

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NOS. F008686 & F100390**

<b>BATHEL ALLEN CUPPLES, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ROLLISON SEED COMPANY, EMPLOYER</b>	<b>RESPONDENT</b>
<b>AGRI GROUP-COMP, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 9, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 12, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

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

At issue is whether or not additional medical treatment is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508.

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 during June 1997, November, 2000 and July 2001, at which time the claimant sustained compensable back injuries at a compensation rate of \$394.00. Medical expenses, temporary total disability benefits, a 5% rating and a 5% wage loss award have been paid. The claimant is presently under the care of Dr. Tracy for pain management.

This claim has been the subject of previous hearings with opinions issued by Judge Curdie on September 6, 2001 and November 19, 2002, the Full Commission on July 29, 2003 and October 14, 2004, and Judge Hogan on May 20, 2004 and December 15, 2005.

The claimant contends he remains symptomatic and wishes to pursue the treatment recommended by Dr. Tracy for an MRI scan and consultation with a specialist.

The respondents contend all appropriate benefits have been paid based on the previous orders of the Commission. Additional treatment is unreasonable, unnecessary, and barred by the doctrine of res judicata.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with a surveillance DVD and the transcripts of previous hearings incorporated by reference.

The following witnesses testified at the hearing: the claimant, who used a cane to ambulate; nurse case manager, Debra Wilson; and investigator, Tammy Wortham.

The claimant, age 47 (D.O.B. March 20, 1959) has a 7<sup>th</sup> grade education. He sustained two compensable back injuries in June 1998 and July 2000. He is 5'11" and weighs 318 pounds. The claimant is presently under the care of Dr. Tracy, a general practitioner, for back pain associated with degenerative disc disease and bulging discs. Dr. Tracy has prescribed medication and urged the claimant to lose weight and exercise. After an MRI scan in April 2006, Dr. Tracy recommended the claimant see a specialist, (Tr. p. 15).

The claimant seeks additional medical treatment as he remains symptomatic with low back and bilateral leg pain worse on the right side. The claimant feels his symptoms are worsening in intensity and frequency, causing him to fall, (Tr. p. 8-11).

The investigator testified the claimant was under surveillance in September, 2006. She observed him driving, fueling his car and walking. There was an incident on September 20, 2006, with the claimant's truck overheating. He pulled into a parking lot, bent over to pick up cables to jump-start the truck and leaned over to pick up a water jug to refill the radiator (Tr. p. 13/37-43/55-58). It should be noted that these activities do not appear to violate the work restrictions assessed by Dr. Moore on March 14, 2001. In that report, the claimant was cautioned against prolonged

sitting, bending, stooping, straining and lifting over 50 pounds. It should also be noted that these same physical abilities and limitations were observed in prior surveillance (see p. 9 of Judge Curdie's opinion of November 19, 2002).

The medical case management nurse, Debra Wilson, testified that the claimant has difficulty ambulating. She felt the claimant had complained of the same symptoms since his injury.

On cross-examination, respondents' counsel emphasized that the claimant's symptoms are similar to those he has been experiencing since 2001 and he has had the benefit of consultation with specialists (Drs. Pollard, Anthony Russell, Jim Moore and P.B. Simpson) in the past. Counsel also pointed out that the claimant chose his family physician, Dr. Tracy as his one-time change of physician in November, 2004. Dr. Tracy has recommended a specialist in the past which was the subject of the last hearing. The claimant's request to see Dr. Chakales was denied in an Order issued in December, 2005. Respondents' counsel also noted the claimant remained active in his father's church and is able to drive. The claimant has gained weight since his injury and has stopped exercising. However, a medical report dated March 10, 2006 notes that the claimant stopped exercising due to increased pain.

The claimant explained that he participates in church services while sitting on a stool (Tr. p. 16). In the past, he has helped his elderly father by fixing a water leak at the church (Tr. p. 25-26). The claimant has not tried to go back to work but has applied for Social Security Disability.

### **MEDICAL EVIDENCE**

The claimant's medical history has been summarized in prior opinions. He has been treated conservatively for the past eight years for a bulging disc rated at 5% to the body as a whole.

Since the last hearing, Dr. Tracy has been treating the claimant with pain and anti-inflammatory medication.

In a report dated March 10, 2006 the claimant complained of increased pain and the doctor ordered an MRI scan. The scan, conducted April 19, 2006, revealed multilevel degenerative changes

“mixed with spondylotic displacement effacing the exiting and descending nerve rootlets of L5 and S1.”

As I interpret the medical evidence, this finding of nerve root involvement would correlate with the claimant’s leg pain, numbness and tingling, but these symptoms are not new, nor is the diagnosis of arthritis at L5-S1. The MRI findings also indicate the source of the problem is the progression of the claimant’s lumbar arthritis over the last eight years.

I think it is unrealistic to consider an orthopaedic consult for surgery to correct arthritic damage in a patient with uncontrolled weight gain and therefore decline to appoint an independent medical evaluator for this purpose. The claimant is returned to Dr. Tracy for pain management at the respondents’ expense.

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during 1997, 2000 and 2001.
2. The claimant has failed to prove that consultation with another surgeon is reasonable and necessary.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

---

ELIZABETH W. HOGAN  
Administrative Law Judge