

3. On January 30, 2005, the claimant sustained a compensable injury to his low back.
4. There is no dispute over accrued medical expenses.
5. There is no dispute over the payment of temporary total disability benefits, at present.
6. The respondents have accepted liability for and are paying permanent partial disability benefits for a permanent physical impairment of 7% to the body as a whole.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

1. The claimant's entitlement to additional medical services as recommended by Dr. Raben.

In regard to these issues, the claimant contends:

"Claimant is entitled to receive additional medical care at the respondents' expense."

In regard to these issues, the respondents contend:

"Respondent contends they paid all appropriate medical expenses for the January 30, 2005 low back injury. Respondents deny that claimant is entitled to further medical expenses for that injury."

DISCUSSION

_____The sole issue presented for resolution, at this time, is the claimant's entitlement to the additional medical services recommended by Dr. Cyril Raben, in his report of August 26, 2005.

The burden rests upon the claimant to prove that these services represent “reasonably necessary medical services” for his admittedly compensable lumbar injury. In order to meet this burden, the claimant must show that these medical services were necessitated by or connected with his compensable injury. He must further show that these services have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

“Reasonably necessary medical services” are not limited to those services intended to improve or resolve the actual physical damage caused by the compensable injury. “Reasonably necessary medical services” may extend to those medical services merely intended to alleviate or reduce the pain and discomfort occasioned by the compensable injury. This particular type of “reasonably necessary medical services” may be appropriate, even though the actual “healing period” from the compensable injury has ended.

The medical evidence shows that Dr. Raben has recommended three separate treatment modalities. These include epidural injections or neuroforamina blocks at L4-5 on the right and L5-S1 on the left, additional physical therapy, and possibly a chronic pain management program. Clearly, these recommended treatment modalities are intended to alleviate or reduce the claimant’s continuing pain complaints that involve the lumbar area of his spine and to some extent his lower extremities.

Thus, it first becomes necessary to determine if the claimant’s continuing complaints of pain in the lower lumbar area of his spine and to some degree his lower extremities are causally

related to the compensable lumbar injury he sustained in the employment related accident of January 30, 2005. The burden rests upon the claimant to prove this fact.

The evidence shows that the claimant has experienced some difficulties, including pain, in the area of his lumbar spine for a number of years. In fact, the claimant experienced an episode of these difficulties only three weeks prior to the employment related accident of January 30, 2005. In early January, the claimant had sufficient difficulties with his low back to cause him to seek medical services. He appears to have been treated with oral medication. However, at that time the claimant exhibited no complaints of radicular difficulties and the diagnosis was given of only musculoskeletal pain. Finally, it appears that this episode of complaints readily resolved with only minimal treatment, and the claimant continued his regular employment with the respondents.

At the hearing, the claimant testified that his prior episodes of back difficulties only produced symptoms below his belt line and that these symptoms would entirely resolve within a short period of time. The evidence presented seems to support the claimant's testimony in this regard.

However, the claimant also testified that his current difficulties differed from his prior complaints, in that his current pain (after the January 30, 2005 injury) was "above" the belt line and have not resolved or even lessened over time. The medical evidence indicates otherwise. The claimant's complaints, following the accident and injury of January 30, 2005, are recorded

as also involving his back that would normally be considered “below” the belt line (i.e. his lumbosacral area). In fact, the objectively established abnormalities that support the presence of his current compensable injury and his entitlement to permanent disability benefits for permanent physical impairment would also normally be considered to be “below” the belt line (i.e. L4-5 and L5-S1 intervertebral disc spaces).

The reports and records of Dr. Blankenship (the claimant’s previous primary treating physician for his compensable lumbar injury) relate that, at the time of the claimant’s June 14, 2005 evaluation, the claimant related that his lower back or lumbar pain “had essentially resolved.” It was Dr. Blankenship’s opinion that the claimant had, at that time, reached maximum medical improvement in regard to his compensable lumbar injury. However, Dr. Blankenship recognized that this compensable lumbar injury was permanent in nature and assessed a permanent physical impairment of 7% to the body as a whole.

When the claimant was evaluated by Dr. Raben, his complaints again involved his lower lumbar spine, an area which would normally be considered to be “below” the belt level. The treatment recommended by Dr. Raben was limited to the area of the claimant’s lower lumbar spine, where the objectively documented permanently damaged L4-5 and L5-S1 intervertebral discs are located. Dr. Raben has recommended no forms of treatment for any difficulties involving the claimant’s mid-back or thoracic spine or any other portions of the claimant’s anatomy.

The objectively documented discal abnormalities, in the form of disc protrusions and tears in the annular fibers of the L4-5 and L5-S1 intervertebral discs, represent physical damage normally associated with specific trauma, such as the accident of January 30, 2005. It is my opinion that the greater weight of the credible evidence shows that this damage was, in fact, caused by the employment-related accident of January 30, 2005. The respondents do not appear to refute this fact, as they have voluntarily accepted liability for the 7% permanent physical impairment attributable to these objectively documented defects.

The various tests which have been performed on the claimant's back, have also shown degenerative or arthritic changes involving multiple levels of the lumbar spine. However, none of the treatment that has been recommended by Dr. Raben is directed toward these degenerative or arthritic problems. The treatment modalities recommended by Dr. Raben are not directed toward any other problems or portions of the claimant's anatomy, but are specifically limited to the two lower lumbar discs.

In summary, the evidence presented establishes that the claimant sustained a permanent injury to the L4-5 and L5-S1 intervertebral discs of his lumbar spine in the employment-related accident of January 30, 2005. This type of permanent injury would reasonably be expected to produce some degree of chronic pain, as described by the claimant. The treatment modalities recommended by Dr. Raben are specifically directed toward the alleviation of the symptoms described and would only involve the limited ones of the

objectively established discal defects. Therefore, I find that the medical services recommended by Dr. Raben are necessitated by or connected with the claimant's compensable lumbar injury of January 30, 2005.

Next, it becomes necessary to determine if these recommended medical services have a reasonable expectation of accomplishing their intended purpose or goal of alleviating or reducing the chronic pain that is being produced by the permanent discal damage at the L4-5 and L5-S1 levels. Clearly, the medical services recommended are of a type commonly accepted and employed by the general medical community to accomplish this intended purpose. In fact, Dr. Blankenship had previously prescribed an extensive course of physical therapy for the claimant's lumbar difficulties. In his report of March 2, 2005, he had also recognized the possible use of localized injections to resolving the claimant's lumbar complaints.

However, I would note that the evidence reflects that the extensive physical therapy previously prescribed by Dr. Blankenship was not successful in alleviating or reducing the claimant's chronic lumbar symptoms and complaints. In fact, when Dr. Blankenship recommended further physical therapy in May of 2005, the claimant not only stated that the prior physical therapy had been of no benefit in alleviating his chronic lower back pain but, in fact, had caused a pulled muscle and the onset of his difficulties with his mid back (Respondent's Exhibit No. 1, page 46). There is no reason to believe that the physical therapy recommended by Dr. Raben would have any different outcome.

Therefore, I find that the evidence presented fails to show that the additional physical therapy that has been recommended by Dr. Raben would have a reasonable expectation of accomplishing its intended purpose of resolving or decreasing the claimant's chronic lumbar pain.

The claimant did not receive the local injections contemplated by Dr. Blankenship in his report of August 2, 2005. He has as yet to receive the injections recommended by Dr. Raben in his report of August 26, 2005. Thus, there is no direct evidence to judge the ultimate potential success of this treatment modality. However, as previously noted, this type of treatment is commonly recognized as being medically appropriate to alleviate or reduce complaints of chronic pain resulting from discal injuries. It has also been expressly recommended in the claimant's instance by two competent medical experts, Dr. Blankenship and Dr. Raben. Thus, it would clearly have a reasonable expectation, at this point, of accomplishing its intended purpose.

The final treatment modality that has been recommended by Dr. Raben consists of treatment in a chronic pain management program. This treatment modality is also commonly recognized by the general medical community as being appropriate to alleviate or reduce chronic pain from permanent injuries, such as those experienced by the claimant. In fact, the local injections or blocks, previously discussed, are customarily performed as part of a chronic pain management program. It is my opinion that, at this point, this recommended treatment modality has a reasonable expectation of

accomplishing its intended purpose or goal of alleviating or reducing the claimant's chronic pain complaints from his compensable lumbar injury.

Therefore, I find that the medical services recommended by Dr. Raben, which are in the form of local epidural steroid injections or neuroforaminal blocks at L4-5 on the right and L4-S1 on the left and participation by the claimant in a chronic pain management program, represent "reasonably necessary medical services" for the claimant's compensable lumbar injury of January 30, 2005. Pursuant to Ark. Code Ann. §11-9-508, the respondents would be liable for the expense of these services, subject to the medical fee schedule established by this Commission. However, I find that the evidence shows that the recommended medical services, which are in the form of additional physical therapy, do not represent "reasonably necessary medical services" within the meaning of Ark. Code Ann. §11-9-508. Thus, the claimant would not be entitled to these medical services at the respondents' expense.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 30, 2005, the relationship of employee-employer-carrier existed between the parties.
3. On January 30, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$456.00 for total disability and \$342.00 for permanent partial disability.

4. On January 30, 2005, the claimant sustained a compensable injury to his low back or lumbar spine, specifically to the L4-5 and L5-S1 intervertebral discs.
5. There is no dispute, at the present time, over the payment of temporary total disability benefits.
6. There is no dispute, at the present time, over the payment of accrued medical expenses.
7. The medical services recommended by Dr. Cyril Raben, which are in the form of epidural steroid injections or neuroforaminal block at L4-5 and L5-S1 and the claimant's participation or at least evaluation in a chronic pain management program, represent reasonably necessary medical services for the claimant's compensable lumbar injury of January 30, 2005. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these medical services, subject to the medical fee schedule established by this Commission.
8. The medical services recommended by Dr. Raben, which are in the form of additional physical therapy do not represent "reasonably necessary medical services," in that the evidence presented fails to prove that these medical services would have a reasonable expectation of accomplishing the purpose or goal for which they are intended (i.e. alleviating or reducing the claimant's chronic pain from his compensable lumbar injury). Thus, the claimant would not be entitled to these recommended

medical services at the respondents' expense.

9. The claimant's compensable injury of January 30, 2005 has resulted in a permanent injury to his lumbar spine for which the respondents have accepted liability for benefits attributable to a permanent physical impairment of 7% to the body as a whole.
10. The respondents have controverted the claimant's entitlement to any additional medical services by or at the direction of Dr. Raben after the claimant's initial visit of August 26, 2005.
11. As no controverted benefits have been awarded directly to the claimant, no controverted attorney's fees can be awarded to the claimant.

ORDER

The respondents shall be liable for the expense of additional medical services for the claimant's compensable lumbar injury by and at the direction of Dr. Raben and which are in the form of epidural steroid injections or neuroforaminal blocks at L4-5 and L5-S1 and the claimant's evaluation and possible participation in a chronic pain management program. Such liability shall be subject to the medical fee schedule established by this Commission.

Any claim made by the claimant for medical services, in the form of additional physical therapy, should be and hereby is denied for the reasons heretofore set forth in this Opinion.

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

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

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge