

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408404

JOHNNIE VICKERS	CLAIMANT
DEPARTMENT OF HEALTH	RESPONDENT
PUBLIC EMPLOYEE CLAIMS INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 25, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by RICHARD SMITH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 16, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 4, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 27, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back.

4. The claimant is entitled to a weekly compensation rate of \$109.00 for temporary total disability and permanent partial disability.

5. Medical expenses have been paid.

6. Respondents have accepted and paid a 10 percent impairment to the body as a whole.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical to go to the Texas Back Institute.

In regard to the foregoing issues the claimant contends that his treating physician, Lance Barton, has referred him to the Texas Back Institute for further treatment. The respondents have refused to honor said request. The claimant is entitled to reasonable and necessary medical treatment as recommended by Dr. Barton, including, but not limited to referral to the Texas Back Institute, or alternatively, a second opinion.

In regard to the foregoing issues the respondents contend that the claimant obtained a change of physician to Dr. Capocelli on February 2, 2005, that Dr. Barton is no longer his authorized treating physician, and was not on October 18, 2005, when he made the referral to the Texas Back Institute and that the referral to the Texas Back Institute is not reasonable and necessary.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and the respondents submitted documentary evidence

marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and the parties have stipulated that he sustained a compensable injury to his low back while working for the respondent on July 27, 2004. The claimant testified that he was transferring a client's leg upon to her bed and ruptured a disc in his back. The claimant agreed that he was initially seen by Dr. Lance Barton in Greenwood but was subsequently referred to Dr. Joe Paul Alberty. The claimant further agreed that he requested a change of physician and was seen by Dr. Capocelli who performed surgery on his back. The claimant agreed that Dr. Capocelli, after surgery, referred him to Dr. Lennington for steroid injections. The claimant explained that steroid injections make him swell which increases his pain, all of which he discussed with Dr. Lennington and, therefore, did not proceed with the injections. The claimant testified that he then was referred by Dr. Capocelli back to Dr. Barton for pain management. The claimant testified that besides prescribing medications for his pain, Dr. Barton has also recommended that he be seen at the Texas Back Institute.

The claimant testified that currently he is having swelling and an enormous amount of pain in his back. The claimant testified that his leg is getting to where it is stiff and just sticks straight out and he is getting where he cannot use his right leg. The claimant testified that no one has discussed additional surgery with him but he was aware that Dr. Lennington had put

something about surgery in his notes. The claimant agreed that Dr. Capocelli gave him a 10 percent impairment rating which the respondents are paying out. The claimant testified that he has been unable to return to any type of employment, noting that his condition since he last saw Dr. Capocelli has gotten worse and continues to get worse. The claimant agreed that he is asking the Commission to allow him to be sent to the Texas Back Institute for treatment at the respondents' expense.

On cross examination, the claimant testified that Dr. Alberty gave him steroid injections to which he had an adverse reaction. The claimant agreed that it was after this event that he requested a change of physician to Dr. Capocelli. The claimant stated that after he refused the injections offered by Dr. Lennington, Dr. Capocelli referred him to Dr. Barton for pain management. The claimant stated that at this time Dr. Barton then recommended that he go to the Texas Back Institute for treatment. The claimant testified that Dr. Barton indicated that he had had good results by sending people to the Texas Back Institute. The claimant stated that no other alternative treatment closer to home was discussed.

The medical records set forth that the claimant was initially treated for his compensable injury by Dr. Lance Barton on July 27, 2004, and was subsequently referred to Dr. Joe Paul Alberty who saw the claimant on September 14, 2004. Dr. Alberty writes on September 14, 2004, that he has seen the claimant for his complaints of lumbar back pain noting that he has been undergoing physical therapy as well as taking medications for this problem.

Dr. Alberty notes that the claimant's MRI done on August 18 shows some extra dural defect in the lower lumbar area compatible with his clinical findings. The claimant was diagnosed with an acute lumbar disc and it was recommended that he continue physical therapy and his medications. On September 17, 2004, Dr. Alberty writes that he recommends the claimant undergo steroid injections for his back problems. On September 29 the claimant called into the doctor's office reporting headaches and pain in the injection site. By October 7, 2004, the claimant had continued to have pain in the site of the injection and preferred not to undergo a repeat LESI. The claimant did undergo steroid injections on October 14, 2004, administered by Dr. Alberty. Dr. Alberty writes on October 21, 2004, that the claimant reports that the pain in his back and right leg is actually getting worse. The doctor notes that the claimant has had three out patient LESIs without significant benefit. Dr. Alberty recommended that the claimant undergo back surgery.

The claimant requested and the Commission granted his request for a change of physician to Dr. Capocelli. Dr. Capocelli writes on December 13, 2004, that he has seen the claimant for his complaints of back and right leg pain. After review of the claimant's x-rays and MRI as well as examination, Dr. Capocelli writes that the claimant is an excellent candidate for surgery, noting that he has already had five to six months of conservative treatment for his symptoms. On February 17, 2005, Dr. Capocelli performed a right laminectomy with diskectomy utilizing METRX

system for his herniated right L4-5 herniated disc. On follow up Dr. Capocelli writes on March 30, 2005, that the claimant has some palatable rigidity and muscle spasm that date in the para wound area of his L5 spine. Dr. Capocelli notes that the claimant reports that he does not have any significant leg pain and it was recommended that he increase his activities. Dr. Capocelli also prescribed medications. On April 20, 2005, Dr. Capocelli notes that the claimant has started physical therapy. The doctor notes that the claimant has post op muscle spasm and on this date there is some mild swelling around the incision with muscle spasm. The doctor notes that the claimant is complaining of non specific pain but notes that he is favoring his right leg. Dr. Capocelli writes that he would like for the claimant to complete a four-week course of physical therapy at the end of which he would have the claimant undergo an FCE. Dr. Capocelli then addresses some concerns with the possibility of the claimant developing a drug dependency to his Hydralcodone. Dr. Capocelli writes on June 14, 2005, that the claimant has undergone an FCE which evaluated him as being able to return to work at light duty, noting that his restrictions would prevent him from returning to his primary work. Dr. Capocelli assessed the claimant with a 10 percent whole body impairment based on the A. M. A. Guides, Forth Edition. Dr. Jerry Lennington writes on October 3, 2005, that the claimant reports that following his surgery his pain was alleviated for about a day but has come back. Dr. Lennington writes that the claimant reports that his pain is throbbing and is made worse by sitting and better if he lays down.

After examination, Dr. Lennington notes that one of the claimant's options is surgery and he recommended epidural injections so that the claimant would not have to be dependent upon medications. Dr. Lennington writes that the claimant reports that epidurals have made his back swell and he did not want to try this type of treatment. Dr. Lance Barton writes on October 18, 2005, that the claimant is still bothered with chronic low back pain and right leg weakness. Dr. Barton notes that the claimant underwent surgery in early 2005. Dr. Barton writes that the claimant's pain was worse than it was prior to his surgery and that most local neurosurgeons are unwilling to give second opinions on someone who has already been operated on. Dr. Barton notes that he has had excellent results with difficulty cases when they have been seen at the Texas Back Institute and recommends that the claimant be sent to the Texas Back Institute. Dr. Barton further notes that the claimant, in his opinion, is still within his healing period and would benefit from a second operative intervention.

After a review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. The claimant has requested that the respondents pay for his evaluation and possible treatment at the Texas Back Institute. Arkansas has many fine physicians who specialize in the treatment of back problems, therefore, I order that the claimant be seen by Dr. Luke Knox in the Fayetteville area for evaluation and possible treatment if recommended. In the alternative, if Dr. Knox will not

see the claimant since he has already been operated on by Dr. Capocelli, I find it reasonable that the claimant be sent to the Texas Back Institute for evaluation and possible treatment. Therefore, the respondents are to pay for additional medical treatment for this claimant's low back injury initially with Dr. Luke Knox if he will agree to see the patient and in the alternative to the Texas Back Institute if Dr. Knox refuses to see the claimant.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 27, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back.

4. The claimant is entitled to a weekly compensation rate of \$109.00 for temporary total disability and permanent partial disability.

5. Medical expenses have been paid.

6. Respondents have accepted and paid a 10 percent impairment to the body as a whole.

7. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. The claimant is to be seen by Dr. Luke Knox for evaluation and possible treatment. If Dr. Knox refuses to see the claimant since he has already been operated on

by Dr. Capocelli, the claimant is to be seen and possibly be treated at the Texas Back Institute at the respondents' expense.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment and should be seen by Dr. Luke Knox for evaluation and possible treatment. If Dr. Knox refuses to see the claimant, the claimant shall be seen by the Texas Back Institute for evaluation and possible treatment.

The cost of this additional medical treatment will be at the respondents' expense.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE