

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401129

TONNIE A. WHITAKER, EMPLOYEE CLAIMANT

**WINGFOOT COMMERCIAL TIRE
SYSTEM, EMPLOYER** RESPONDENT

**LIBERTY MUTUAL INSURANCE CO.,
CARRIER** RESPONDENT

OPINION FILED JUNE 8, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 24, 2006, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE ROBERT R. CORTINEZ, SR., Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

_____A hearing was conducted to determine the claimant's entitlement to payment of additional medical treatment and attorney's fees.

At issue is whether or not the treatment proposed by Dr. Chakales is reasonably necessary in connection with the compensable injury pursuant to Ark. Code Ann. §11-9-508. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on January 21, 2004 at which time the claimant sustained a compensable back injury at a compensation rate of \$329.00/\$247.00. Medical expenses, temporary total disability benefits and a 5% rating to the body as a whole have been paid. The claimant owes back child support to Jefferson County Child Support Enforcement and he has received unemployment benefits.

The claimant contends he remains symptomatic and wishes to pursue the treatment recommended by Dr. Chakales, (see his report of September 1, 2005).

The respondents contend that all appropriate benefits have been paid and further medical treatment is unreasonable and unnecessary. Dr. Chakales was appointed as the claimant's change of physician by the Commission's Medical Cost Containment Division in an Order filed June 22, 2005. The respondents paid for the initial visit, but specifically object to repeat diagnostic testing.

The following were submitted without objection and comprise the evidence of record: The parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing.

The claimant, age 47 (D.O.B. October 1, 1958) has an eleventh grade education and 25 years experience in changing eighteen wheeler truck tires

weighing 250 pounds.

On January 21, 2004, the claimant lifted a tire and felt a stabbing pain in his low back. He also developed left leg pain. He reported the incident to the office manager and took some Advil. When the pain persisted, he went to the Emergency Room (ER) that night. The claimant was excused from work for five days.

The employer sent the claimant to Healthcare Plus. After an MRI scan, the claimant was referred to surgeons, Dr. P.B. Simpson and Dr. Steven Cathey. Dr. Cathey assessed a 5% permanent impairment rating to the body as a whole and referred him to Dr. B. Garlapati for pain management.

When the carrier stopped paying for the pain clinic, the claimant petitioned the Commission for a change of physician. The Medical Cost Containment Division appointed Dr. Chakales. After one visit, the carrier controverted the claimant's treatment with Dr. Chakales.

The claimant stated he remains symptomatic with a pins and needles sensation. Dr. Garlapati's medications and injections helped temporarily but he would like to pursue treatment with Dr. Chakales as prolonged standing is problematic. The claimant stated that he has no faith in Dr. Cathey or Dr. Simpson.

MEDICAL EVIDENCE

Some reports refer to radicular right leg pain, but the claimant stated that the reports were in error. He testified that the radicular symptoms have always been on the left side.

The claimant was treated at the emergency room and saw his family physician, Dr. Lindsey before he came under the care of Drs. Morris, Alexander, and Henderson, at Health Care Plus, the carrier's authorized medical provider. He was referred to two neurosurgeons, Dr. Simpson and Dr. Cathey and a pain management specialist, Dr. Garlapati. The claimant has received medication, physical therapy and steroid injections. His condition has been evaluated by three MRI scans, a myelogram and CT scan and a Functional Capacity Evaluation (FCE). He is not considered a surgical candidate.

Initially, the claimant complained of back and right leg pain. The first MRI scan conducted January 30, 2004 was interpreted as showing mild degenerative changes at L5-S1 with slight disc bulging. Thereafter, the medical records refer to a "negative" MRI scan and a diagnosis of lumbar strain.

A report dated February 23, 2004 mentions complaints of bilateral leg pain. The claimant was treated conservatively and improved enough to return to light duty on March 27, 2004.

The claimant returned to the Health Care Plus clinic on April 13, 2004 complaining of back and left leg pain. A second MRI scan performed April 19, 2004 was interpreted by the same radiologist who read the first scan as showing a change in the findings. The claimant was diagnosed with a small left lateral disc herniation at L3-4.

Because of the discrepancies in the MRI scans, Dr. Simpson recommended a myelogram and CT scan. These tests conducted May 27, 2004 showed a small paracentral herniated disc on the left side at L5-S1. In his report of June 16, 2004, Dr. Simpson opined that the claimant was not a surgical candidate and recommended a second opinion from another physician.

The carrier sent the claimant to Dr. Cathey on August 24, 2004. Dr. Cathey opined that the claimant's symptoms did not correlate with the test results or physical examination. He recommended repeat diagnostic testing and consultation with a pain specialist, Dr. Garlapati.

Dr. Garlapati prescribed medication, steroid injections, and an FCE.

On November 17, 2004, an FCE was conducted which was considered invalid due to inconsistent effort, self-limiting behaviors, and complaints of pain out of proportion with his functional abilities. The claimant demonstrated the ability to work at light duty lifting less than 20 pounds.

A third MRI scan was conducted by Dr. Cathey which showed no nerve root compromise or canal stenosis to substantiate the claimant's complaints of radicular leg pain. In a report dated January 6, 2005 Dr. Cathey agreed with Dr. Simpson that the claimant was not a surgical candidate. He assessed a 5% rating to the body as a whole but could not relate the claimant's condition to the injury at work.

The claimant then saw Dr. Chakales on September 1, 2005. He diagnosed lumbar disc syndrome at L5-S1 and a protrusion at L3-L4. He recommended an EMG study and a fourth MRI to evaluate the claimant's current condition and look for evidence of chronic nerve root irritation. Dr. Garlapati agreed with Dr. Chakales' recommendations (see the report dated December 29, 2005). It is unclear why Dr. Chakales suspected nerve root irritation when the MRI scans showed no nerve root compromise or stenosis.

FINDINGS AND CONCLUSIONS

Employers must promptly provide medical services which are "reasonably necessary in connection with" the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, ___ S.W.3d ___ (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services "may include that necessary to accurately diagnose the nature and extent of the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury." Greer v. Phillip Mitchell Construction, Full Commission opinion

February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

The Commission has the duty of weighing the medical evidence, resolving any conflicts. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995), Beeson v. Landcoast, 43 Ark. App. 132, 862 S.W.2d 846 (1993).

The evidence of record shows the claimant injured his back at work and the claim was accepted as compensable. The respondents have provided the claimant with adequate medical care, diagnostic testing and consultation with specialists.

Dr. Cathey has provided the most detailed reports and his opinion has been given great weight in considering the evidence. Diagnostic testing does not substantiate the claimant's need for additional treatment based on the opinions of Drs. Cathey and Simpson and the claimant's complaints of pain are out of proportion to the injury sustained based on the FCE results.

Accordingly, I find further treatment is unreasonable and unnecessary.

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed among the parties on January 21, 2004 at which time the claimant sustained a compensable back injury at a compensation rate of \$329.00/\$247.00. Medical expenses,

temporary total disability benefits and a 5% rating to the body as a whole have been paid.

2. The claimant has failed to prove by a preponderance of the evidence of record that further medical treatment is reasonable and necessary.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge