

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F512518

JUAN RUBIO, Employee	CLAIMANT
D.J. WEBER CONCRETE, Employer	RESPONDENT
GUARANTEE INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 8, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JOHN DAVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 21, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his low back on November 8, 2005.
4. The claimant was earning an average weekly wage of \$570.10 which would entitle him to temporary total disability benefits at the rate of \$380.00 per week.
5. Respondents paid temporary total disability benefits from November 9, 2005 through March 28, 2006.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.

The claimant contends that as a result of his compensable injury he is entitled to additional medical treatment.

The respondents contend that claimant is not entitled to additional medical treatment for his compensable injury.

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

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 21, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. This includes not only continued treatment from Dr. Luo, but also includes any unpaid medical treatment and testing performed at the request of Dr. Knox and/or Dr. Moffitt.

FACTUAL BACKGROUND

The claimant is a 43-year-old Hispanic man who was hired by respondent to pour concrete and "work on cement." The claimant suffered an admittedly compensable injury to his back on November 8, 2005, when he was struck in the low back by a backhoe. It is unclear from a review of claimant's testimony exactly how this injury occurred; however, respondent did accept as compensable an injury to claimant's low back on that date.

Claimant did not seek any medical attention for his low back on November 8, 2005.

When claimant's pain continued the next day he went to Northwest Medical Center. Medical records from the Northwest Medical Center indicate that x-rays were interpreted as normal and claimant was diagnosed as suffering from a lumbar strain. Claimant was given medication and instructed to receive follow up treatment from Dr. Sites.

Apparently claimant did not receive follow up treatment from Dr. Sites, but instead received an evaluation by Dr. Knox, neurosurgeon. Dr. Knox first evaluated the claimant on November 15, 2005, and his report concerning that visit is contained in a letter dated December 12, 2005. Dr. Knox notes in his report that claimant had marked spasms of the paralumbar spine and positive straight leg raising on the left. Dr. Knox noted that an MRI scan revealed no significant findings. Dr. Knox diagnosed claimant's condition as an acute blunt trauma to the lumbar spine with S1 radiculopathy on the left and facet settling at L4-5. Dr. Knox prescribed conservative treatment which consisted of an injection and medication.

Claimant's next evaluation with Dr. Knox occurred on December 6, 2005, and in his report of that date Dr. Knox notes that claimant's x-rays revealed no evidence of acute pathology and again states that claimant's MRI scan was normal. Due to claimant's continued complaints he started the claimant on a physical therapy regimen. He also noted that the injection which he had given to claimant on November 15 was ineffective.

On December 29, 2005 and December 31, 2005, claimant sought medical treatment from the emergency room at Washington Regional Medical Center complaining not only of complaints with his low back, but also of problems in his groin and scrotum area. At the time of the visit on December 29, claimant was diagnosed as having symptoms of a prostate infection and was treated with antibiotics. When claimant was evaluated on December 31 with complaints of pain near his anus and scrotum, he was diagnosed as suffering from a moderate perirectal abscess.

Claimant returned to Dr. Knox on January 4, 2006, at which time he noted that

claimant had recently been diagnosed with a perirectal fissure. It was Dr. Knox's opinion that the medication claimant had been prescribed for his back pain precipitated that condition.

I am certain that the treatment regimens that we have instituted for his back pain; specifically, the narcotic use, ultimately resulted in constipation that probably precipitated his perirectal fissure.

Dr. Knox went on to indicate that he did not believe that any surgical options were available for the claimant. Instead, he recommended that claimant see Dr. Mary Frances Daut for an evaluation involving physical medicine and rehabilitation.

Apparently claimant did not see Dr. Daut for medical treatment, but instead was referred to Dr. Moffitt by the respondent. Claimant was initially seen by Dr. Moffitt on January 24, 2006, at which time he diagnosed claimant as suffering from a contusion of the back. Dr. Moffitt recommended physical therapy and a change in claimant's medication. On February 7, 2006, Dr. Moffitt noted that claimant's condition had improved "a little bit" due to the physical therapy. Dr. Moffitt recommended continued physical therapy and medication. He also released the claimant to return to work with some restrictions.

On February 22, 2006, Dr. Moffitt noted that claimant was not any better. He noted that claimant was still complaining of pain in his lower back and that an x-ray of his hip was normal. Dr. Moffitt ordered additional testing including a metabolic profile, rheumatogram, urinalysis, and bone scan.

Claimant's next visit with Dr. Moffitt occurred on March 3, 2006. Dr. Moffitt noted that claimant's lab testing revealed an elevated sugar level, but that the rest of the lab work was normal. He also noted that the claimant's rheumatoid arthritis testing was negative. Most importantly, Dr. Moffitt noted that although the claimant's MRI scan was not revealing, he was still concerned that there might be a radicular problem causing claimant's back

symptoms. As a result, he ordered a CT myelogram.

After the March 3, 2006 visit with Dr. Moffitt claimant received chiropractic adjustments from Dr. Joseph Hines on four separate occasions before returning to Dr. Moffitt on March 28, 2006. Dr. Moffitt's report of that date notes that claimant's back is still bothering him and again recommends a CT myelogram.

The respondent accepted claimant's low back injury and paid some compensation benefits including temporary total disability benefits through March 28, 2006. It is unclear from a review of the transcript as to the exact date the respondent last paid for medical treatment. However, according to claimant's attorney, no medical has been paid subsequent to March 2006. This would include the CT myelogram which was recommended by Dr. Moffitt. Indeed, medical reports contained at Page 87 of the joint exhibit indicate that claimant had to pay for the myelogram.

While Dr. Moffitt had recommended the CT myelogram as of March 28, 2006, it does not appear from a review of the medical records that claimant ever returned to Dr. Moffitt for medical treatment. Instead, claimant returned to Dr. Knox on April 20, 2006. Dr. Knox noted that the claimant continued to have "significant component of back pain, leg pain, and weakness". Dr. Knox also recommended a myelogram since the claimant's prior MRI scan had been unremarkable.

A CT scan of the claimant's lumbar spine was performed on May 9, 2006, which revealed a lateral disc protrusion at the L4-5 level which impinged on the L4 root. Following that myelogram claimant was next evaluated by Dr. Knox on May 25, 2006. Dr. Knox indicated that the findings on the myelogram did not explain the atrophy and weakness in the claimant's left leg. He further indicated that he could not recommend any surgical options with regard to claimant's compensable injury, but instead recommended that the claimant follow up with Dr. Cannon for pain management.

Instead of Dr. Cannon, the claimant was seen by Dr. Luo for pain management at

the referral of Dr. Knox. Dr. Luo's first evaluation of the claimant occurred on June 9, 2006, at which time she recommended an injection.

The medical evidence also indicates that during this period of time the claimant was diagnosed as suffering from a meniscal tear in his left knee for which he underwent surgery on October 19, 2006. Claimant has specifically reserved as an issue the compensability of any potential knee claim.

Claimant has filed this claim contending that he is entitled to additional medical treatment as a result of his compensable low back injury.

ADJUDICATION

Pursuant to A.C.A. §11-9-508(a) an employer is required to provide all medical treatment that is reasonable and necessary for treatment of a compensable injury. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 31 (2004). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. *White Consolidated Industries v. Galloway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. This includes not only continued medical treatment from Dr. Luo, but it also includes medical treatment claimant received in connection with his low back injury from Drs. Moffitt and Dr. Knox which remains unpaid.

Initially, it should be noted that multiple objective tests on the claimant's low back pain have essentially returned normal, or in the case of a CT myelogram did not explain claimant's continued complaints of pain. However, a claimant is not required to show by

objective medical findings that he is entitled to additional medical treatment. *Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W. 2d 1 (1999); *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W. 2d 196 (1997).

After claimant's initial medical treatment at the Northwest Medical Center he came under the care of Dr. Luke Knox, neurosurgeon. While Dr. Knox's medical reports indicate that he did not recommend any surgical treatment for the claimant's compensable back injury, his medical reports also indicate that he was of the opinion that claimant was in need of additional medical treatment for his compensable low back injury. On April 20, 2006, Dr. Knox recommended that the claimant undergo a myelogram due to continued complaints of low back pain. While that myelogram did not explain claimant's continued problems, Dr. Knox did not indicate that claimant was not in need of any additional medical treatment, but instead recommended that claimant receive medical treatment from Dr. Cannon for pain management. Claimant did not receive the medical treatment from Dr. Cannon for pain management, but instead was seen at the referral of Dr. Knox by Dr. Luo for his chronic low back pain. Dr. Luo on June 9, 2006 recommended an injection for the claimant's low back pain. Dr. Knox reiterated in his report of June 19, 2006 that claimant should continue to receive follow up treatment from Dr. Luo for relief from his continued low back complaints.

In short, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. Here, based upon the opinion of Dr. Knox that claimant is in need of additional medical treatment in the form of pain management from Dr. Luo, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. This additional medical treatment includes continued treatment from Dr. Luo. In addition, I also find that claimant is entitled to any unpaid medical treatment he received at the request of Drs. Moffitt and Dr. Knox for his low back injury. This would

include the CT myelogram which was recommended by both Drs. Moffitt and Knox.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. This includes continued medical treatment from Dr. Luo as well as payment of all unpaid medical treatment provided by Drs. Knox and Moffitt for claimant's compensable low back injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

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.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE