

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F407239

JERRE BRADLEY, Employee

CLAIMANT

R & R SUZUKI, Employer

RESPONDENT

ARGONAUT INSURANCE COMPANY, Carrier

RESPONDENT

OPINION FILED APRIL 30, 2007

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

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

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 11, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 31, 2007, 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 on January 13, 2004.
3. The claimant sustained a compensable injury to his left hand on January 13, 2004.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$161.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits.

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

1. Additional medical from Dr. Kelly.

The claimant contends he is entitled to additional medical treatment as recommended by Dr. Kelly.

The respondents contend that claimant is not entitled to additional medical treatment from Dr. Kelly.

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 January 31, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury from Dr. Kelly.

#### FACTUAL BACKGROUND

The claimant is a 34-year-old man who suffered a compensable injury to his left hand while working for respondent on January 13, 2004. On that date, claimant was in the process of helping take a window out of a wall when the window exploded and cut various tendons in the claimant's left hand. Claimant was taken to the emergency room and underwent surgery on that date by Dr. Allard. Following that surgery the claimant continued to have problems with his left hand and Dr. Allard referred claimant to Dr. Benafield. Dr. Benafield performed a second surgical procedure on the claimant's left hand on March 29, 2004. Claimant underwent physical therapy after the surgery and was released to return to work with no restrictions by Dr. Benafield on May 11, 2004.

In a medical report dated June 11, 2004, Dr. Benafield noted that claimant continued to have problems with his hand. Dr. Benafield stated that he would not recommend any additional surgery at that time but instead recommended that claimant try to live with his problem for six months and then consider surgery if necessary. Dr. Benafield's medical report of November 22, 2004 indicates that claimant was still having problems with his left hand, but Dr. Benafield still did not recommend additional surgery. Dr. Benafield indicated that claimant might want a second opinion and as a result referred claimant to his partner, Dr. Heinzelmann. Dr. Heinzelmann evaluated the claimant on December 8, 2004 and stated that a repeat tenolysis surgery and possible removal of a bony osteophyte would have a good chance to improve claimant's range of motion. As a result, Dr. Heinzelmann recommended that Dr. Benafield perform an additional surgical procedure.

The medical records do not indicate that claimant returned to Dr. Heinzelmann or Dr. Benafield. Instead, claimant was referred by the respondent to Dr. Kelly who performed surgery on claimant's left hand on January 10, 2006. Dr. Kelly's medical reports indicate that after surgery claimant's condition improved and he eventually released the claimant to return to work. Claimant was also assigned an impairment rating of 4% to the body as a whole.

On December 6, 2006, claimant again returned to Dr. Kelly presenting with numbness in his fingers and hand. Dr. Kelly indicated that claimant might suffer from carpal tunnel syndrome and as a result recommended that claimant undergo an EMG/NCV study.

Respondent has refused to pay for any additional medical treatment recommended by Dr. Kelly and as a result claimant has filed this claim.

### ADJUDICATION

Claimant 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. 2d 32 (2004). What constitutes reasonably necessary medical treatment is a question of fact for 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 from Dr. Kelly.

In reaching this decision, I do note that claimant was released by Dr. Kelly and was assigned an impairment rating in April of 2006. Claimant testified at the hearing that the numbness he began experiencing in his hand did not begin until some time after his surgery. He also admitted that he noticed the numbness while he was working with tools at his home. However, claimant also testified that he noticed numbness in his fingers even when he was not using tools at home.

Most importantly, I rely primarily upon the medical records indicating that it is the opinion of Dr. Kelly that claimant's need for additional medical treatment is causally related to his work-related injury. In a note from Dr. Kelly's office which is undated but is contained on Page 33 of Claimant's Exhibit Number 1, Peggy Gary of Dr. Kelly's office states:

This letter is regarding the nerve conduction studies that Jerre had done at Trinity Rehab. According to the handwritten notes by Dr. James E. Kelly the injuries are work related.

In summary, claimant has the burden of proving by a preponderance of the evidence that his need for additional medical treatment is reasonable and necessary and causally related to his original compensable injury. Here, based upon the medical records from Dr.

Kelly, a physician chosen by the respondent, I find that claimant has met his burden of proof. Accordingly, I find that claimant is entitled to additional medical treatment for his compensable injury from Dr. Kelly.

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).

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury from Dr. Kelly.

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).

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE