

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106415

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| ARVEL B. GRAHAM, EMPLOYEE | CLAIMANT |
| OWENS PLANTING CO., EMPLOYER | RESPONDENT |
| AIG CLAIM SERVICES, CARRIER | RESPONDENT |

OPINION FILED DECEMBER 13, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 14, 2006 at Helena, Phillips County, Arkansas.

Claimant represented by the HONORABLE PHILLIP ALLEN, JR., Attorney at Law, West Helena, Arkansas.

Respondents represented by the HONORABLE R. SCOTT MORGAN, Attorney at Law, Pine Bluff, Arkansas.

ISSUES

Two hearings were conducted to determine the claimant's entitlement to payment of additional medical treatment, temporary total disability benefits, and attorney's fees.

At issue is whether or not continuing medical treatment is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on April 26, 2001 at which time the claimant sustained compensable injuries (shoulder, arm, back, neck, head) at a compensation rate of \$410.00. Medical expenses (until January 16, 2004) and Dr. Bosch's treatment (in July 2004) have been paid along with temporary total disability benefits (until January 27, 2004). This claim was the subject of a previous hearing and order filed by Judge Curdie on August 15, 2003. The claimant was awarded additional medical treatment with Dr. Bosch for his cranial injury and indefinite temporary total disability benefits.

The claimant saw Dr. Bosch who referred him to Dr. Hall who then referred him to Dr. Fowler. The claimant remains symptomatic with head and facial pain and dizziness. He requests continuing treatment with Dr. Fowler, payment of medical expenses, additional temporary total disability benefits from January 28, 2004 to a date yet to be determined and attorney's fees.

The respondents contend additional medical treatment is unreasonable and unnecessary.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires contained in the transcripts of March 14, 2006 and September 14, 2006 along with the deposition of Dr. James Fowler and the hearing transcript of July 10, 2003, incorporated by reference.

The claimant, age 49 (D.O.B. June 9, 1957) was emotionally distraught at the hearing. Presently he resides with his daughter out of financial necessity. The claimant has received Social Security Disability since December 2002.

The claimant sustained injuries to his head and upper torso on April 26, 2001 when the bucket of a front end loader dropped unexpectedly and threw him into the steering column.

The claimant received treatment for his chest, back, arm and neck. About one month after the accident, the claimant reported headaches, dizziness, vision and hearing problems. After diagnostic testing and an FCE exam, Drs. Nadel and Jones released the claimant. After a hearing, Judge Curdie awarded the claimant additional medical treatment with Dr. Bosch for the cranial injury (dizziness, pain, etc.) and an indefinite period of temporary total disability benefits.

The claimant testified Dr. Bosch, an ear, nose and throat specialist, referred him back to his family physician, Dr. Scott Hall. A letter dated July 7, 2004 from Dr. Bosch indicates the claimant was asking for pain medication and a disability rating for his arm and for headaches. Since these health problems were outside his specialty, he suggested the claimant contact his family physician or his neurologist for continuing care.

The claimant also testified Dr. Bosch referred him to Dr. Fowler, another ENT physician who specializes in facial and plastic surgery. Sinus surgery was performed in February 2005 which helped the claimant's breathing problems.

MEDICAL EVIDENCE

The claimant's medical history is summarized in Judge Curdie's opinion. The following is a summary of treatment since the last hearing in 2003.

Dr. Scott Hall, the claimant's family physician, continued to treat the claimant for neck and back pain with spasm after a motor vehicle accident on January 29, 2003 and a furniture moving incident in February 2004.

In July, 2004, Dr. Bosch referred the claimant to either his family physician or neurologist for follow-up care on his arm and headaches.

In September, 2004, Dr. Hall referred the claimant to a rheumatologist. On February 16, 2005, Dr. Fowler performed surgery to improve nasal and sinus ventilation.

In July 2005, Dr. Fowler performed surgery to correct scar tissue damage obstructing the airways and to insert tubes in the ears.

In October, 2005, Dr. Fowler continued to excuse the claimant from work. He opined the claimant suffered from intra orbital emphysema (abnormal passageway of air into the eye socket) which "could certainly be related" to the claimant's sinus problems. Dr. Fowler also diagnosed bilateral hearing loss (worse on the left side), which "could certainly be due to trauma associated with a severe blast of noise or pressure." Dr. Fowler recommended an ENG (electronystagmography) to evaluate the claimant's symptoms of dizziness. Because he did not have the equipment necessary to perform this test, he referred the claimant to Dr. John Dornhoffer at UAMS.

In his report of December 12, 2005, Dr. Dornhoffer explained that he could not perform an ENG on the claimant because of the ventilation tubes in his ears. Dr. Dornhoffer decided to test the claimant's dizziness with posturography. He also referred the claimant to an ophthalmologist

to check double vision and to Dr. Vural to evaluate the facial fractures. The claimant never saw Dr. Vural.

An MRI scan of the brain conducted December 15, 2005 was interpreted as normal, however a CT scan of the sinuses was abnormal.

A rheumatologist at UAMS, Dr. Hugo Jasin, treated the claimant's left arm with injections and medications.

The claimant's vision was evaluated by Drs. Nicola Kim and Joseph Chacko. In a report dated February 14, 2006, Dr. Chako diagnosed functional visual loss with "post-trauma constricted visual field". The doctor felt this condition would improve and prescribed only artificial tears.

Dr. Fowler authored a report on March 3, 2006 summarizing the claimant's treatment at UAMS and opining the claimant was still unable to return to work.

In his deposition, Dr. Fowler explained why the treatment he recommended for the claimant was reasonable and why the referrals to other physicians were necessary. Dr. Fowler began treating the claimant in December, 2004 for symptoms of dizziness, vertigo, blurred vision and headaches.

A CT scan revealed a left nasal septal deformity which could explain the claimant's breathing difficulties, sinusitis and headaches. This deformity could be congenital or could be caused by trauma. Because the claimant's nasal fracture was documented by x-ray and palpated during physical examination, Dr. Fowler "felt there was a high probability that that could be related to his injury."

A CT scan also revealed chronic sinusitis, which could explain some of the claimant's facial pain. Sinusitis can be caused by trauma or allergies and can make the patient susceptible to sinus infections. Dr. Fowler felt it was more likely than not that the claimant's ethmoid sinusitis was related to the trauma from the injury, (Depo. p. 49-50).

Testing also revealed hearing loss which Dr. Fowler also related to the injury (Depo. p. 11-12). Dr. Fowler implanted tubes in the claimant's ears, finding evidence of retracted eardrums due to eustachian tube blockage and negative pressure in the middle ear.

Dr. Fowler also stated that the surgery he performed was related to the compensable injury, (Depo. p. 50-51). Dr. Fowler opined that the claimant's healing period would end approximately six months after the July 2005 surgery unless the testing at UAMS uncovered some other problems (Depo. p. 52, 54).

Dr. Fowler's treatment relieved the claimant's sinus headaches but he continued to have a pounding headache. Dr. Fowler felt this could be explained by a vascular problem and referred him to Dr. Hall. Dr. Fowler also made referrals for evaluation of the claimant's vision problems. Dr. Fowler ordered the MRI scan of the brain to rule out a tumor (Depo. p. 30).

In a report to Attorney Morgan's concerns about the gap in time between the injury and the claimant's report of symptoms, Dr. Fowler opined that initially swelling could have masked some of his problems, and some of the symptoms could have worsened over time. Dr. Fowler was also concerned that the claimant's fractures were initially misdiagnosed, (Depo. p. 56-58). Generally, however, Dr. Fowler felt the claimant had sustained a hard blow to the face which explained his symptoms and need for treatment (Depo. p. 55).

FINDINGS AND CONCLUSIONS

Employers must promptly provide medical services which are "reasonably necessary in connection with" the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services "may include that necessary to accurately diagnose the nature and extent of 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 Commission opinion February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably

necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

The evidence of record shows the claimant sustained a compensable blow to the head resulting in fractures and the need for medical treatment to evaluate his sinuses, hearing loss, headaches, dizziness and blurred vision. After considering Dr. Fowler's deposition which explains why the treatment was reasonable in relation to the injury sustained and why the referral to several physicians was necessary, I find the claimant is entitled to additional medical treatment and indemnity benefits at the respondents' expense.

The claimant has the burden of proving a causal connection between the work-related accident and the disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. Jeter v. BR McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

Despite the gap in time between the injury and some of the symptoms, Dr. Fowler's explanation of swelling, misdiagnosis and worsening of symptoms was sufficient to meet the claimant's burden of proof on causation.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on April 26, 2001 at which time the claimant sustained compensable injuries at a compensation rate of \$410.00.
2. The claimant has proven by a preponderance of the evidence of record that treatment provided by Dr. Fowler and his authorized referrals was reasonable and necessary in relation to the compensable injury pursuant to Ark. Code Ann. §11-9-508.
3. The respondents are directed to pay medical expenses within thirty days of receipt pursuant to Rule 30.
4. The claimant has proven by a preponderance of the evidence of record that he is entitled to temporary total disability benefits from January 28, 2004 to a date yet to be determined as he remains in his healing

period and incapacitated from working based on Dr. Fowler's deposition and the claimant's ongoing diagnostic testing at UAMS.

5. The respondents are directed to pay court reporting fees and expenses to Ms. Linda Parker pursuant to Commission Rule 20.
6. Pursuant to an agreement worked out by the attorneys, Attorney King's lien will be satisfied by Attorney Allen and Attorney Olsen out of the proceeds of this award.
7. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999). be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge