

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E901291

CAL L. JONES, EMPLOYEE	CLAIMANT
SMITH BLAIR, INC., EMPLOYER	RESPONDENT
PACIFIC EMPLOYERS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 21, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was Pro Se.

The respondents were represented by HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Arkansas.

STATEMENT OF THE CASE

The claimant sustained a compensable arm injury in 1998. This injury has been the subject of multiple prior hearings. In a prehearing telephone conference addressing the claimant's current request for a hearing, we identified two possible consequences of the 1998 injury as hearing issues: (1) a diagnosed reflex sympathetic dystrophy and (2) diagnosed depression. The claimant has treated for these conditions with Dr. DeHaan, Dr. Sharma, and Dr. Otero in Texarkana.

Pursuant to Arkansas Code Annotated section 11-9-511, the respondents currently seek to have the claimant

independently evaluated for his alleged reflex sympathetic dystrophy diagnosed by Dr. DeHaan and for his alleged mental illness diagnosed by Dr. Otero. The claimant contends that these diagnosed conditions are related to his 1998 arm injury.

A hearing was held on September 20, 2007, to consider the respondents' request for independent evaluations. The record consists of the September 20, 2007, hearing transcript and the exhibits contained therein. In addition, on July 27, 2007, I blue-backed to designate as part of the record in this matter the respondents' motion filed on April 16, 2007, my June 5, 2007, letter to the parties, the claimant's response filed on June 20, 2007, and the respondents' brief filed on June 25, 2007.

DISCUSSION

To obtain a Commission-ordered independent medical evaluation under Arkansas Code Annotated § 11-9-511, the requesting party must establish that the evaluation is (1) reasonably necessary and (2) reasonably convenient for the claimant. Melinda Roland v. Advanced Clinical Systems, Full Workers' Compensation Commission, Opinion filed October 24, 2001 (E904745); Thomas E. Wilson v. Armstrong Brothers

Tools, Full Workers' Compensation Commission, Opinion filed September 1, 1999 (E709892).

In Wayne Owens v. Whitfield Construction, Full Workers' Compensation Commission, Opinion filed October 9, 1992, a majority of the Full Commission found an independent medical evaluation reasonably necessary under circumstances where a treating physician assigned a 25% impairment rating, the claimant sought benefits for that rating, and legitimate questions existed regarding the basis of the rating. In Virginia King v. Willow Oaks Acres, Full Workers' Compensation Commission, Opinion filed January 25, 2001 (E903202), the Commission found reasonably necessary a requested independent evaluation to render a second opinion on whether proposed surgery was appropriate.

However, in Judith B. Hughes v. Union County, Full Workers' Compensation Commission, Opinion filed February 24, 2000 (E005739), the Full Commission found that an independent medical evaluation was not reasonably necessary where the respondents were actually attempting to change the claimant's treating physician. In Melinda Roland v. Advanced Clinical Systems, Full Workers' Compensation Commission, Opinion filed October 24, 2001 (E904745), the Full Commission found that an independent medical evaluation

was not reasonably necessary where the respondents sought an evaluation to answer a medical question previously resolved by the Commission.

In the present case, I find that independent medical evaluations are reasonably necessary for both the claimant's diagnosed reflex sympathetic dystrophy and his diagnosed depression. In reaching this conclusion, I have considered the claimant's contentions that he has already been seen for ordered evaluations and his observation that his current treating physicians, Dr. DeHaan, Dr. Sharma, and Dr. Otero, are highly qualified in their respective fields.

While I do not in any way dispute the qualifications of the claimant's treating physicians in their respective fields, I note that the claimant contends that he has sustained a compensable mental injury (depression) and reflex sympathetic dystrophy as a result of his original 1998 injury. The respondents are entitled to collect and present evidence at a hearing as to the existence and the cause of the claimant's conditions for which he seeks benefits, and I find that a clinical examination and any non-invasive testing would be reasonably necessary to determine the existence and cause of diagnosed symptoms of

reflex sympathetic dystrophy and depression allegedly related to a 1998 physical injury.

To the extent the claimant argues that he has already seen physicians requested by the respondents and/or the Commission, the only independent medical evaluation I have ever identified in this case was performed by Dr. Peeples nearly four years ago in January of 2004. Coincidentally, at that time, Dr. Peeples recommended that the claimant undergo a triple-phase bone scan to rule out the possibility of reflex sympathetic dystrophy and a psychological evaluation by Dr. Winston Wilson. I have to date found no records in the Commission's files that the claimant ever received the evaluations proposed by Dr. Peeples.

In addition, at the 2007 hearing the claimant confirmed my understanding from previously reviewing the file that the claimant requested a change of physician to Dr. Sharma in 1999. The Commission entered an order changing his physician to Dr. DeHaan who performed additional surgery, but Dr. DeHaan then referred the claimant to his original physician choice, Dr. Sharma, in 2004 for pain management.

In summary, it appears to me that the claimant has been treating for the last four years with his original choice of physician, Dr. Sharma. In the past year of trying to get

this claim set for a hearing, I have yet to receive a comprehensive packet of treatment records of Dr. Sharma, Dr. DeHaan, and Dr. Otero from either party. I do not perceive that the respondents are requesting the current evaluations for delay or other inappropriate purposes since reflex sympathetic dystrophy and depression are listed as hearing issues, and I find that an examination of the claimant and review of his complete medical history by independent medical and psychological evaluators is reasonably necessary at this juncture in the case.

I also find that evaluation in Little Rock, Arkansas, would be reasonably convenient to the claimant who lives in Texarkana, Arkansas, approximately 143 miles from Little Rock. In this regard, I note that the claimant can drive himself and also has grown children who have and still can assist him with travel if necessary. The employer will be responsible for travel expenses for each evaluation as well as the cost of the evaluations themselves.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. An independent medical examination by a physician in Little Rock to evaluate the existence and cause of the claimant's diagnosed reflex sympathetic

dystrophy condition is reasonably necessary and reasonably convenient to the claimant.

2. The respondents are directed to obtain a complete set of the claimant's medical and psychological records to provide the evaluating physician, Dr. Kenneth Rosenzweig, and to arrange through the claimant's cooperation an appropriate date and time with Dr. Rosenzweig's office for the claimant's clinical examination.
3. An independent psychological evaluation by a psychologist in Little Rock to evaluate the existence and cause of the claimant's diagnosed depression condition is reasonably necessary and reasonably convenient to the claimant.
4. The respondents are directed to obtain a complete set of the claimant's medical and psychological records to provide the evaluating psychologist, Dr. Winston Wilson, and to arrange through the claimant's cooperation an appropriate date and time with Dr. Wilson's office for the claimant's clinical examination.

ORDER

The respondents are directed to take all necessary actions identified herein to arrange clinical evaluations by Dr. Rosenzweig and Dr. Wilson within 90 days of the date of this Order, if the evaluators' schedules will permit. In the event that Dr. Wilson or Dr. Rosenzweig believe that any additional diagnostic studies are necessary to complete their evaluations, the evaluator should contact the respondent for pre-authorization. The claimant is directed to cooperate in the arrangements and in the evaluations.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge