

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F506771

DAVID C. EATON, EMPLOYEE

CLAIMANT

**COOPER TIRE & RUBBER COMPANY,
SELF-INSURED EMPLOYER**

RESPONDENT

**CROCKETT ADJUSTMENT, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED OCTOBER 2, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. Paul Miller, Attorney at Law, Texarkana, Texas, Texas.

The respondents were represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

STATEMENT OF THE CASE

On July 10, 2007, the above captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing conference was conducted on April 12, 2007, and a Prehearing Order was filed on April 13, 2007. A copy of the April 13, 2007, Prehearing Order was marked as "Commission Exhibit 1," and made a part of the record herein without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times, including June 22, 2005.

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- 3) The claimant's applicable weekly compensation rates are \$466/\$350 for TTD/PPD, respectively.
- 4) The claimant sustained a compensable back injury on June 22, 2005, for which some benefits have been paid.

The parties agreed at the full hearing that the sole issue to be determined was whether the claimant is entitled to the additional surgery now recommended by Dr. Shahim.

At the full hearing, the claimant contended entitlement to the surgery recommended by Dr. Shahim in his April 27, 2006, report.

Respondents contended at the full hearing that claimant cannot meet the statutory burden of proving that his surgery on L5/S1 disk as recommended in Dr. Shahim's April 2006 report is reasonable and necessary treatment for the injury sustained by the claimant on June 22, 2005. Respondents further contended that the major cause of any additional need for medical treatment which the claimant has experienced or may experience in excess of the benefits paid by respondents is not the compensable injury of June 22, 2005, but instead was one or more intervening and superceding causes and/or the natural progression of claimant's preexisting conditions.

The April 13, 2007, Prehearing Order initially set this matter for a full hearing to take place on May 17, 2007; however, by the request of the parties the hearing was rescheduled to July 10, 2007.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) Claimant has failed to prove by a preponderance of the evidence that the L5/S1 bilateral decompression surgery recommended by Dr. Shahim is reasonably necessary in relation to his compensable injury of June 22, 2005.
- 4) Therefore, claimant's request for the L5/S1 bilateral decompression surgery is hereby denied.

DISCUSSION

A. History

The claimant, age 61, sustained an admittedly compensable back injury while working for Cooper Tire & Rubber Company on June 22, 2005. The claimant testified as follows regarding his compensable incident:

- A Well, I was doing what they call booking on number one tuber line, and the tray puller, he had to go get a battery for his tugger. We filled the tray and went to push it out of the way and when I pushed my back popped.

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Q You felt a specific popping sensation in your back?

A Yes, and the guy that was working with me, Scott Engledowl, he just looked at me and he said, you better get your back side to the office and file a report.

After the incident, the claimant reported his injury and was sent to the emergency room by his employer. After his emergency room visit, the claimant testified he was treated by the company doctor, Dr. Craig Ditsch. The claimant underwent three epidural steroid injections, three sessions of physical therapy, two lumbar MRI's and a myelogram with CT scan. Dr. Ditsch then referred the claimant to Dr. Shahim.

Contained in the record herein (Cl. Ex. 1) is a report from Dr. Shahim dated April 27, 2006, in said report, Dr. Shahim states the claimant has "canal stenosis at L5/S1" due to a combination of "ligamentous hypertrophy" and "central disk hernation" at L5/S1. Dr. Shahim's report also recommends bilateral decompression at L5/S1.

The claimant next went to see Dr. Edward Saer on July 6, 2006. Dr. Saer reviewed both the April 25, 2006, and June 25, 2005, lumbar MRI's. Dr. Saer also reviewed the CT myelogram done at ASH on December 19, 2005, and stated it was "relatively unremarkable." (R. Ex. 1, pg. 3). Dr. Saer stated the June 29, 2005, lumbar MRI showed a small central bulge at L5/S1, but "no evidence of nerve root compression or frank disk hernation." (R. Ex. 1, pg. 2). Dr. Saer specifically reported that the April 25, 2006, MRI showed "no evidence of disk hernation or stenosis." (R. Ex. 1, pg. 3). Dr. Saer went on

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to opine that the claimant did not need any surgical treatment. (R. Ex. 1, pg. 3). In summary, the claimant requests respondents pay for the bilateral decompression surgery now recommended by Dr. Shahim at the L5/S1 level and respondents contend the surgery is not reasonably necessary.

B. Adjudication

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. Arkansas Dept. of Corr. v. Holybee, 46 Ark. App. 232, 878 S.W.2d 420 (1994). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, 90 Ark. 248, 205 S.W.3d 181 (2005). The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000).

After carefully considering the medical evidence, I find the claimant has failed to prove by a preponderance of the evidence that the bilateral decompression surgery recommended by Dr. Shahim is reasonable, necessary and related to the claimant's compensable injury. The medical evidence simply does not support a decompression.

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First, the radiology report from Dr. Sethi specifically states:

“There is no central canal stenosis or nerve root cutoff at any level.”

“Impression: normal myelogram.” (R. Ex. 3, pg. 2).

Also, the April 25, 2006, lumbar MRI report specifically states:

“There is no thecal compression.” (R. Ex. 3, pg. 3).

Even though Dr. Shahim states in his April 27, 2006, report “I do not agree with the radiologist reading,” Dr. Shahim still does not state the claimant has any specific compression of a nerve. Dr. Saer’s report does specifically state “there is no evidence of nerve root compression or frank disk hernation.” (R. Ex. 1, pg. 2). Dr. Saer goes on to not recommend surgical intervention.

The medical evidence contained in the record seems to show there is no compression which requires decompression surgery. Even though Dr. Shahim broadly disagrees with the radiology report; the MRI’s and Dr. Saer’s report back-up the radiologist. Based on the medical evidence before me, I agree with Dr. Saer that a decompression is not warranted at this time.

ORDER

The claimant has failed to prove by a preponderance of the evidence that the L5/S1 bilateral decompression surgery recommended by Dr. Shahim is reasonable and necessary treatment for his compensable back injury. The claim for benefits in the

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form of additional medical treatment is respectfully denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb