

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F304543**

**AVA I. ROBERSON,  
EMPLOYEE**

**CLAIMANT**

**SALINE MEMORIAL HOSPITAL,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES,  
BENEFITS ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED FEBRUARY 6, 2006,**

Pursuant to a hearing conducted November 9, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Terrence C. Jensen, Attorney at Law, Benton, Arkansas, appearing for the claimant, and

Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over additional medical care requested by the claimant for her admittedly compensable low back injury.

The claimant, an emergency medical technician who had worked about three years as an ambulance attendant for the respondent employer, injured her low back April 28, 2003, when she slipped and fell to the ground, landing in a seated position, as she came out of the back of the ambulance.

Her initial medical care was directed toward an injury to her ankle, general trauma, and a broken thumb which required surgery the next day. Then, about two weeks after the surgery, when the effect of pain pills began to wear off, the claimant realized that she was also having significant

problems associated with her back, including pain in her low back, right hip, right thigh, and into her foot and toes, as well as numbness in her great toe and right thigh.

Her continuing treatment included medication, such as a duragesic patch, pain pills, sleeping pills, and muscle relaxants, as well as an antidepressant. Eventually, Dr. Lorio sent the claimant to Dr. Christopher K. Mocek. The respondents also sent the claimant to Dr. William Ackerman who treated and released the claimant. Thereafter, the claimant changed physicians, by Commission Order, to Dr. Eric David Akin, a neurosurgeon, who returned the claimant to Dr. Mocek's care. The claimant was also seen by Dr. William Blankenship on April 20, 2005, at the request of the respondents for a second opinion.

Dr. Mocek's treatment had included lumbar epidural steroid injection therapy beginning in August, 2003, as well as medication and physical therapy. However, the claimant did not obtain adequate relief from these measures and by November, 2004, Dr. Mocek indicated that he might consider an implantable trial of either an epidural stimulator or continuous epidural infusion of morphine for possible pain pump implant for long-term chronic pain management. On January 13, 2005, at the request of Dr. Mocek, the claimant was evaluated by psychologist Jody L. Hagen, Ph.D., who gave psychological clearance for a spinal cord stimulator. However, after his second opinion examination, Dr. Blankenship wrote that there was very little objective evidence for any other treatment and no evidence for an internal pain delivery system.

Thus, at the hearing, the claimant requested a pain pump trial, as recommended by Dr. Mocek, as well as an attorney's fee for controversion, while respondents contended that such treatment was not reasonably necessary or related to the claimant's compensable injury.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable low back injury April 28, 2003; her average weekly wage was \$564.00; an Order dated January 19, 2004, changed the claimant's treating physician to Dr. Eric Akin; and that Dr. Christopher Mocek is an authorized treating physician.

3. The preponderance of the evidence shows that, as recommended by Dr. Mocek, a pain pump trial and, if the claimant gets 50% or greater pain relief from the trial, the pain pump itself, is reasonably necessary in connection with, and related to, the claimant's compensable injury.

4. The Act currently does not provide for an attorney's fee for an award of medical benefits, except for the recovery of disputed bills where the medical provider has contracted with the attorney.

**DISCUSSION**

Where, as here, the issue of the occurrence of a compensable injury has been resolved in favor of the claimant, the Act requires that the employer promptly provide such medical and related benefits as may be reasonably necessary currently in connection with the compensable injury. Ark. Code Ann. §11-9-508(a). Thus, the issue currently in dispute is one where expert opinion is of considerable value. The respondents rely primarily upon the opinion of their second opinion

physician, Dr. Blankenship, while the claimant relies on the opinion of her treating physician, Dr. Mocek.

Following the evaluation of the claimant performed by Dr. Blankenship, Dr. Mocek reviewed Dr. Blankenship's report and wrote to the respondents defending his position. He first noted that Dr. Blankenship is an orthopedic physician and does not place or manage intrathecal pump therapies and that Dr. Mocek did not think it was appropriate to have an opinion rendered by a physician who is not familiar with the therapy in question. He also noted that Dr. Blankenship referred to discogram, a diagnostic test, as if it were a therapeutic treatment (although Dr. Blankenship clarified this somewhat in his deposition testimony). Dr. Mocek further noted that Dr. Blankenship did not mention the discogram test performed on the claimant May 17, 2004, showing concordant back pain with annular tears in all four lower lumbar discs and, further, he made no mention of a post discogram CT confirming annular disruption in the discs. Dr. Mocek indicated that while the claimant did have degenerative disc disease, as noted by Dr. Blankenship, Dr. Blankenship failed to point out that the claimant had discogenic related pain in four lumbar discs. Dr. Mocek also stated that the discogram showing back pain at all four lumbar disc levels, confirmed by post discogram CT, was inconsistent with Dr. Blankenship's statement concerning the objective basis for further treatment or for the "internal pain delivery system". He concluded by stating that he did not think Dr. Blankenship was qualified to make a definitive statement as he had concerning intrathecal pump therapy.

In short, this review by Dr. Mocek, emphasizing the difference in practice and experience between himself and Dr. Blankenship, is persuasive. Moreover, the opinion of Dr. Mocek as a treating physician who has followed the claimant for some time is also entitled to greater weight.

The record also indicates that the claimant's continued long-term use of medication has resulted in confusion, sleepiness, and has impaired her ability to function, although testing showed she has retained moderate strength. Further, Dr. Blankenship's emphasis on objective findings is somewhat misplaced, since the statutory issue is reasonable necessity of treatment, not objective findings to establish the compensable injury. It has long been settled that the employer takes the claimant as it finds him and provides treatment for the compensable injury even though pre-existing conditions may also benefit. Under these circumstances, the therapy requested by the claimant, which may not go further than the pain pump trial, is reasonably necessary in connection with her compensable injury and her request should be granted.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant. The requested attorney's fee is denied.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge