

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F111537

**GREGORY L. STOUT,
EMPLOYEE**

CLAIMANT

**WHITE'S HEATING
& AIR, INC.,
EMPLOYER**

RESPONDENT NO. 1

**STATE FARM INS. CO.,
INSURANCE CARRIER**

RESPONDENT NO. 2

SECOND INJURY FUND

RESPONDENT NO. 3

OPINION FILED JUNE 9, 2006,

Pursuant to a hearing conducted June 8, 2006, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant;

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for Respondents No. 1 and 2;

Mr. Terry Pence, Attorney at Law, Little Rock, Arkansas, representing Respondent No. 3, appearance excused.

STATEMENT OF THE CASE

This was a hearing to consider the claimant's request for additional medical care recommended by his primary treating physician, Dr. Donald Boos, for an admittedly compensable back injury of September 25, 2001.

The claimant was employed as the head of the respondent employer's heating and air conditioning installation, service, and repair operations. On September 25, 2001, he injured his back when he tripped over a piece of rug and fell on the concrete floor of the employer's warehouse in Hot Springs while unloading a truck. The respondents provided medical care, including the attention of

Dr. Michael Young, a Hot Springs surgeon who performed three surgical procedures on the claimant's low back. The claimant, who had undergone a diskectomy a few years prior to this injury, experienced relative good results from the first two surgeries, but did not do well after the third surgery, which was performed in October, 2003.

Consequently, he was referred to Dr. Donald L. Boos for pain management and received a spinal cord stimulator. Initially, this device afforded significant relief for the claimant's symptoms, although adjustment was occasionally required. Over time, the claimant's symptoms began to become more severe. For example, at one point, the claimant had lost coverage in his back. After the device was adjusted, and at the time of the hearing, the claimant had coverage in his lower back but not in his leg. On March 28, 2006, Dr. Boos wrote that after the original placement of the stimulator the claimant had excellent relief of his back pain, but still had persistent pain in the left leg to the extent that he complained about it and it has been a problem for him. Dr. Boos opined that a revision of the stimulator may result in less back coverage at the expense of the leg and, therefore, he thought it best to do a trial on the left side to see how much of the left leg pain could be captured while leaving in place the current system. He explained that the whole purpose was not only to increase the quality of life but also the claimant's mobility.

At the hearing, the claimant contended that he should be awarded such medical care, while reserving other possible issues. Respondents No. 1 and 2 contended that the record fails to show that the procedure recommended by Dr. Boos is reasonably necessary in connection with the claimant's compensable injury, based primarily upon the second opinion furnished by Dr. Earl Peebles, who examined the claimant June 30, 2005.

The record, which included the testimony of the claimant, was closed at the conclusion of the hearing, consistent with Ark. Code Ann. §11-9-705(c) and the Prehearing Order.

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 employee-employer-insurance carrier relationship existed at all pertinent times, including September 25, 2001, when the claimant sustained a compensable back injury, arising out of and in the course of his employment.

3. The preponderance of the evidence shows that it is reasonably necessary in connection with the claimant's compensable injury for him to receive the medical care suggested by Dr. Boos, including a preliminary trial and, if successful, a revision of the claimant's spinal cord stimulator as described in his letter of March 28, 2006.

DISCUSSION

Once a compensable injury has occurred, Ark. Code Ann. §11-9-508(a) requires the employer promptly to provide the injured employee such medical and related care as may be reasonably necessary in connection with the injury received by the employee. As noted above, the respondents have acknowledged that the claimant suffered a compensable injury and have authorized and paid for his medical care, which has included three surgeries and the initial placement of the claimant's spinal cord stimulator, none of which was challenged at the hearing. The effectiveness of the spinal cord stimulator varied over time and, at this point, has diminished to the point that the trial

procedure, as well as the revision itself, if the trial is successful, are appropriate for the effects of the claimant's injury and related surgeries and may even assist him in possibly returning to the workforce on a continual basis.

Dr. Peeples has not seen the claimant since June 30, 2005, when he wrote that, after examining the claimant and the available medical records, it would be helpful to obtain and EMG/NCV study before commenting on the impairment rating assigned by Dr. Young. He further stated that it might be helpful to review and, if necessary, to repeat the psychological study obtained prior to the original insertion of the dorsal column stimulator.

The respondents did not present the requested psychological study but did have the claimant undergo electromyographic studies August 5, 2005, and also had him complete a one-page patient comfort assessment guide on August 11, 2005. On September 21, 2005, Dr. Peeples commented on the impairment rating received by the claimant, noting that he had reviewed the EMG/NCV findings. He also wrote that he was still happy to review the psychological data apparently available on the claimant.

On May 15, 2006, Dr. Peeples wrote that he reviewed Dr. Boos March 28, 2006, letter, which did not give anatomic logic as to why the leads and type of stimulator should be changed. However, he again stated that, prior to making any comment regarding the appropriateness of additional invasive procedures for pain, he would like to see the previous psychological data. He also suggested that current testing by Dr. Winston Wilson should be obtained. At the time of the hearing, there was no additional comment from Dr. Peeples about either the past psychological studies or the requested study by Dr. Winston Wilson or the appropriateness of the proposed treatment by Dr. Boos.

Based on the claimant's testimony indicating that he has received relief from such treatment in the past and the fact that his treating physician, Dr. Boos, has been following the claimant and is familiar with the use of such devices as a part of his regular practice, while Dr. Peoples is not known to have such extensive experience with these devices in his orthopedic surgery practice, the opinion of the claimant's treating physician is entitled to greater weight. Moreover, a trial of the proposed revision is likely the surest method for determining if the revision itself is needed and, of course, must be successful before the final revision is attempted.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge