

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F003545

PAUL J. HENSLEY, EMPLOYEE	CLAIMANT
BRIDGESTONE/FIRESTONE, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES/TPA	RESPONDENT

OPINION FILED OCTOBER 16, 2007

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Russellville, Pope County, Arkansas.

Claimant was represented by the HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on September 26, 2007, in Russellville, Arkansas. A Prehearing Order was entered in this case on July 30, 2007. This Prehearing Order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing, as well as the parties' contentions.

Stipulations

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including February 17, 2000.

3. The claimant sustained a compensable injury to his lumbar spine on February 17, 2000.

4. The prior Opinion of July 24, 2002, by a former Administrative Law Judge, which was affirmed and adopted by the Full Commission on April 22, 2003, is res judicata.

5. That respondent has previously made payments on this claim including, medical, temporary total disability benefits, and permanent partial disability benefits for a 9% whole person rating.

Issues

1. Additional medical treatment, specifically that which has been provided by Dr. Kevin Beavers.

2. Whether the claimant's claim is barred by the statute of limitations. (At the time of the hearing, the respondents withdrew its statute of limitations defense).

3. Whether the treatment from Dr. Beavers is authorized.

4. Whether the respondents are entitled to a set-off under Ark. Code Ann. § 11-9-411. (The respondents alleged a set-off at the hearing, in the event medical benefits are awarded).

5. Controverted attorney's fee, was requested by the claimant at time of the hearing.

Contentions

The claimant contends that he is entitled to additional medical treatment in connection with his injury. Specifically, the claimant will contend that he is entitled to the treatment he received from Dr. H. Kevin Beavers. The claimant suffered

compensable injuries to his neck and lower back on February 21, [sic], 2000. The respondent paid benefits, but controverted additional medical treatments provided by Dr. Beavers. The claimant will contend that this treatment is reasonable, necessary, and in connection with his compensable injury.

Respondents contend that the claimant has been provided all appropriate benefits to which he is entitled. The claim was accepted as compensable and the respondents paid the claimant benefits for treatment of his low back complaints. Subsequently, the claimant asserted a neck injury as part of the claim which was later found to be a part of the claim for which respondents have provided medical benefits. The last benefits provided for the claim was in January, 2004, therefore it is respondents' position that the claimant's request for additional benefits in the form of payment of medical treatment from Dr. Beavers on April 2, 2007, is barred by the statute of limitations. Further respondents assert that the additional treatment is from an unauthorized physician and alternatively, any additional treatment is not reasonably necessary or related to the February, 2000 injury.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of July 30, 2007, which has been marked as Commission's Exhibit No. 1. The claimant's responses to the Prehearing Questionnaire was marked as Commission's Exhibit No. 2. The respondents' responses to the Prehearing Questionnaire was marked as Commission's Exhibit No.

3. The claimant filed a post-trial brief, which has been blue-back and marked as Commission's Exhibit No. 4, as is hereby incorporated by reference. The claimant's medical packet was marked as Claimant's Exhibit No. 1. The respondents' Abstract and Medical Packet were marked as Respondents' Exhibit No. 1. The respondents' hearing transcript dated April 25, 2002, the Opinion dated July 24, 2002, and the Opinion dated April 22, 2003, were marked as Respondents' Exhibit No. 2, as they have been blue-backed and are hereby incorporated by reference.

The following witness testified at the hearing: the claimant.

DISCUSSION

The claimant, age 52(8/04/55), sustained a compensable injury to his cervical spine and low back in February of 2000, while working for the respondent. The claimant testified he was injured while putting a roller on a conveyor belt. According to the claimant, this roller weighed approximately 150 pounds. He testified he has had treatment for his lower back in the form of physical therapy and steroid shots. The claimant testified he underwent surgery with Dr. Ron Williams for his neck injury. He further testified that the physical therapy treatment for his back has helped with his symptoms, as it eases the pain and makes him more mobile and he is able to continue working. He also testified he takes medication to help relieve his pain.

According to the claimant, his last visit with Dr. Beavers

occurred approximately three or four months prior to the hearing. At which time, Dr. Beavers prescribed medication and directed the claimant to return for follow-up care with him. According to the claimant, he paid for the prescription with his regular health insurance, which is provided through his employment with the respondent. He testified that this helped with his back. The claimant gave the following testimony concerning his back symptoms:

Q. Paul, since the accident, the symptoms you've had in your back, have you noticed any significant change in the symptoms in your back?

