

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511682

CHARLES D. MARTIN, EMPLOYEE	CLAIMANT
GEORGIA PACIFIC CORPORATION, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, CARRIER	RESPONDENT

OPINION FILED AUGUST 3, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on May 12, 2006 at Monticello, Drew County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by the HONORABLE SUSAN M. FOWLER, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of additional medical treatment.

At issue is whether or not additional medical treatment is reasonable and necessary in relation to the compensable injury 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 does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on October 24, 1995 at which time the claimant sustained a compensable neck injury

at a compensation rate of \$270.00/\$203.00. Medical expenses were paid until October 12, 2005 when this claim was controverted. A companion case to this claim is file No. F304719. An opinion was filed in that case on April 6, 2004. Although two file numbers have been assigned, there is only one compensable injury.

The claimant contends that although he is able to work, his neck remains symptomatic. He wishes to pursue pain management treatment with Dr. Barry Thompson, a general practitioner and his treating physician.

The respondents contend additional medical treatment is unreasonable and unnecessary. The respondents rely on Dr. Scott Schlesinger's report of July 25, 2005.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing. He impresses me as a hard working gentleman.

The claimant, age 56 (D.O.B. February 9, 1950) has a high school education and some college courses. His work experience includes jobs in law enforcement (policeman and sheriff), truck driver and restaurant owner. He began work for the respondent-employer in 1985 as a heavy equipment operator and is presently employed there.

On October 24, 1995 the claimant injured his neck when the weight of a front end loader he was operating broke through concrete. The claimant was treated conservatively for a disc protrusion at C6-7 indenting the thecal sac and aggravating preexisting conditions, (bone spur at C7, degenerative disc disease and spondylosis).

The claimant's treating physician and general practitioner, Dr. Thompson, opined the claimant's healing period was extended because the compensable injury was superimposed upon a preexisting degenerative condition. He recommended permanent work restrictions and the employer accommodated the claimant by moving him to a job where he monitored activity on a computer screen. Dr. Thompson assessed a 6% rating and continued to treat the claimant from the date of the injury to the present.

The claimant was also examined by Dr. P. B. Simpson, a neurosurgeon. Dr. Simpson opined that the claimant's symptoms of radiculopathy may worsen over time but since he was still capable of working with the pain, surgical intervention was unnecessary in 1997. Dr. Simpson released the claimant with no work restrictions and 0% impairment. In a report dated September 27, 2001, Dr. Simpson opined there was no causal connection between the claimant's condition and the 1995 injury.

The claimant testified he remains symptomatic with pain and swelling in his neck and occasional headaches. His treating physician, Dr. Barry Thompson,

provides him with medication, physical therapy and injections to alleviate the pain and allow him to continue working. Dr. Thompson has been the claimant's treating physician since 1995. The respondents have also sent the claimant to Drs. Simpson, Safman, Houston and Schlesinger.

On cross-examination, respondents' counsel emphasized that the specialist who examined the claimant recommended no additional medical treatment and the claimant's symptoms are sometimes brought on by changes in the weather.

MEDICAL EVIDENCE

The claimant's 1995 neck injury and history of medical treatment until 2003 is summarized in the prior opinion.

The claimant sees general practitioner, Dr. Thompson every three months for medication for chronic neck strain and a prolapsed disc at C5-6 and C6-7 with stenosis. The doctor has also treated the claimant for sleep disturbance and irritability due to chronic pain. The claimant is required to undergo blood tests because the anti-inflammatory medication causes kidney damage. The doctor noted the claimant's symptoms flared with changes in weather and with activity.

In a report dated July 23, 2004 the claimant complained of a loss of grip strength in his right arm. An MRI scan was conducted on September 10, 2004 and the radiologist noted that patient motion adversely affected the test. He diagnosed disc degeneration at C5-6 and C6-7 with osteophytes and stenosis.

On September 14, 2004 the claimant was referred to Dr. Simpson. The claimant did not improve with physical therapy and Dr. Thompson prescribed epidural steroid injections. There is an indication in Dr. Thompson's records that the claimant also saw Dr. Safman but again, those records were not introduced into evidence.

On July 25, 2005 the respondents sent the claimant to Dr. Schlesinger. The doctor performed a clinical examination and reviewed a 2004 MRI scan, which he complained was of poor quality and a 1997 myelogram CT scan and concluded the claimant's symptoms were related to degenerative disc disease and arthritis. Dr. Schlesinger recommended neck exercises and anti-inflammatory medications.

Dr. Schlesinger's report of 7-25-05:

_____ I cannot see any further treatment necessary as regards to the accident of October 1995. I would not state that the current treatment needs are a result of the October 1995 injury. I would assume that the maximum medical improvement after the injury would have ended certainly within 6 months to a year after the accident.

Dr. Thompson still feels the claimant requires medical treatment for a chronic condition:

Dr. Thompson's letter of 12-13-05:

I have reviewed the report from Dr. Scott Schlesinger dated 07/25/05. Mr. Martin was asymptomatic prior to his work related neck injury on October 24, 1995. He has been symptomatic since that time. His complaints have been consistent since the time of his injury and are mainly related to his injury. Both X-ray and MRI results have consistently been shown to have little or no bearing on a patient's symptoms. As a matter of fact, the MRI either

does not show the problem or shows a problem that is not related to the complaint's 50% of the time. It is my medical opinion that Mr. Martin's complaints are solely a result of his work related injury on October 24, 1995 and that he will require ongoing treatment for these complaints. Treatment to date, with minor job restrictions, have kept him in the work force.

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 neck injury in October, 1995 which aggravated a preexisting condition. The respondents have provided reasonable and necessary medical treatment, diagnostic testing, and consultation with specialists over the last eleven years.

The claimant relies on Dr. Thompson's reports to support his contention that he needs additional medical treatment. However, Dr. Thompson does not base his opinion on objective medical evidence. His report states that diagnostic testing does not always uncover the cause of symptoms. That is probably true, but in a workers' compensation case, the claimant has the burden of proving the extent of his injury by objective medical testing, Wal-Mart Stores, Inc. v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

Since the respondent-employer has accommodated the claimant's permanent work restrictions, the claimant's condition is no longer aggravated by his job duties. And Dr. Thompson's frequent references to weather changes as the cause of the flare-ups in the claimant's condition suggest that treatment is directed at arthritis, a preexisting condition.

Accordingly, I find that the claimant has failed to meet his burden of proof by a preponderance of the evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier

existed among the parties on October 24, 1995 at which time the claimant sustained a compensable neck injury.

2. The claimant has failed to prove by a preponderance of the evidence of record that additional medical treatment is reasonable and necessary in relation to the compensable injury.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge