

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309857

DENNIS SMITH, EMPLOYEE	CLAIMANT
CONAGRA, SELF-INSURED EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, TPA	RESPONDENT

OPINION FILED MARCH 6, 2006

Hearing held December 13, 2005, at El Dorado, Union County, Arkansas, before the HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant represented by HON. R. THEODOR STRICKER, Attorney at Law, of Jonesboro, Arkansas.

Respondent represented by HON. NORWOOD PHILLIPS, Attorney at Law, of El Dorado, Arkansas.

STATEMENT OF THE CASE

On December 13, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on October 31, 2005, and a pre-hearing order was entered on November 2, 2005. A copy of the November 2, 2005, pre-hearing order was marked Commission Exhibit "1", and made a part of the record herein without objection. At the hearing the parties confirmed that the stipulations, issues, and respective contentions outlined in the prehearing order were properly set forth.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employer/employee/carrier relationship existed at all relevant times, including September 10, 2003; that the claimant sustained compensable injuries to his head, for which some benefits were paid; and that on January 18, 2005 a change of physician order was entered by Pat Capps-Hannah changing the claimant's physician to Dr. Burba.

**Smith, Dennis/F309857**

The parties agreed the issues to be presented for determination at the full hearing were whether the claimant is entitled to additional medical treatment related to his September 10, 2003 compensable injury; specifically, whether the claimant is entitled to additional studies recommended by Dr. Burba.

The claimant contended at the full hearing that the additional studies recommended by Dr. Burba are reasonable, necessary, and related to his September 10, 2003 compensable injury.

The respondents contended at the full hearing that the additional studies recommended by Dr. Burba are not reasonable, necessary or related to the claimant's September 10, 2003 compensable injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the claimant and to observe his demeanor, and without giving the benefit of the doubt to either party, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the

**Smith, Dennis/F309857**

evidence that additional medical treatment is reasonably necessary in connection with his compensable head injury stipulated to herein.

4) All issues not specifically addressed herein are hereby reserved.

## DISCUSSION

### I. HISTORY

The claimant testified that while working for the respondent-employer on September 10, 2003, he was pushing some racks to the washroom, slipped on some ice and landed on his head. The claimant, on the day of the incident, went to Dr. Greg Smart to be evaluated. The next day, September 11, 2003, a CT of the claimant's brain was conducted. (CX-2, pg. 3) The claimant continued treating with Dr. Smart, but later was treated by Drs. Saffman and Burba.

The claimant also indicated at the full hearing that he hurt his back as a result of the September 10, 2003 fall, and it appears the claimant received some medical treatment in relation to his back. However, the stipulations agreed to by the parties at the full hearing only stated that the claimant sustained "compensable injuries to his head." Therefore, the issue of "whether the claimant is entitled to additional medical treatment in relation to his compensable injury of September 10, 2003" can only be addressed with regard to the claimant's head. The claimant was instructed at the full hearing that issues regarding his back are reserved, as it appears the respondents have controverted any alleged compensable back injury.

**Smith, Dennis/F309857**

After receiving treatment for head injuries from Dr. Smart, the claimant also treated with Dr. Alonzo Burba. On March 3, 2005, Dr. Burba referred the claimant to Baptist Health Medical Center for an MRI of the brain. (RX-1) The claimant is requesting additional treatment from Dr. Burba in relation to his stipulated compensable head injury.

#### ADJUDICATION

An employer shall promptly provide an employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a) The claimant bears the burden of proving that he is entitled to additional medical treatment. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

The parties agreed at the prehearing conference the sole issue for determination at the full hearing was "whether the claimant is entitled to additional medical treatment related to his September 10, 2003 compensable injury. Specifically, whether he is entitled to additional studies recommended by Dr. Burba." (CX-1) Further, at the full hearing, claimant's counsel again reiterated the same issue to be determined:

THE COURT: So just to clarify, the sole issue then is whether or not, for today's purposes anyway, is whether or not Mr. Smith is entitled to the additional studies recommended by Dr. Burba in this letter you are going to introduce?

MR. STRICKER: I think that would be correct, yes.

The only stipulated, or previously adjudicated, compensable injury that occurred

**Smith, Dennis/F309857**

on September 10, 2003 was to the claimant's head as stipulated to on the record. The claimant expressed concern that he also sustained compensable back injuries on September 10, 2003; however, the issue of a compensable back injury and benefits associated therewith were not addressed at the prehearing conference and therefore any issue regarding the claimant's back were reserved.

I find the claimant has failed to prove entitlement to additional medical treatment concerning his admitted compensable head injury for a number of reasons. First, the claimant's CT of the brain conducted on September 11, 2003, was "normal". (CX-2, pg 3) Also, Dr. Burba obviously reviewed the MRI of the brain conducted by Dr. Ronald Martin on 3/3/05, (RX-1), and concluded as follows:

"I doubt that the area of increased signal in the periventricular white matter has anything to do with the fall." (CX-1)

Dr. Burba went on to say in his December 6, 2006 letter that:

"I would not think this was a diffuse axonal sheering injury, but rather the usual small vessel disease that we see on almost every 41-year-old patient." (CX-1)

Dr. Burba's assessment of the MRI shows this examiner that any further treatment of the claimant's head would not relate to the September 10, 2003 compensable head injury. Dr. Burba's report of December 6, 2005 clearly indicated any condition the claimant may have is not related to the fall. The claimant has failed to meet his burden of proof by a preponderance of the evidence that he is entitled to additional medical treatment. Specifically, the claimant has failed to show that the additional medical treatment relates in any way to his compensable head injury of September 10, 2003.

Injured employees have the burden of proving by a preponderance of the evidence

**Smith, Dennis/F309857**

that the medical treatment sought is reasonably necessary for the treatment of the compensable injury. ***Norma Beaty v. Ben Pearson, Inc.** Full Workers' Compensation Commission Opinion filed February 16, 1989. (Claim No. D612291).* When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. ***Deborah Jones v. Seba, Inc.** Full Workers' Compensation Commission Opinion filed December 13, 1989. (Claim No. D512553).* The respondent is only responsible for medical services which are causally related to the compensable injury, and the claimant has failed to prove how any future recommended medical treatment is related to his compensable head injury.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment. Therefore, the claim for additional benefits must be and hereby is denied and dismissed.

IT IS SO ORDERED.

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DALE DOUTHIT  
ADMINISTRATIVE LAW JUDGE

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