A. No, not really. It's pretty much the same.

Q. Has it changed areas? Has it changed in sensation?

A. No. It has its good days and bad days. Sometimes it worse than other days.

Q. Since the accident, have you had any other accidents at work?

A. I had one where I overextended my finger pulling out a pin and that's the only one I know of.

Q. Did you injure your back in that accident?

A. No.

Q. Have you had any accidents or injuries outside of work since 2000?

A. No.

Q. Any falls, any car wrecks?

A. None.

Q. Anything at all that you would associate with the current symptoms that you are having?

A. No.

The claimant testified it was his understanding that the company had sent him to Dr. Beavers, as he went to the therapist, who was getting worried that his back was moving differently, so he sent him to Dr. Beavers and he then sent the claimant for an MRI.

He admitted he did not pay for the MRI, and has no clue who paid for it.

According to the claimant, thereafter, he went to the safety person, Lori, for her to make him a follow up appointment, but she told him she would have to get hold of the third party insurance company. He testified his back continued to hurt, so he went back up to Ashley (phonetic), who wrote a note to have the appointment made, and that is when they told him they would no longer cover it anymore. The claimant testified that in the next couple of days, Lori Chestnut, gave him a letter (dated February 9, 2007) stating they would not cover it.

On cross examination, the claimant admitted to treating with Dr. Meyers, but did not recall an MRI dated December 10, 2002, that showed degenerative disk disease of the back.

The claimant admitted to being treated for a herniated neck disk with Dr. Williams after his compensable injury. He further admitted that Dr. Williams performed surgery on his neck on October 9, 2003. After which, the claimant followed up with him and went through a functional capacity assessment on December 5, 2003, which showed he could perform heavy work. The claimant admitted he went back to full duty work for the respondent in

December of 2003. The claimant admitted to working his regular duties since that time. He also admitted to receiving a 9% impairment rating for the neck surgery that Dr. Williams performed.

He admitted that Dr. Meyers withdrew as his doctor in February of 2004 and rendered a report on February 6, 2004, as to why he was withdrawing as the claimant's doctor. The claimant admitted to seeing some doctors for complaints of shoulder problems. He denied that this (his shoulder) is currently a problem. The claimant admitted to seeing Dr. Williams through 2004 and to having some physical therapy treatment periodically during that period of time. The claimant admitted to having last seen Dr. Williams on May 24, 2005. At which point, Dr. Williams indicated the claimant was still having some occasional difficulties with his neck and back.

The claimant denied having requested that Dr. Beavers be his family physician. Instead, he essentially maintains that Dr. Williams requested he see someone in his community area, and named off a couple of doctors, which included Dr. Beavers, and he agreed that he would be fine. The claimant admitted that if the reports show that he saw Dr. Beavers in December of 2005 and March of 2006, he has no reason to dispute the fact that there are no other records out there. He essentially admitted he saw Dr. Beavers during these visits for his back, and to having undergone an MRI of the back on April 12, 2006, which was normal.

He admitted to seeing Dr. Wilbourn on May 9, 2006, after the

April of 2006 MRI. After this, the claimant essentially admitted to not seeing any doctor for his neck or back until April 2, 2007, when he went to see Dr. Beavers.

The claimant admitted to receiving the letter dated February 9, 2007, wherein it was indicated that his workers' compensation benefits were being stopped. He testified he believed that everything was paid for by worker's compensation claim up to that point. The claimant admitted that when he went to see Dr. Beavers on April 2, 2007, he had been notified that workers' compensation benefits were going to be stopped. At this time, he admitted to talking to Dr. Beavers about his heart, a colonoscopy, and prostate exam. He admitted he does not take the medication (for his back) given to him by Dr. Beavers on a daily basis. The claimant admits that he continues to work overtime.

On December 5, 2003, the claimant underwent a functional capacity evaluation (FCE), in order to assess his abilities to perform certain tasks and specific job activities, which demonstrated the claimant could perform heavy duty work. On December 10, 2003, Dr. Williams released the claimant to full duty work with respect to his treatment of the claimant's neck injury; and, on December 19, 2003, he assessed the claimant as having a 9% impairment to the body as a whole for his anterior cervical fusion.

Dr. Kelley Meyer released the claimant to regular activity on December 23, 2003 with some limited restrictions. At that time, he diagnosed the claimant with, "status post cervical

fusion and L-S DOA."

On January 28, 2004, Dr. Meyer noted the need for physical therapy treatment in an attempt to increase the strength in the claimant's shoulder, neck and back.

Dr. Meyer wrote the following to the claimant on February 6, 2004.

We have striven mightily to satisfy your needs, however, no matter how we seem to strive toward this end, we do not seem to be able to do this and we wind up continually switching physical therapists, doctors etc. At this point, since we are having such a difficult time pleasing you and achieving the goals you require, we are withdrawing services and will let you find another physician who can better serve your needs.

On September 13, 2004, the claimant complained of neck and pain to the therapist. The therapist reported, "today has been a bad day and that neck and low back have been pretty much 'constantly,' hurting; also reports cont'd soreness he thinks may be from massage."

Dr. Williams wrote the following to Dr. Kevin Beavers on May 24, 2005.

Paul Hensley is a gentleman I had done an anterior cervical fusion on in the past. He has basically done well with that. He has occasional difficulty with muscle spasms in his back and neck. He has been able to continue working daily. He is here today to see me again because of muscle spasms. I have given him some Flexeril for that. Range of motion in the neck is mildly restricted. Gait is normal. Straight leg raising test is negative. He previously used Kelly Meyer there for a family physician, but Kelly is no longer doing that I understand. You have been treating some of Mr. Hensley's family and he would like you to become his family physician. I told him I thought that would be an excellent plan since that would save him from driving all the way to Little Rock to get occasional medicine such as the Flexeril.

The claimant saw Dr. Beavers on December 16, 2005, at which point, he reported:

He recently was followed by Dr. Ron Williams for back pain with muscle relaxant. He wishes to have this refilled. The latest MRI performed 11/04/04, reveals residual vertebral body, osteophytic bone impingement upon the sac in the left paracentral location and also left sided neuroforaminal narrowing. He has residual disk herniation at C6-7 and has on going pain but is not disabled. He has intermittently undergone physical therapy and his last surgery was performed 10/03. He complains of pain and neck pain but otherwise he is tolerating this. He has radicular symptoms into the left extremity.

On examination today pupils are equally round and reactive to light. Extraocular movements are intact. No jugular venous distension or thyromegaly. Cardiac examination reveals a regular rate and rhythm without murmur. PMI is nondisplaced. Neurovascular examination is physiologic.

We will obtain records from Dr. Williams and continue muscle relaxant therapy for the time being and a limited quantity of Hydrocodone was provided for pain relief.

He also released the claimant to regular activity, and he assessed the claimant as having "neck pain and back pain."

Dr. Beaver referred the claimant for physical therapy treatment of his back pain on February 14, 2006.

On March 13, 2006, Dr. Beavers assessed the claimant with "back pain," for which he ordered an MRI.

An MRI was performed of the claimant's lumbar spine on April 12, 2006, with the following impression, "Normal MRI of the lumbar spine."

The claimant underwent an independent medical evaluation with Dr. Darin Wilbourn on May 9, 2006 due to complaints of neck

and low back pain. He gave the following answers to specific questions:

1. Diagnosis?
 1. Chronic cervical spine pain status post anterior cervical fusion October 9, 2003.
 2. Chronic low back pain.
2. Prognosis for recovery?

Good
3. Please obtain history of injury(ies) sustained and subsequent medical treatment received.

As stated above.
4. Please include in history any prior injuries and/or preexisting conditions.

As stated above.
5. Please establish causal relationship, if any, of claimant's current symptomatology to incident of February 17, 2000.

Mr. Hensley's current symptoms of chronic cervical spine pain and low back pain, in my opinion, are related to the incident of February 17, 2000.
6. To what degree is claimant currently disabled, if at all, relative to incident of February 17, 2000?

Mr. Hensley is currently not disabled.
7. Is further treatment needed for injuries sustained in incident of February 17, 2000? If so, what type and for what duration?

No.
8. In your medical opinion, is this claimant's current regime of medical care reasonable and necessary for injuries sustained on February 17, 2000?

Yes.
9. In your medical opinion, has claimant sustained any loss of function due to incident of February 17, 2000?

No.
10. Please evaluate status of scarring.

Scarring evident from previous anterior cervical fusion.
11. Should we anticipate any permanency on this claim?

9% whole person impairment for his cervical spine as already documented by Dr. Ron Williams on December 19, 2003. There is no permanent impairment as related to his chronic low back pain.
12. In your opinion, has an end result been achieved?

Yes.
13. Has this claimant reached maximum medical improvement?

Yes.

Dr. Wilbourn stated the aforementioned opinions within a reasonable degree of medical certainty.

Dr. Beaver reported the following on April 2, 2007,

He comes in today and has history of back pain. He had strained his back at work. He has some paraspinous muscle spasm and denies radicular symptoms. Cardiac, pulmonary, and neurovascular examination physiologic. Straight leg raise negative.

Patient currently is on no medications.

Screening colonoscopy was discussed. Prostate examination normal. PDS and lipid panel will be obtained.

In a letter dated February 9, 2007, the respondent reported, in pertinent part, the following:

Please be advised that your Workers [sic] Compensation Claim has been closed as of June 28, 2006. Dr. Wilbourn evaluated your injury on May 9, 2006 and at that time he placed you at Maximum Medical Improvement.

ADJUDICATION

A. Authorized physician

The first issue for determination is whether the treatment the claimant received from Dr. Beavers during the April of 2007 visit was authorized. According to Ark. Code Ann. §11-9-514, routine treatment by a physician other than the claimant's authorized treating physician shall be at the claimant's expense; this section, however, is inapplicable if the authorized treating physician refers the claimant to another doctor for examination or treatment. I find that the treatment the claimant received from Dr. Beavers in April of 2007 was authorized based on a valid

referral (pursuant to his letter dated May 24, 2005, which is outlined above) from his treating physician, Dr. Williams.

In addition to this, no evidence has been presented demonstrating the claimant received a copy of the form AR-N, advising him of his rights and responsibilities with respect to the change of physicians rules, and the respondents controverted the claimant's entitlement to additional benefits as of June 28, 2006, by way of its February 9, 2007 letter to the claimant. As a result, the change of physician rules do not apply in this case, and the claimant was free to seek treatment from any physician of his own choosing.

B. Medical treatment

The next issue for determination is whether the treatment the claimant received from Dr. Beavers was reasonable and necessary for his compensable injury of February 17, 2000.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The claimant now contends he is entitled to additional treatment for his compensable back injury, which was received

from Dr. Beavers, on April 2, 2007. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury of February of 2000. The claimant has previously been diagnosed with back pain, for which he received extensive conservative treatment, which included, steroid injections, physical therapy treatment and medication. His most recent MRI performed of his lumbar spine on April 12, 2006 was "normal." In a letter dated May 9, 2006, Dr. Wilbourn (after performing an IME), opined that the claimant had reached maximum medical improvement for his compensable injury of February of 2000. There is no documented complaint by the claimant of any problem with his back again until April of 2007, when he went to see Dr. Beavers for what appears to be a routine check-up, almost one year later. I find Dr. Wilbourn's opinion to be credible and entitled to great weight in light of the findings of the MRI, and the lack of treatment or any documented complaint of any back symptoms thereafter for approximately one year. Based on the expert opinion of Dr. Wilbourn, and due to all of the foregoing reasons, I find that the claimant's compensable back injury resolved no later than May 9, 2006. Therefore, I am constrained to find that the treatment rendered by Dr. Beavers in April of 2007 was not reasonable and necessary in connection with the claimant's compensable injury of February

of 2000. Having found the claimant is not entitled to any additional medical treatment for his compensable injury, the issue of a setoff, has been rendered moot in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including February 17, 2000.
3. The claimant sustained a compensable injury to his lumbar spine on February 17, 2000.
4. The prior Opinion of July 24, 2002, by a former Administrative Law Judge, which was affirmed and adopted by the Full Commission on April 22, 2003, is res judicata.
5. That respondent has previously made payments on this claim including, medical, temporary total disability benefits and permanent partial disability benefits for a 9% whole person rating.
6. The treatment the claimant received from Dr. Beavers was based on a valid referral/authorized.
7. The treatment the claimant received from Dr. Beavers was not reasonable and necessary in connection with his compensable injury of February of 2000.

Order

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury of February 17, 2000. Therefore, his claim for additional medical benefits is hereby denied and dismissed.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge