

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. D915653; E605328; F308454 & F600406

HOLLIS LaBEFF, CLAIMANT

CLAIMANT

GE RAILCAR REPAIR, SELF INSURED EMPLOYER and
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., TPA

RESPONDENTS NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED DECEMBER 29, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on October 3, 2006 at Hope, Hempstead County, Arkansas.

Claimant represented by HON. GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents No. 1 represented by HON. CHARLES D. BENNETT, Attorney at Law, Texarkana Arkansas.

Respondent No. 2 represented by HON. DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above-captioned claim came on for a hearing in Hope, Arkansas on October 3, 2006. A prehearing conference was held on July 13, 2006, and a prehearing order was filed on July 14, 2006. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection, subject to the modifications made on the record at the October 3, 2006 full hearing.

The parties stipulated to the following at the full hearing:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times.
- 3) The claimant's applicable compensation rates are \$440.00 and \$330.00 for temporary total disability and permanent partial disability, respectively.
- 4) That since the Second Injury Fund has accepted liability, the Death & Permanent Disability Trust Fund would be dismissed from the claim.
- 5) Claimant sustained compensable injuries to his head, elbow and left shoulder on September 9, 1989. That Dr. Jeffrey DeHaan is the claimant's primary treating physician associated with those compensable injuries. That claimant has continued to take medications in association with those injuries since the date of injury, and that respondents have continued to accept and pay for that medical treatment with the exception of the prescription medications of Mobic, Ultram, Skelaxin, Prevacid and Tramadol. Claimant was assigned a 15% permanent partial disability rating to the upper extremity by Dr. DeHaan by letter of December 11, 1990, which was then translated into a 10% rating to the body as a whole, which respondents accepted and paid.
- 6) On April 6, 1999, claimant sustained a recurrence of his April 13, 1996, compensable injury, from which he reached maximum medical improvement on October 20, 2002, and was assigned a 10% permanent anatomical impairment rating, which was accepted and paid.
- 7) On April 13, 1996, claimant sustained compensable injuries to his back and pursuant to the Administrative Law Judge's opinion entered July 8, 1997, initially reached maximum medical improvement on December 10, 1996.
- 8) Claimant sustained a compensable injury to his right shoulder on July 1, 2003, for which he reached maximum medical improvement on December 2, 2005, and was assigned a 22% whole body rating which was accepted and paid by

LeBeff/D915653; E605328; F308454 & F600406

respondents.

- 9) The Second Injury Fund has accepted liability and agree claimant is permanently and totally disabled.
- 10) Parties agree to reserve the issue of whether A.C.A. 11-9-522(F)(i) is constitutional.
- 11) Parties agree claimant's rheumatoid arthritis is not a compensable consequence.
- 12) Parties agree to reserve the issue of whether claimant is entitled to the difference between the TTD rate and the PPD rate from the Second Injury Fund to December 2, 2004.

At the full hearing, the claimant contended, in summary, as follows:

That in association with his many compensable injuries, stipulated to herein, claimant has been under the care of Dr. DeHaan who has prescribed medications, some of which are at issue. Claimant went to Dr. Jeffrey Leonard who took over prescribing some of the medications that Dr. DeHaan had been prescribing, as well as some other medications. Respondents accepted and paid for all of the prescriptions from Drs. Leonard and DeHaan until approximately December of 2004. Due to respondents continually paying for the medication now in question, claimant detrimentally relied upon the respondents actions and discontinued his private health insurance. Claimant contends respondents should be estopped from controverting the prescriptions now in question.

Claimant further contends the medications now recommended by Dr. DeHaan are reasonable, necessary, and related to his compensable injuries.

LeBeff/D915653; E605328; F308454 & F600406

At the full hearing, respondents contended, in summary, as follows:

That Dr. Leonard was treating the claimant for rheumatoid arthritis or arthritis, and not for anything related to the claimant's compensable injuries. That Dr. DeHaan's reports of December 29, 2004 and September 7, 2005 clearly state Dr. Leonard was not treating the claimant for anything related to his compensable injuries. Respondents contend they were misled in believing Dr. Leonard was treating the claimant for compensable injuries and did pay at least \$14,000.00 worth of bills. Therefore, respondents request a reimbursement of some \$14,000.00 in medical prescriptions they filled from Dr. Leonard. Respondents contend those medications from Dr. Leonard were for arthritis, not related to the claimant's compensable injuries.

Respondents further contended the medications of Mobic, Skelaxim, Ultram, and Prevacid now recommended by Dr. DeHaan are not related to the claimant's compensable injuries, but rather to arthritis as they are what Dr. Leonard were prescribing for arthritis.

The parties agreed on the record to litigate the following issues:

- 1) Whether the claimant is entitled to the medications from Dr. DeHaan of Mobic, Ultram, Skelaxim, Prevacid and Tramadol; and whether those medications are reasonable, necessary and related to the claimant's compensable injuries.
- 2) Should the respondents be estopped from denying the medical prescriptions prescribed by Dr. Leonard.

LeBeff/D915653; E605328; F308454 & F600406

- 3) Whether Dr. Leonard's treatment is reasonable, necessary and related to the claimant's compensable injuries.

DISCUSSION

As stipulated, the claimant, age 69, has sustained several compensable injuries while working for the respondents. The claimant sustained various shoulder and back injuries, and ultimately was found permanently and totally disabled due to his work-related injuries.

After the claimant's left shoulder injury in 1989, he came under the care of Dr. DeHaan. Also, after the claimant's 1996 back injury, Administrative Law Judge David Greenbaum issued an opinion naming Dr. DeHaan as the claimant's primary treating physician in association with the back injury.

The claimant has continued to treat with Dr. DeHaan for his shoulder and back problems to the present time. Sometime in 1999, it appears, the claimant went to Dr. Jeffrey Leonard, a rheumatologist. According to Dr. DeHaan in his May 24, 1999 report, Dr. Leonard put the claimant on Ultram and Celebrex which Dr. DeHaan agreed with. (Cl X-1, pg. 11) Also, on May 24, 1999, Dr. DeHaan prescribed Celebrex for the claimant. (Cl X-1, pg. 12) Dr. DeHaan also states in his August 30, 2000, report that "will continue him on the medications he's taking and just leave it at that." (Cl X-1, pg. 16) Again, in his December 6, 2000 report Dr. DeHaan states, "He's to continue with his Ultram and his other non narcotic medications." (Cl X-1, pg. 16)

LeBeff/D915653; E605328; F308454 & F600406

The claimant treated very regularly with Dr. DeHaan for his back pain and shoulder problem. Repeatedly throughout the reports Dr. DeHaan would reiterate that he agrees with the medications the claimant is taking and some reports specifically state he agrees with the medications of Dr. Leonard.

The respondents have alleged they should be reimbursed for all prescriptions they paid for from Dr. Leonard because they were misled by the claimant. Respondents further argue that the prescriptions now recommended by Dr. DeHaan (Mobic, Ultram, Skelaxin and Prevacid) are not reasonable or necessary because they are not related to the claimant's compensable injuries.

An employer shall 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). Reasonably necessary medical services may include that necessary to accurately diagnosis the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from 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 Mitchele Construction, Full Workers' Compensation Commission Opinion filed February 14, 2003 (E906565). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, 90 Ark. App. 248, ___ S.W. 3d ___ (2005). What constitutes reasonable necessary treatment under the statute is a question of fact for the Commission.

LeBeff/D915653; E605328; F308454 & F600406

After considering the credible evidence in this matter, I find the prescription medications recommended in Dr. DeHaan's August 8, 2006, letter to be reasonable, necessary and related to the claimant's stipulated compensable injuries. Dr. DeHaan has treated the claimant's compensable injuries for over fifteen (15) years and I find his August 8, 2006 letter to be directly on point when he addressed the medications of Modic, Skelaxin, Ultram and Prevacid:

"These medications are being prescribed by me in direct relation to his work-related injury." (CI X-1, pg. 57)

The respondents allege Dr. DeHaan was pressured by the claimant and/or his wife to issue the August 8, 2006, letter. The respondents' allegation was purely speculation and conjecture, which does not substitute for proof. The respondents could have taken Dr. DeHaan's deposition to back up their allegation, but chose otherwise. Also, a review of the medical records and the credible testimony of the claimant shows that Dr. DeHaan had prescribed either the same medications in the past or a similar alternative. All of the medications in question relate to basically pain management for the claimant's stipulated compensable injuries. Even though the claimant is at maximum medical improvement, pain management can extend well beyond the claimant's healing period.

Respondents also argue that Dr. DeHaan's August 8, 2006 letter is in direct contrast to his September 7, 2005 letter and his December 29, 2004 letter. I disagree. Dr. Dehaan's September 7, 2005 letter clearly explains that the claimant had two problems. One

LeBeff/D915653; E605328; F308454 & F600406

was his continued pain treatment for his compensable shoulder and back injuries and the other was for his arthritic condition. I find that Dr. DeHaan was continuing to treat the claimant for his pain and he recommended Dr. Leonard for arthritic consultation. In fact, the claimant continues to treat with Dr. DeHaan. I find the claimant has proven by a preponderance of the evidence that he is entitled to the additional medication now recommended by Dr. DeHaan in his August 8, 2006 letter. Further, Dr. DeHaan's report states "Ultram" for pain relief and the parties also listed Tramadol as a medication at issue. I take judicial notice that Tramadol is the generic name for Ultram and for the purpose of this Opinion they will be treated the same. Therefore, respondents are responsible for all prescriptions, past or present, issued by Dr. DeHaan for Ultram, Prevacid, Skelaxin, Tramadol or Mobic.

The respondents have requested reimbursement for all prescriptions they paid for from Dr. Leonard between 1999 and 2004. At issue is whether the respondents should be estopped from seeking reimbursement, or whether the prescriptions from Dr. Leonard were reasonable, necessary and related to the claimant's compensable injuries.

It is undisputed between the parties that Dr. Leonard is a Rheumatologist, and that the claimant treated with Dr. Leonard between 1999 and 2004. The respondents allege they were misled into paying for prescriptions from Dr. Leonard. I find the respondents argument, of being misled, to be without merit. First, the claims adjuster, Ms. Yvonne Richard, acknowledged that the prescription bills which she paid cited Dr. Leonard as being the doctor who prescribed the medications for which respondents now request reimbursement.

LeBeff/D915653; E605328; F308454 & F600406

Second, as stated earlier, in the record are reports from Dr. DeHaan between 1999 and 2004 that mention Dr. Leonard and Dr. Leonard's prescribed medications. Further, those reports state that Dr. DeHaan concurs with the medication being prescribed for the claimant. (See CI X-1, pg. 21, "At this point will keep him on his current medications of Neurontin an Mobic.") (See CI X-1, pg. 27, "Hollis is here follow-up lower back problems. He continues to do pretty well on his medications that he's taking for his pain control.") Respondents had access to all of Dr. DeHaan's reports and cannot now claim surprise.

I find the claimant did not mislead the respondents into paying for prescriptions from Dr. Leonard. In fact, Dr. DeHaan's report of August 8, 2006, confirms that the prescriptions in question were in fact reasonable, necessary and related to the claimant's compensable injuries. It is clear to this examiner that Dr. DeHaan's reports find the claimant with a need for pain management medication related to his compensable injuries and possibly for arthritis. Dr. DeHaan's reports lead this examiner to conclude that Dr. DeHaan was appraised of all medications prescribed by Dr. Leonard, and that the prescriptions in question for Ultram, Prevacid , Skelaxin, Tramadol and Mobic overlapped to treat the two conditions. It would have been unnecessary for Dr. Dehaan to issue a second prescription for the same medication Dr. Leonard had already prescribed. As stated, Dr. DeHaan's reports repeatedly stated that he agreed with the current medications being prescribed for the claimant. Therefore, I find that since the claimant's primary treating physician for his compensable injuries concurred with and recommended the prescriptions now in question, that said

LeBeff/D915653; E605328; F308454 & F600406

medications were reasonable, necessary and related to the claimant's compensable injuries though prescribed by Dr. Leonard at times between 1999 and 2004. Dr. DeHaan's reports clearly show the medications were for a dual purpose. Respondents argued at the full hearing the medications in the question were not reasonably necessary because they were for arthritic conditions only. That argument fails because Dr. DeHaan's report of August 8, 2006, clearly states the medications are directly related to the compensable injuries.

I have found that the medications controverted by the respondents were reasonable, necessary and related to the claimant's compensable injuries whether prescribed by Dr. DeHaan or Dr. Leonard; however, I must note the respondents cannot be directly reimbursed by the claimant for the prescriptions they paid for from D. Leonard pursuant to Osborne v. Logan County, Workers' Compensation Commission E513263 (Aug. 29, 1998). That case stated "respondent cannot be directly reimbursed by the Claimant."

I also find the respondents are estopped from seeking reimbursement for the medical prescriptions they paid for from Dr. Leonard between 1999 and 2004. As stated in Southern Hospitalities v. Britian, 54 Ark. App. 318, 925 S.W. 2d 81 (1996); the elements necessary to prove estoppel are as follows:

- 1) The party to be estopped must know the facts.
- 2) He or she must intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended.

LeBeff/D915653; E605328; F308454 & F600406

- 3) The party asserting the estoppel must be ignorant of the true facts, and
- 4) The party asserting the estoppel must rely on the other parties conduct to his or her injury.

Here, all of the elements of estoppel are met. The party to be estopped (respondents) knew Dr. Leonard was issuing the prescriptions for nearly five years, and Dr. DeHaan's reports clearly stated Dr. Leonard was a Rheumatologist. The respondents actions, by paying Dr. Leonard's prescriptions for approximately five years, gave the claimant a right to believe there was no problem with the prescriptions being filled. The claimant was ignorant of the true facts, i.e., that the respondents did controvert the payment of Dr. Leonard's prescriptions. Finally, it is clear the claimant relied upon the respondents actions of paying the bills for five years to his detriment because he testified he stopped carrying private insurance because he thought the bills would continue to be paid. Based on the credible evidence, I find the respondents are estopped from seeking reimbursement for the \$14,781.00 in prescription medical bills.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C. A. 11-9-704:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed upon by the parties are reasonable and are approved.
- 3) Claimant has proven by a preponderance of the evidence the medical treatment in the form of prescription medication recommended by Dr. DeHaan in his August 8, 2006 letter (CI X-1, pg. 57) is reasonable, necessary and related to the claimant's stipulated compensable injuries, and therefore the respondents responsibility. (Including those prescriptions for Tramadol.)
- 4) Respondents are estopped from seeking reimbursement for prescription medication they paid as prescribed by Dr. Leonard between 1999 and 2004.
- 5) Further, I find the prescriptions in question for Mobic, Tramadol, Ultram, Skelaxin and Prevacid prescribed by Dr. Leonard between 1999 and 2004 to be reasonable, necessary, and related to the claimant's stipulated compensable injury.

ORDER

Claimant has proven by a preponderance of the evidence that the prescription medication recommended by Dr. DeHaan in his August 8, 2006, report (CI X-1, pg. 57) is reasonable, necessary and related to his compensable injuries and therefore the responsibility of the respondents. Having met elements for estoppel, respondents are estopped from seeking

LeBeff/D915653; E605328; F308454 & F600406

reimbursement for prescriptions they paid from Dr. Leonard between 1999 and 2004.

Respondents are responsible for the prescription medication costs for Mobic, Ultram, Tramadol, Skelaxim and Prevacid prescribed by Dr. Leonard as the claimant has proven by a preponderance of the evidence that said medications were reasonable, necessary and related to his stipulated compensable injuries.

S. DALE DOUTHIT
Administrative Law Judge

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