

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501378

CURTIS NETTLES,
EMPLOYEE

CLAIMANT

MODERN BUILDERS SUPPLY CO.,
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 22, 2006

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Batesville, Independence County, Arkansas.

The claimant was represented by HONORABLE C. MICHAEL WHITE, Attorney at Law, North Little Rock, Arkansas.

The respondents were represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on March 7, 2006 in Batesville, Arkansas. A prehearing order was entered in this case on January 10, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the hearing and are hereby accepted:

1. The employer-employee-carrier relationship existed at all pertinent times.
2. On or about January 25, 2005, the claimant sustained a compensable back injury.
3. The claimant has been paid benefits on the assumption that his compensation rates were \$281/\$211.
4. The respondents have controverted the claimant's entitlement to any additional benefits after August 4, 2005.
5. The claimant's correct compensation rates are \$268 per week for total disability and \$201 per week for permanent partial disability.

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

1. Whether the claimant is entitled to additional reasonably necessary medical treatment.

2. Whether the claimant is entitled to additional temporary disability compensation after August 4, 2005.
3. Claimant specifically reserves all issues on permanency.

In addition, the respondents' attorney sought to raise as a hearing issue at the start of the hearing the respondents' entitlement to a credit for prior payments of temporary total disability compensation at an excessive compensation rate. The claimant's attorney objected to raising this issue for the first time at the start of the hearing.

The record consists of the March 7, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). Injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably

necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In addition, the Full Commission explained in Wells v. Wal-Mart Associates, Full Workers' Compensation Commission, Opinion filed May 22, 2002 (W.C.C. No. F100849):

[W]e note that an injured worker is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). However, we note that the presence or absence of ongoing objective pathology can be a relevant factor.

Temporary total disability for unscheduled injuries is that period within the healing period in which a claimant suffers a total incapacity to earn wages. Ark. State

Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present case, Mr. Nettles sustained an admittedly compensable low back injury on January 25, 2005. The respondents provided Mr. Nettles temporary total disability compensation and medical treatment from various physicians on referral until Dr. Stephen Eichert, at the Mid-South Neurosurgery Center in Jonesboro, Arkansas concluded on August 4, 2005 that Mr. Nettles was at maximum medical improvement, and that no further medical treatment is warranted in this case.

Mr. Nettles testified that since he has last seen a doctor he has developed numbness and tingling in his right forefinger and thumb, that his back pain has gotten worse, that he experiences intermittent right foot numbness and difficulty sleeping. Mr. Nettles testified his understanding that he is under a five pound lifting restriction from his treating physicians, and Mr. Nettles

testified that none of the pain medications that he has been prescribed have ever worked.

The claimant's attorney explained during the course of the hearing that Mr. Nettles seeks an evaluation by a neurosurgeon who can see him more than one time to see if any treatment can be prescribed, or, at a minimum, Mr. Nettles seeks a pain management evaluation. In addition, Mr. Nettles seeks additional temporary disability compensation.

With regard to Mr. Nettles' request for additional medical treatment, I find that the preponderance of the evidence fails to establish that either a neurosurgical referral or a pain management referral is reasonably necessary in connection with Mr. Nettles' January 25, 2005 low back injury. With regard to Mr. Nettles' request for additional temporary total disability compensation, I find that a preponderance of the credible evidence establishes that Mr. Nettles' healing period ended no later than August 4, 2005. Therefore, I find that Mr. Nettles' present request for additional benefits must be denied.

In reaching my conclusions that Mr. Nettles' healing period ended no later than August 4, 2005, and that additional medical treatment is not reasonably necessary in

connection with his January 25, 2005 injury, I note that Dr. Terrence Braden on August 12, 2005, opined that Mr. Nettles was at maximum medical improvement, that Mr. Nettles could return to regular work duties without restrictions, and that that the objective evidence did not support Mr. Nettles' continued marked subjective complaints of pain at that time. I note that Dr. Eichert likewise concluded on August 4, 2005, that Mr. Nettles was at maximum medical improvement and that no further medical treatment was warranted. I note that these conclusions were reached only after Dr. Braden noted on July 14, 2005 that Mr. Nettles' July 14, 2005 office visit was "fraught with non-physiological signs", and that Dr. Braden was placing Mr. Nettles on alternate duty status until he could be referred for a neurosurgical opinion, which Dr. Eichert provided on August 4, 2005.

In reaching my conclusions, I also note that Mr. Nettles has already received therapeutic treatment from two chiropractors, an MRI, a myelogram and post-myelogram CT, a neurosurgical referral to Dr. Scott Schlesinger, in addition to the referral to Dr. Eichert, a course of physical therapy, lumbar epidural steroid injections, and various types of pain medication. Furthermore, although the physical therapist and Dr. Sunil Gera, who performed lumbar

epidural steroid injections, noted muscle spasms in the lumbar spine area through May 20, 2005, I note that Dr. Gera specifically recorded the absence of muscle spasm in the lumbar spine on June 29, 2005, with "exaggerated signs of pain." Dr. Gera, a pain management specialist, concluded on June 29, 2005 that Mr. Nettles does not need any pain medicine. Based on the medical conclusions of Dr. Gera, Dr. Braden, and Dr. Eichert in this case, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment after August 4, 2005 is reasonably necessary for his lumbar injury, and that the claimant has failed to prove by a preponderance of the evidence that he remained within the healing period for his lumbar injury after August 4, 2005.

Because I have not awarded herein any additional indemnity benefits against which the respondents may be entitled to the credit sought, and since the claimant's attorney has objected to any findings at this time on the respondents' potential entitlement to a credit for prior overpayment if the claimant is ultimately entitled to any additional indemnity benefits, I am making no findings at this time on the respondents' request for a credit for prior

overpayments of temporary total disability at an excessive rate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer-employee-carrier relationship existed at all pertinent times.

2. On or about January 25, 2005, the claimant sustained a compensable back injury.

3. The claimant has been paid benefits on the assumption that his compensation rates were \$281/\$211.

4. The respondents have controverted the claimant's entitlement to any additional benefits after August 4, 2005.

5. The claimant's correct compensation rates are \$268 per week for total disability and \$201 per week for permanent partial disability.

6. The claimant has failed to prove by a preponderance of the evidence that any additional medical treatment after August 4, 2005 would be reasonably necessary for his compensable back injury.

7. The claimant has failed to prove by a preponderance of the evidence that he remained within the healing period for his January 25, 2005 back injury after August 4, 2005. Therefore, the claimant has failed to prove

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by a preponderance of the evidence that he is entitled to any temporary disability compensation after August 4, 2005.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge