

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. D805666

KELLY S. JONES, EMPLOYEE	CLAIMANT
HILLS VALLEY FOODS, INC., EMPLOYER	RESPONDENT
EMPLOYERS INSURANCE COMPANY OF WAUSAU, CARRIER	RESPONDENT

OPINION FILED MAY 30, 2007

Hearing before Administrative Law Judge O. Milton Fine II on April 3, 2007, in Batesville, Independence County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 3, 2007, the above-captioned claim was heard in Batesville, Arkansas. A prehearing conference took place on January 8, 2007. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission's Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. They are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed at all relevant times, including April 17, 1988.

Issues

At the hearing, the parties discussed the issues set forth in Commission's Exhibit

1. Respondents admitted the wording of their first issue, resulting in the following being litigated:

- _____ 1. Whether the Claimant is entitled to payment by Respondents for prescription medications.

Contentions

At the hearing, the parties discussed the contentions set forth in Commission's Exhibit 1. The contentions read:

_____ Claimant:

1. The Respondent carrier is refusing to pay for prescriptions that Claimant physician is writing.

_____ Respondents:

1. Respondents are paying for all reasonable, related, and necessary medications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has failed to prove by a preponderance of the evidence that Respondents should pay for him to receive Prilosec, Mylanta and Ambien.

CASE IN CHIEF

Summary of Evidence

_____ Claimant was the sole witness at the hearing. In addition to the prehearing order and deposition transcript discussed above, the exhibits admitted into evidence in this case consist of the following: Commission's Exhibit No. 2, a photocopy of the certified mail receipts from Claimant and Respondents' counsel; and Claimant's Exhibit No. 1, a pharmacy printout consisting of four unnumbered pages.

Testimony

In addition to his own testimony, Claimant indicated that he was going to call his father and mother to testify. However, because he did not prepare to call them or even show up on time for the hearing, they did not appear. Because of Claimant's *pro se* status, and without objection from Respondents, I initiated the questioning of Claimant, and then afforded Respondents the opportunity to question him. His testimony was as follows on direct examination:

Claimant testified that his full name is Kelly Scott Jones. He was born September 11, 1962. He recounted the history of his injury. He attended a machine at Hills Valley Foods that used a rake to push cheese off a table into a metal bucket that had two augers inside it. At the time of his injury, the rake had gotten too big a bite of the cheese and the

bucket was overloaded and starting to spill cheese onto the floor. When Claimant reached to grab the cheese, his fingers got caught in the first auger blade. He pushed his fingers down to free them, but he became ensnared in the second blade. In a panic, Claimant jerked his hand out of the machine—severing it from his wrist in the process. His right big toe was amputated and attached to his hand. Because of this, Claimant has trouble maintaining his balance.

He asked for a hearing before the Arkansas Workers' Compensation Commission in this instance to determine whether Respondents should have to pay for some of his prescription medications. Claimant is once again being prescribed sleeping pills. He stated that he has re-acquired a sleeping disorder that he has had in the past and has been treated for in the past. He testified that the condition is due to “emotional distress and the problems that I deal with every day.” As a result, Claimant states that he goes three or four days straight without sleep. This can happen twice a month. He fears that this will harm his health.

Claimant testified that he believes that when he had this condition previously, the Respondent carrier paid for the prescriptions used to treat it. He recalled that his physician prescribed Ambien to treat the sleeping disorder in the past. However, it has been years since that occurred, and he could not locate his pharmacy records from that era. The first four years after his injury, Claimant saw a psychiatrist, who prescribed medications. He came to rely on the medications quite heavily. Claimant stated that he managed to wean himself off of the medications then because he was not comfortable with taking strong medications for a long period of time. He said that he wishes to use the

medications long enough to get the physical problem straightened out and then cease use of the medications and return to a normal life.

In addition, Claimant testified that he is again experiencing what he termed "ulcer problems." He stated that the cause of it is "[t]he emotional distress and the anxiety" due to his physical problems. Inexpensive over-the-counter medications, such as Roloids, do not help. Previously, he was prescribed Prilosec, and he also took four bottles of Mylanta per month. Claimant feels that the Prilosec pills are more important than the Mylanta liquid. However, Claimant did not feel that he would require that many bottles this time.

Claimant also had a dispute with the Respondent carrier regarding his prescription for Xanax. Initially, Respondent carrier would only agree to pay for 90 pills per month, which Claimant testified he would be happy to make do with. But the carrier has now approved the full prescription amount of 120 pills per month.

Claimant's Exhibit No. 1 lists prescriptions that Claimant has not mentioned. Respondent carrier is paying for Wellbutrin. Alprazolam is a generic form of Xanax. Claimant testified that it does not bother him to take the generic form of a drug, as long as the medication works. He is not asking for Respondent carrier to pay for the name-brand drug. Claimant stated that he is only asking for his ulcer and sleeping medications to be paid: Mylanta, which is over-the-counter, and the prescription drugs Prilosec and Ambien. According to Claimant, he would only need two (2) bottles of Mylanta per month in order to address his ulcer problem, and the Prilosec alone might suffice.

On cross-examination, Claimant stated that he had a long recuperation after his accident. The doctors reattached his hand the best that they could. Even with the big toe

functioning as a thumb, Claimant stated that the function of his right hand is limited. It will open and close and allow him to pick up an object as long as it is not heavy.

Claimant testified that his initial medical treatment and everything else has been covered by the Respondent carrier. He was unable to document what he took in the past because his pharmacy did not have records that went back that far and because the first four years of his treatment were exclusively in Little Rock.

Ever since the accident, Claimant has taken the anti-depressant medication Wellbutrin. Respondent carrier has always paid for it. He has also taken the anti-anxiety medication on a consistent basis. It has been several years since he stopped taking medications for his stomach and sleeping difficulties. He believes that his psychiatric treatment helped him to cease needing those medications. However, Claimant testified that he does not understand what has led to the recurrence of these problems. He stated that "the emotional problems and the stress that I have, you know, is no different now than what it was two years ago. So, I don't know why . . . these symptoms have come back into my life again. And I don't know why the sleeping disorder has come back into my life again."

Claimant testified that he has no medical records or medical proof that ties these conditions to his 1988 accident. He stated that he believes the evidence would be found in his psychiatric records, and that he would not be experiencing the digestive and sleep problems but for the accident. Claimant also attributes these problems to the nine surgeries he stated he underwent after the accident. He stated that Respondents should pay for these medications because they have done so in the past and because these problems are the same ones he has experienced in the past.

While Claimant admitted that he has been convicted of methamphetamine possession, he stated that he was only a seller and not a user of the substance and that his current medical problems are not due to illegal drug use. He testified that he is on Social Security disability, and that prevents him from getting a job. Claimant also stated that he has an annuity as a result of a settlement related to the accident. While he is on Medicare, Claimant stated that Medicare has not covered medications or treatments related to his 1988 injury. Claimant has not paid for the Ambien, Prilosec or Mylanta out of his pocket because he cannot afford to do so. He stated that he has prescriptions for the Ambien and the Prilosec and has tried to have the Ambien filled, but the pharmacist has told him that it has not been approved.

On re-direct, Claimant testified that he was not aware that there was going to be a hearing on his claim on April 3, 2007. He did not recall that date being set during the course of the January 8, 2007 prehearing conference call involving Respondents' counsel, Claimant and me. Claimant did recall receiving a Claimant's Exhibit 1, the prehearing notice, by certified mail, and identified Commission's Exhibit 2, a return receipt card that accompanied, as bearing his signature.

Claimant also clarified that the sleeping medication Respondents paid for in the past was not Ambien but Halcion. He has never taken Ambien before. Claimant reiterated that he only wanted to be on the sleeping and stomach medications long enough to improve these conditions and enable him to go on with his life.

Respondents called no witnesses.

Records

The sole record of Claimant that was introduced at the April 3, 2007 hearing was Claimant's Exhibit 1. This record purports to be a "Customer Prescription Report" for Claimant from Oak Park Pharmacy in Batesville for the period January 1, 2006 to March 12, 2007. The report lists numerous drugs prescribed by Drs. Raymond Rimmel and Reginald Rutherford. An entry in the report dated September 14, 2006 refers to Ambien 10mg being prescribed by Dr. Rimmel. However, the report reflects that the prescription has not been filled, and it contains the notation "HOLD." There is no reference to Prilosec in the report.

ADJUDICATIONReasonable and Necessary Medical Care

A respondent is only liable for a treatment that is deemed reasonably necessary for the treatment of a claimant's injury. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). Under Ark. Code Ann. § 11-9-508(a) (1987), an "employer shall promptly provide for an injured employee such . . . medicine . . . as may be reasonably necessary in connection with the injury received by the employee." A claimant must prove by a preponderance of the evidence that he or she is entitled to benefits. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). Whether a given treatment is reasonably necessary is a question of fact for the Commission. *DeBoard, supra; Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

Claimant has contended that Respondents should pay for Ambien and Prilosec prescriptions for him, along with bottles of Mylanta, an over-the-counter medication. His

contention is that the sleeping and digestive disorders that these drugs treat are related to his 1988 compensable injury, when his right hand was severed in a cheese processing machine while he was working for Respondent employer.

It is without question that Claimant suffered a compensable injury on April 17, 1988. The opinion of the Commission on May 4, 1993, which affirmed Administrative Law Judge Richard Calaway's August 31, 1992 opinion and which I have blue-backed to the record, is the law of the case and establishes this. See *Shelly v. N.W. Ark. Neurosurgery Clinic*, 91 Ark. App. 290, ___ S.W.3d ___ (2005)(discussing law-of-the-case doctrine). However, there must be a causal connection between the maladies for which Claimant is seeking treatment and the compensable injury. See *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *Murphy v. Wal-Mart Stores, Inc.*, 2003 AWCC 41 (Full Commission Opinion filed March 4, 2003).

Simply put, there is nothing in the record before me to conclude that there is any connection between Claimant's alleged insomnia and digestive problems and his 1988 accident. Even Claimant could only testify that he has suffered from these medical problems before and that Respondents paid for medications to treat them previously. He did not know why these problems have allegedly resurfaced. There is no medical evidence in the record establishing that Claimant suffers from these conditions, let alone tying such conditions to his compensable injury. Claimant's Exhibit 1 does not even reflect that Claimant has been prescribed Prilosec. And the basis for the Ambien prescription is unknown; the record is devoid of anything from Claimant's physicians regarding the reasons for any of his medications.

For me to find from the evidence before me that Ambien, Prilosec and Mylanta are reasonable and necessary to treat conditions arising from Claimant's 1988 injury would require that I resort to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Ark. Dept. of Corr. v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (1991); *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Hence, I cannot find that these medications are reasonably necessary.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that these prescriptions are reasonably necessary. He has failed to do so. Therefore, this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge