

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509674

ILDEFONSO FERMIN

CLAIMANT

ROTH CUSTOM HOMES
UNINSURED

RESPONDENT

OPINION FILED JANUARY 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondent represented by STEVE GUNDERSON, Attorney, Tontitown, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 30, 2006, in Springdale, Arkansas.

A pre-hearing order was entered in the case on September 26, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

An Agreed Order had previously been entered on December 19, 2005. This Agreed Order was signed by counsel for the parties and followed a prior hearing held on December 12, 2005. Although this prior Order was not specifically made an exhibit, it was referred to in the pre-hearing Order and judicial recognition will be taken of its findings and holdings.

The following stipulations were offered by the parties, and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The stipulated Order of December 19, 2005, is final and is res judicata of all issues raised and addressed therein.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

1. The claimant's entitlement to additional medical services by and at the direction of Dr. Cyril Raben.

In regard to these issues, the claimant contends that claimant was injured on August 18, 2005. His spinal cord and right shoulder were injured when he was painting while on ladder and fell (in a sitting position) five feet to the ground.

In regard to these issues, the respondent contends whether claimant suffered a compensable injury.

DISCUSSION

_____The sole issue for resolution at this time, is the claimant's entitlement to medical services by and at the direction of Dr. Cyril Raben. The burden rests upon the claimant to prove his entitlement to these services.

Ark. Code Ann. §11-9-508 entitles an injured employee to all medical services "reasonably necessary" for his compensable injuries. Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing their intended purpose or goal, at the time the services are rendered. Reasonably necessary medical services are not limited only to those services intended to actually improve or resolve the physical damage caused by the compensable injury. This term also extends to medical

services which are appropriate to insure a reasonably accurate diagnosis of the nature and extent of the compensable injury, medical services appropriate to develop a proper regimen of treatment for the compensable injury, and medical services appropriate to provide only symptomatic relief of the pain and other difficulties produced by the compensable injury.

In the present case, the evidence reveals that the respondent provided the claimant with chiropractic care for his compensable injuries by Dr. Libby Rhodes. The records of Dr. Rhodes show that the claimant's initial complaints involved his left neck, left shoulder blade area, low mid back, right hip, and right leg. These records also reveal that Dr. Rhodes observed an abnormal lordosis of the claimant's cervical and lumbar spine, a finding that is indicative of muscle spasms, at the very least. Dr. Rhode's records show discal defects (bulges) at L2-3 and L4-5. It is difficult to ascertain from the evidence presented what tests or studies were performed on the claimant by Dr. Rhodes, what types of treatment modalities were provided to the claimant by Dr. Rhodes, or even Dr. Rhodes' actual diagnosis of the nature and extent of the claimant's injuries.

Dr. Rhodes appears to have discharged the claimant from further care on September 23, 2005, with the opinion that the claimant had sustained "no permanent injuries". This opinion concerning "no permanent injuries" would appear some what inconsistent with the prior opinion that the claimant had sustained discal injuries at both L2-3 and L4-5. This opinion and the

claimant's sudden discharge from all treatment also seems somewhat inconsistent with the findings noted by Dr. Rhodes during visits on September 21, 2005, September 19, 2005, and September 14, 2005.

It appears that the claimant was next seen by Dr. Cyril Raben, an orthopaedic surgeon, on April 24, 2006. This evaluation by Dr. Raben was the result of a change of physicians, granted to the claimant on March 24, 2006. Following his examination, Dr. Raben also diagnosed a discal defect involving the lumbar spine. He recommended an MRI study of the lumbar and thoracic spine and prescribed continued conservative treatment modalities, in the form of physical therapy and oral medication for pain, muscle spasm, and inflammation.

Dr. Raben is a board certified orthopaedic surgeon with particular expertise in the diagnosis and treatment of spinal injuries and conditions. His opinions concerning the necessity of additional testing and continued treatment is clearly entitled to significant weight and credit. It must also be noted that one of the commonly used tests to verify the existence and determine the extent of discal injuries is a magnetic resonance imaging study or MRI and that the actual conservative treatment modalities recommended by Dr. Raben are of a type and nature commonly employed for injuries and conditions such as those experienced by the claimant. These particular conservative treatment modalities do not appear to have been previously provided to the claimant by Dr. Rhodes.

It should also be noted that the claimant testified that although his difficulties had somewhat improved with chiropractic treatment, he has continued to experience significant difficulties from his compensable injuries. I find this testimony to be credible.

After consideration of the evidence presented, it is my opinion that the additional testing and treatment recommended by Dr. Raben, in his report of April 24, 2006, is necessitated by or connected with the claimant's compensable injuries, is medically appropriate for the purposes intended, and have a reasonable expectation of accomplishing their intended purposes. Therefore, these medical services represent "reasonably necessary" medical services, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondent is liable for the expense of these services. However, such liability is limited by the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 18, 2005, the relationship of employee- uninsured employer existed between the parties.

3. On August 18, 2005, the claimant sustained compensable work related injuries.

4. The medical treatment provided and recommended by Dr. Cyril Raben, in his report of April 24, 2006, represents "reasonably necessary medical services" for the claimant's compensable

injuries. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondent is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

5. The respondent has controverted the claimant's entitlement to the medical services provided or recommended by Dr. Raben.

6. The only controverted benefits herein awarded are in the form of medical expenses. No controverted attorney's fee can be awarded to the claimant's attorney on such benefits.

ORDER

The respondent is liable for the expense of the medical services provided and recommended by Dr. Cyril Raben in his report of April 24, 2006. However, such liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE