

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602123

FRANK A. BUIRSE

CLAIMANT

K.O.C. FOOD MART

RESPONDENT EMPLOYER

COMMERCE & INDUSTRY INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED MAY 17, 2007

Hearing held before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on March 15, 2007. A prehearing conference was held on January 3, 2007, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a February 20, 2006, low back injury.
2. The compensation rates are \$228/171.
3. The claimant had a one-time change of physician to Dr. James Bryan, an orthopedic surgeon.

The claimant contends he sustained a specific incident back injury on February 20, 2006 and is entitled to additional medical benefits and temporary total disability benefits from April 15, 2006, to a date to be determined.

Respondents contend that all appropriate benefits have been paid.

Respondents contend that Dr. Scott Carle released the claimant to full duty on March 10, 2006, and respondents controverted further benefits on that date.

ISSUES TO BE LITIGATED

1. Additional medical benefits.
2. Temporary total disability benefits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a February 20, 2006, low back injury.
2. The compensation rates are \$228/171.
3. The claimant had a one-time change of physician to Dr. James Bryan, an orthopedic surgeon.
4. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to his February 20, 2006, compensable injury.
5. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and totally unable to earn wages from April 15, 2006, to a date to be determined.

DISCUSSION

The claimant worked the night shift in a convenience store as a cashier, stocker and general cleaner of the store. The claimant began his employment about April 2005 and on February 20, 2006, as he was filling the soda machine with ice, he felt a sharp stabbing pain in his low back and had to stop working for a short time. The claimant was able to work his shift, which he works alone, but he continued to have discomfort. The claimant went home when he got off his shift and slept but went to the emergency room about 6:00 p.m. that evening. The claimant was taken off work for a few days and then began seeing respondents' doctor, Dr. Scott Carle. Dr. Carle took x-rays, prescribed medication and physical therapy. The claimant returned to work on light duty restrictions and was given a stool to sit on at work. The claimant also took pain medication in order to work and found that he was groggy, disoriented and was making mistakes. He also would fall asleep and wake up to find a customer in the store.

The claimant described his problems after the work injury as muscle spasms that would last a long time, headaches, low energy, depression and discomfort. The claimant continued to see Dr. Carle and he first released him back to restricted duty and then Dr. Carle gave the claimant a full release. The claimant next asked for a change of physician and he saw Dr. James Bryan, orthopedic specialist. The claimant was able to see Dr. Bryan for one evaluation and respondents controverted benefits after that visit.

The claimant testified that when he saw Dr. Bryan he could not stand up straight without pain, he had no energy, and no appetite because of pain. The claimant has not worked since leaving the employer nor has he applied for unemployment.

The claimant confirmed that he suffered from back problems stemming from a slip and fall in 2004, where he had a procedure performed by Dr. Christopher Mocek in November 2004. The claimant confirmed that by the time he went to work for his present employer he was mobile and able to do his own yard work and be a good father to his children, although not 100% pain free.

Under cross examination, the claimant confirmed that he slipped and fell on something in the Kroger store in 2004. The claimant hit his head and back and an ambulance was called. The claimant confirmed that the paramedics in attempting to put him on a Gurney dropped him and he hit the back of his head and back again. This incident started his back problems. The claimant worked as a bus driver before the 2004 incident and was not able to perform his job after the 2004 incident. The claimant also verified that he was in a motor vehicle accident in 1996 and he treated with a chiropractor following that incident. The claimant was rear-ended by a police car in March 2005 and received some money. The claimant also verified that he filed for social security disability in July 2005. Following the 2004 fall, the claimant was treated with physical therapy, injections, pain medication, muscle relaxers and hot packs. None of this treatment had long term positive results. The claimant testified that he had no insurance after he left his bus driving job and he did need prescription medication for his back pain before his February 20, 2006, work incident.

The claimant confirmed that following his 2004 incident, a MRI revealed that he had bulging discs at three different levels. The claimant further confirmed that he had an annular tear and compression onto the nerves. The claimant also verified that his symptoms of spasms, headaches, low energy, and depression and moodiness were

similar symptoms he was having before his employment with the respondent employer.

The claimant became social security disability eligible in February 2007 and has not worked since leaving the respondent employer.

The claimant first contends that he is entitled to additional medical benefits following his change of physician evaluation with Dr. James Bryan. The claimant contends Dr. Bryan recommended some pain management treatment; however, respondents controverted all medical after the claimant's one time visit with Dr. Bryan.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we 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. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits. The claimant was initially treated by Dr. Scott Carle and on March 10, 2006, Dr. Carle examined the claimant again and released him back to full duty with no impairment. Dr. Carle noted there was no presence of involuntary muscle spasms and Dr. Carle opined: "He has been adequately treated for an exacerbation to his otherwise chronic and unstable condition."

Resp. Exh. No. 1, p. 47.

The claimant was apparently evaluated by Dr. James Bryan, an orthopedic surgeon, on September 26, 2006, as the result of a Change of Physician Order approved by the Workers' Compensation Commission. That order was entered on April 26, 2006, and an appointment was set up with Dr. Bryan on May 30, 2006. All parties were notified of that appointment. Respondents' counsel stated that the claimant did not actually see Dr. Bryan until September 26, 2006, but there was no explanation of the delay. The claimant testified that he went for the evaluation as soon as the insurance company approved it. The claimant could not explain the delay. Respondents paid for the one time visit with Dr. Bryan but chose not to introduce his report. The claimant testified that he did not receive a copy of Dr. Bryan's report. If an unrepresented claimant does not receive a copy of a pertinent medical report, he cannot introduce relevant medical records. In an effort to discern if the claimant received a copy of the written report, I wrote respondents' counsel and in a March 23, 2006, letter, respondents' counsel stated that the claimant was mailed a copy of Dr. Bryan's report on February 8, 2007. (See blue-backed correspondence.) It is stressed to unrepresented claimants at the prehearing conferences that it is required that pertinent medical evidence be submitted at the hearing and provided to the opposing side before the hearing. The claimant carries the burden of proof that additional medical treatment is reasonable and necessary and related to his compensable injury.

Without Dr. Bryan's written report of the claimant's condition and his recommendations (if any), I do not have sufficient information to decide that additional medical treatment is warranted and related to the compensable injury. It is undisputed

that the claimant had a pre-existing back condition from a 2004 injury. Dr. Carle, in his March 10, 2006, report, released the claimant and indicated his exacerbation had resolved from the February 20, 2006, injury. There was an August 30, 2006, report from Dr. Kevin Collins that was made a part of the evidence. This evaluation most likely stemmed from the claimant's social security claim. While Dr. Collins recommended some additional aquatic therapy and possibly a CT myelogram, he did not mention the claimant's February 20, 2006, injury in this report. The only incident noted was the claimant's 2004 slip and fall in a store, which was the beginning of his back pain problems. I did not find this report to adequately address the claimant's need for additional treatment related to his February 20, 2006, work injury. After carefully considering all the medical evidence introduced and considering the credible testimony of the claimant, I find the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to his compensable injury.

The claimant next contends that he is entitled to temporary total disability benefits from April 15, 2006, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages. The claimant sustained a compensable injury and continued to work with restrictions; however, on March 10, 2006, Dr. Carle released the claimant back to full duty with no

restrictions indicating his exacerbation of his pre-existing condition had resolved. The claimant apparently continued to work for a time but finally left his employment since he was unable to take pain medication and continue to work. There was no supporting medical evidence to indicate the claimant had re-entered his healing period nor medical indicating he should remain off work.

ORDER

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to his February 20, 2006, compensable injury. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and totally unable to earn wages from April 15, 2006, to a date to be determined. The claim is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE