

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F104631

SCOTT W. JONES, EMPLOYEE	CLAIMANT
SHERWOOD PONTIAC, BUICK, GMC, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED JULY 31, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on May 3, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ROBERT R. CORTINEZ II, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of continuing medical treatment.

At issue is whether or not additional medical treatment is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on April 13, 2001 at which time the claimant sustained a compensable injury at a compensation rate of \$300.00/\$225.00. Medical expenses (until June 2002) and temporary total disability benefits (until September 10, 2001) were paid. Dr. Peoples released the claimant with a 0% impairment in a report June 24, 2002. The Medical Cost Containment Division authorized a change of physician from Dr. Peoples to Dr. Wayne Buffett on October 23, 2006.

The claimant contends he remains symptomatic and wishes to pursue treatment recommended by Dr. Buffett. The claimant has been financially unable to get the necessary medical

care he needs, but he has continued seeing a general practitioner for medication. The claimant also contends the MRI scans consistently show objective signs of injury.

The respondents contend additional medical treatment is unreasonable and unnecessary. An MRI scan conducted March 30, 2007 shows a change in the claimant's condition from previous scans. The claimant's present condition is unrelated to the compensable injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing.

The claimant, age 43 (D.O.B. June 12, 1964) is 6'3" and weighs 315 pounds. He has a high school education and training as a diesel mechanic. The claimant's health history includes a March 1, 2001 back injury. The claimant described the injury as minor, missing only one day of work after an MRI scan was taken on March 22, 2001. The scan showed bulging at L1-2 and L4-5. No workers' compensation claim was filed. The claimant began work for the respondent-employer in October 1999 as a mechanic. He was terminated around the time of his change of physician request, in the fall of 2006, (Tr. p. 17).

Once the carrier controverted the claim, the claimant declared bankruptcy, sold his home, moved in with his mother and relied on Medicaid (off and on since 2003) for medical treatment, (Tr. p. 28-30). His application for Social Security Disability benefits is pending. The claimant has worked sporadically since he lost his job doing mechanic work, mowing yards, refurbishing antiques and sweeping. He does not feel he is physically able to return to full time employment.

The claimant testified he injured his back at work on April 13, 2001. His shop manager took him to the medical clinic for his symptoms of back and bilateral leg pain. The carrier then sent him to Dr. Earl Peebles, an orthopaedic surgeon, who prescribed injections, a TENS unit, a bone scan and a MMPI (psychological evaluation).

The claimant came under the care of Dr. Lon Burba, neurologist, who recommended a nerve conduction study and excused the claimant from work for thirty days which the carrier never paid.

The claimant was diagnosed with meralgia paresthetica and was released at light duty on June 27, 2002. Dr. Burba recommended additional therapy and pain management which the carrier controverted. The claimant was referred for a second MRI scan on October 22, 2001 which was positive for a L5-S1 annular bulge and protrusion at L2-L3.

The claimant saw Dr. Wayne Bruffett who recommended additional testing which the carrier has controverted. The claimant obtained a third MRI scan on March 30, 2007 which showed an annular tear at L5-S1.

The claimant's general practitioner, Dr. Pledger, is presently prescribing pain medication and muscle relaxers.

MEDICAL EVIDENCE

After the first back injury on March 1, 2001, pulling on a prybar, the claimant saw Dr. Charles Schultz, neurologist, on March 15, 2001 for back and bilateral leg pain. Dr. Schultz found muscle spasm during the clinical examination while performing range of motion testing. A March 22, 2001 MRI scan was interpreted as showing degenerative disc disease (DDD) with minimal disc bulging at L1-2 and L4-5, and listed the claimant's symptoms as low back and bilateral hip pain. An EMG/NCV study conducted March 27, 2001 was interpreted as normal on the left lower extremity. It appears that the right extremity was not tested.

After the second back injury, the claimant came under the care of Dr. Earl Peoples who diagnosed a right sacroiliac strain in his report of May 3, 2001. He prescribed medication, a TENS unit, and limited his work to activities that did not require stooping or heavy lifting. A bone scan, conducted June 29, 2001, was interpreted as normal. The claimant continued to complain of back pain as well as shoulder pain. Dr. Peoples felt the claimant exhibited evidence of "somatic complaints without evidence of organic lesion." He recommended a psychological evaluation, which was interpreted as normal.

In a letter dated July 27, 2001, Dr. Peoples released the claimant, commenting, "I have been unable to identify a specific abnormality which explains all (the claimant's) symptoms,"

based on normal diagnostic studies.

The claimant returned to Dr. Peeples on August 21, 2001 complaining of pain in his left leg, causing him to fall and injure his left shoulder. Dr. Peeples had no treatment to offer.

The claimant requested an evaluation by a neurologist and came under the care of Dr. Burba for evaluation of numbness in the left leg. Dr. Burba diagnosed “meralgia paresthetica and usually results from compression of the superficial femoral cutaneous nerve at the anterior superior iliac crest.” Dr. Burba excused the claimant from work beginning September 26, 2001 and recommended testing to confirm the diagnosis.

In response to a letter from the carrier, Dr. Peeples opined that the claimant did not need to see a neurologist based on Dr. Dale Perrymore’s interpretation of the MRI scan (DDD at L5-S1, mild annular disc bulge and small superimposed central disc protrusion on the right indenting the epidural fat but not impairing the thecal sac or nerve roots).

Dr. Burba allowed the claimant to return to work (4 hours per day) in a note dated June 27, 2002.

Based on the claimant’s continued complaints of pelvic pain and left leg numbness, Dr. Steven Nokes interpreted an MRI scan of the pelvis as showing a probable benign lesion in the interchanteric left femur, probably an incidental enchondroma. Dr. Nokes recommended correlation with plain films and possibly a bone scan based on the claimant’s complaints of left thigh pain.

In a letter dated July 16, 2004, Dr. Burba opined that the claimant suffers from DDD, meralgia paresthetica and peroneal axonal polyneuropathy. Dr. Burba recommended exercises and epidural steroid treatments. Dr. Burba’s diagnosis was based on the results of the EMG, MRI, clinical examination and the claimant’s history. “My determination that his condition may be related to workers’ compensation injuries relates to his history of sudden onset of leg and back pain while pulling and leaning down.” Dr. Burba also mentions that the claimant had also seen Dr. Ward and Dr. Mocek, however their records are not in the exhibit packets.

Dr. Bruffett saw the claimant on November 15, 2006 and recommended another MRI scan

which was not performed until March 30, 2007 pursuant to Dr. Norman Pledger's order. The claimant was diagnosed with multilevel DDD, desiccation and spurring with bulges at L2-3 to L5-S1 without stenosis. A posterior annular tear at L5-S1 was also identified.

Dr. Bruffett's Report of 11-15-06:

He injured his back in 2001. He never had problems with his back prior to this. He was pulling on a long pry bar, standing in a slight bent position. He twisted his upper body while making this lift and pulled to the left. His pain was extremely severe. When he was walking over to sit down or try to recover from this, he actually vomited.

...An MRI scan in October, 2001...revealed...a diffuse bulge of the disk and a central disk protrusion at L5-S1...eccentric to the right. I do not think Dr. Peeples felt that this was significant. He sent Mr. Jones for a personality test, which Mr. Jones passed.

...Mr. Jones continues to be in severe pain... He has some areas of tenderness and some swelling. His symptoms are getting worse... He has areas of tenderness in his back, and he also has some palpable masses. These are either tender areas of lipomatous change or he may have some degree of muscle spasm.

It is going to be very difficult to get Mr. Jones appreciably better now that he has gone for years with his pain and is so deconditioned, overweight, and out of the work force. The statistics would show that his likelihood of going back to gainful employment are very, very low. However, in talking with him, he seems to be motivated and he definitely wants to get better. I think he must have something to explain his pain. I cannot image (sic) anyone who would want to be in existence (sic) like he has over the last several years.

DOCUMENTARY EVIDENCE

On October 23, 2006, the Medical Cost Containment Division authorized a change of physician for the claimant from Dr. Peeples to Dr. Bruffett.

FINDINGS AND CONCLUSIONS

Employers must promptly provide medical services which are "reasonably necessary in connection with" the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured

employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Commission opinion February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers’ Compensation Commission, December 13, 1989 (Claim No. D511255).

The evidence of record shows the claimant was diagnosed with an annular bulge at L5-S1 with a central disc protrusion following the compensable injury, based on an MRI scan dated October 22, 2001. The claimant remained symptomatic and a subsequent MRI scan performed on March 30, 2007 showed bulging discs at L2-3 to L5-S1 with an annular tear at L5-S1.

The respondents contend the annular tear is a new finding unrelated to the compensable injury. However, the respondents concede there is no independent intervening cause. As I interpret the medical evidence, the annular tear is a progression of the original injury at L5-S1, but the lesion in the thigh treated by Dr. Burba is unrelated to the compensable injury. Meralgia paresthetica is produced by compression of the nerve at the inguinal ligament producing pain and numbness in the outer surface of the thigh, Dorland’s Illustrated Medical Dictionary, Edition 28, page 1014. Dr. Burba’s diagnosis of peroneal axonal polyneuropathy also refers to the outer side of the leg, Dorland’s, supra at page 1266.

To the extent that Dr. Burba recommends pain management or therapy for the annular tear, I find the claimant is entitled to additional medical treatment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on April 13, 2001 at which time the claimant sustained a compensable back injury at a compensation rate of \$300.00/\$225.00.
2. The claimant suffered a annular bulge at L5-S1 which has progressively worsened into a annular tear at L5-S1, which is a compensable consequence of the April 13, 2001 injury, requiring additional medical treatment.
3. The claimant's thigh pain and numbness is unrelated to the compensable back injury at L5-S1.
4. Respondents are directed to pay all reasonable and necessary medical expenses related to the claimant's back condition within thirty days of receipt pursuant to Rule 30.
5. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge