

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F104011**

**BILL ROSE**

**CLAIMANT**

**CHARLES JONES CONSTRUCTION**

**RESPONDENT EMPLOYER**

**COLUMBIA NATIONAL INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED OCTOBER 10, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JAMES H. BINGAMAN, Attorney at Law, Springdale, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on September 8, 2006. A prehearing conference was held on August 8, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a March 7, 2001, compensable injury.
2. The compensation rate is the maximum for a 2001 injury.

The claimant contends he sustained a compensable injury and is requesting additional medical treatment from his authorized treating physician, Dr. James Arthur, an orthopedic surgeon.

Respondents contend the claimant has reached maximum medical improvement and has been given no impairment rating for his lumbar spine. Respondents contend additional medical treatment is not reasonable and necessary and related to his compensable injury. Medical was controverted in February 2004.

### **ISSUES TO BE LITIGATED**

1. Entitlement to additional medical treatment.

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 Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was a March 7, 2001, compensable injury.
2. The compensation rate is the maximum for a 2001 injury.
3. The claimant has proven by a preponderance of the evidence that his continued need for treatment with Dr. Arthur is reasonable and necessary and related to his compensable injury.
4. Respondents remain responsible for the reasonable and necessary medical care for the claimant's injuries following his 2001, work injury.
5. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to

be paid by respondents in accordance with Ark. Code Ann. §11-9-715, *Coleman v. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990) and *Chamness v. Superior Industries*, W.C.C. E019760 (Opinion filed March 4, 1992).

## **DISCUSSION**

The claimant, 43 years old, sustained a compensable injury on March 7, 2001, where he injured his neck and back. The claimant was initially under the care and treatment of Dr. Jackson and was then referred to Dr. Arthur. Dr. Arthur performed cervical surgery on May 29, 2001, and then referred the claimant to Dr. Scott Slagle for pain management, who provided steroid injections and medications. According to the claimant, his condition has progressively gotten worse and he understood if his condition worsened, another surgery would be an option. Respondents have denied further care and treatment by Dr. Arthur. The claimant testified that he attempted to see Dr. Arthur on September 3, 2004, but respondents denied payment and he was unable to see the doctor. The claimant takes for pain: Hydrocodone (six per day), Oxycodone (one), Kadian (two every other day) and Tramadol, as well as two muscle relaxers and an antidepressant and Nexium for his ulcer. The claimant contends all the drugs are related to his neck and back pain. The claimant has continued to get prescriptions for these drugs from his family doctor, Dr. Michael Verser, after the insurance company no longer paid for medications.

The claimant contends he is entitled to additional medical benefits. Ark. Code Ann. §11-9-508(a)(Supp. 2005), provides that 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. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregor Trucking*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.*

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, 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 Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In the present case, the claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to his compensable injury. The claimant had cervical surgery in May 2001, by Dr. Arthur and was next treated conservatively for a time with pain management, to include medications and steroid injections. On November 12, 2003, Dr. Arthur stated in his letter, "Though I would not recommend surgery on him at this time, it is possible in the future that he may require a decompression at C3, 4 to avoid cord compression." Dr. Arthur goes on to state, "I believe his pain is of chronic nature and he will require some sort of treatment for this in the future in the form of pharmaceutical therapy." A progress note from Dr. Arthur on April 29, 2004, indicates the claimant may need more

surgery in the future considering the pain. The claimant credibly described his pain as primarily in his neck but going down to his arms, chest, shoulder and in the neck area and constant headaches. He described the numerous medications he is currently taking, as well as his continued problems after taking steroid injections and following the conservative treatment recommended by his doctors.

Dr. Arthur was asked in his February 12, 2004, deposition about the claimant's current problems at the C6-7 levels and whether those were a natural and probable consequence of the surgery and he answered affirmatively. Resp. Exh. No. 1, p. 39. Dr. Arthur confirmed that with the history from the claimant, the cause for the need for surgery was the work-related incident. Dr. Arthur stated that surgery would be recommended when the claimant was unable to tolerate the pain.

The claimant testified that he had been unable to work since his injury. Medicare began paying for some of the claimant's medicines about the first of 2006, according to the claimant. He confirmed also that he has not had any accidents or other injuries since his work injury in 2001.

### **ORDER**

After considering the claimant's testimony and the medical evidence, to include Dr. Arthur's deposition, I find the preponderance of evidence indicates the claimant's continued need for treatment with Dr. Arthur is reasonable and necessary and related to his compensable injury. Respondents remain responsible for the reasonable and necessary care for the claimant's injuries following his 2001, work injury.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be

paid by respondents in accordance with Ark. Code Ann. §11-9-715, *Coleman v. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990) and *Chamness v. Superior Industries*, W.C.C. E019760 (Opinion filed March 4, 1992).

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**