

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F510194**

**ROGER KESTERSON, EMPLOYEE** **CLAIMANT**

**BAILEY LOGGING,  
EMPLOYER** **RESPONDENT**

**CAPITOL CITY INSURANCE CO.,  
INSURANCE CARRIER/TPA** **RESPONDENT**

**OPINION FILED NOVEMBER 19, 2007**

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Terence Jensen, Attorney at Law, Benton, Arkansas.

The respondents were represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On August 23, 2007, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on May 23, 2007, and a Prehearing Order was entered on May 24, 2007. A copy of the May 24, 2007, Prehearing Order was marked as "Commission Exhibit 1" and made a part of the record herein, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including September 14, 2005.

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- 3) Claimant's applicable compensation rates are \$458.00 per week for temporary total disability and \$344.00 per week for permanent partial disability.
- 4) The parties stipulated that the claimant sustained compensable injuries to his neck, back, and spine on September 14, 2005, and as a result was assigned a 5% permanent partial impairment rating which has been accepted and paid by the respondent-carrier.
- 5) The parties agreed that all issues not specifically addressed herein would be reserved.

At the prehearing conference the parties agreed to litigate the issues of additional medical treatment and additional TTD benefits. However, at the full hearing the parties agreed the sole issue to be presented for determination would be whether the claimant is entitled to additional medical treatment from Dr. Boos.

At the full hearing the claimant contended that his treating neurosurgeon, Dr. Pace of Hot Springs, has referred the claimant to a pain specialist by the name of Dr. Boos. The claimant contends that Dr. Boos has recommended additional medical treatment to the claimant's neck, thoracic, and lumbar area, which the respondents have controverted. The claimant contends that he is entitled to the additional medical treatment now recommended by Dr. Boos.

At the full hearing the respondents contended that all appropriate benefits have been paid with regard to Mr. Kesterson's workers' compensation claim, and it is the respondents' contention that additional medical treatment is not reasonable, necessary,

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or related to the claimant's compensable injuries. Respondents further contended that the claimant is not entitled to additional medical treatment due to independent intervening causes. Respondents contend that the claimant's subsequent employment with Billingsley and Moore Logging and a fall which the claimant took subsequent to his compensable injury are all independent intervening causes which would preclude the claimant from receiving additional medical treatment from Dr. Boos.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties and recited herein are hereby accepted as fact.
- 3) The claimant has met his burden of proving by a preponderance of the evidence that he is entitled to the additional medical treatment now recommended by Dr. Boos, as recited on page 8 of Claimant's Exhibit No. 1.

**DISCUSSION**

The claimant, age 34, drove a logging truck for the respondent-employer. On September 14, 2005, the claimant was in an automobile/truck accident wherein he

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sustained stipulated compensable injuries to his neck, back, and spine. The medical records contained in the record herein show that the claimant was taken to the Pike County Memorial Hospital and treated in the ER on September 14, 2005. The emergency room record from September 14, 2005, shows that the claimant had cervical spine pain and numbness in his left fingers. (Cl. Ex. 1, p. 33). At page 32 of Claimant's Exhibit 1 is a report from the Pike County Memorial Hospital ER dated September 14, 2005, that reflects "cervical strain."

Following the claimant's visit to the emergency room on the date of his stipulated compensable injury, the claimant testified he reported to St. Joseph's Hospital in Hot Springs where he stayed approximately one week. (T. p. 19, lines 11-13). The claimant testified that at St. Joseph's Hospital he underwent MRI's and X-rays. The claimant testified that during his stay at St. Joseph's Hospital he continued to have neck and low back pain. The medical records contained in the record herein show that following the claimant's stay at St. Joseph's Hospital he treated with Dr. Wayne Bruffett with the Arkansas Specialty Spine Center. Respondents' Exhibit 2, page 10, shows a report from Dr. Bruffett where he talks about possibly doing some injections with regard to the claimant's low back. Respondents' Exhibit 2, page 16, is a report from Dr. Bruffett wherein he diagnoses the claimant with discogenic low back and released the claimant with a 5% whole

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body impairment rating. The next report contained in the record from Dr. Bruffett is dated September 18, 2006, wherein Dr. Bruffett states that the claimant returned regarding neck pain. The September 18, 2006, report contained at page 20 of Respondents' Exhibit 2, seems to indicate that the first Dr. Bruffett had heard of neck pain was on that date, September 18, 2006. At that time, Dr. Bruffett diagnoses the claimant with "Low back pain and neck pain, status post work injury." In that same report of September 18, 2006, Dr. Bruffett states "I feel that Mr. Kesterson's complaints continue to be related to his work injury on 09/14/2005." At that time, Dr. Bruffett opined that surgery was not recommended and Dr. Bruffett referred the claimant to Dr. Boos in Hot Springs. At the full hearing Respondents' counsel agreed that Dr. Bruffett was an authorized treating physician at the time that he referred the claimant to Dr. Boos for further pain management.

**JUDGE DOUTHIT:** And Dr. Bruffett, Mr. Parrish, was an authorized treating physician at the time; is that right?

**MR. PARRISH:** Right.

(T. p. 77, lines 2-5).

The record also reflects that the claimant was treated by Dr. John Pace at the Hot Springs Neurosurgery Clinic regarding the claimant's cervical problems. (C. Ex. 1, pp. 21-25). The medical reports of Dr. Pace contained in the record show that Dr. Pace tried cervical epidural steroid injections on the claimant. The medical records

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contained in the record herein also show that the claimant did see Dr. Boos and received bilateral cervical facet nerve block treatment. (C. Ex. 1, p. 10). Based on Dr. Boos treatment of the claimant, Dr. Boos recommended cervical medial branch block/cervical radiofrequency in his statement contained at Claimant's Exhibit 1, page 8. It is the cervical radiofrequency that respondents controvert at this time.

The claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that the medical treatment now recommended by Dr. Boos as stated in Claimant's Exhibit 1, page 8, is reasonable, necessary, and causally related to his original compensable neck injury.

Respondents argue that the treatment now recommended by Dr. Boos is not reasonably necessary or related for a number of reasons. First, the respondents rely on the cervical MRI contained in the record herein at page 8 of Respondents' Exhibit

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No. 2. It is true that the MRI contained in the record of the claimant's cervical spine is normal. However, I find that the MRI would go more toward compensability than towards additional pain management. In this case, all parties have stipulated that the claimant sustained a compensable neck injury on September 14, 2005. The respondents are asking the Commission to find that the need for cervical radiofrequencies/cervical medial branch block is something that would show up on MRI. For this administrative law judge to conclude that the need for cervical radiofrequencies/cervical medial branch block is something that can only be shown on MRI would require speculation and conjecture.

Respondents argue that the claimant's need for the cervical radiofrequencies/cervical medial branch block is not related to the claimant's stipulated compensable neck injury of September 14, 2005. However, both Drs. Boos and Bruffett have opposite opinions of the respondents. Dr. Boos opined in his report contained at pages 8 and 9 of Claimant's Exhibit No. 1, that the cervical radiofrequency/cervical medial branch block treatment now recommended by him is necessary as a result of the injuries that claimant sustained in his auto accident of September 14, 2005. Further, Dr. Bruffett opined that "I feel that Mr. Kesterson's complaints continue to be related to his work injury on 09/14/2005." (R. Ex. 2, p. 20). Respondents argue that since the claimant went nine months without any treatment after being released from

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Dr. Bruffett in December of 2005, worked in the interim and that such a delay gives rise to question whether or not the claimant's now needed cervical radiofrequency/ cervical medial branch block is related to his stipulated compensable injury. It must be noted that Dr. Boos and Dr. Bruffett's opinions regarding relatedness are well after the claimant's nine month interval without medical treatment.

Respondents also argue that since the claimant sustained a fall in October of 2006, wherein he complained of neck pain, that the fall was an independent intervening cause that would alleviate the respondents from any continued neck treatment for the claimant. I find respondents' argument to be without merit for a number of reasons. First, Dr. Bruffett had opined that the claimant's continued neck complaints were related to his work injury nearly one month prior to the fall in October of 2006. Second, the claimant had complained of neck complaints since the date of his injury to the present. I find the claimant's testimony regarding his neck pain to be credible and in line with the medical records contained herein. The claimant credibly testified that his neck had continued to hurt since his stipulated compensable neck injury all the way up through the present, and that the fall that he sustained in October of 2006 resulted in no changes to his neck symptoms.

There is also no evidence that the claimant injured or aggravated his neck condition while working for various employers during the approximately nine month

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period that the claimant did not receive medical attention. While it is possible that the claimant's various working conditions and/or his fall in October of 2006 aggravated his preexisting neck condition, there is insufficient evidence supporting such a finding.

Based upon the evidence presented, I find that the claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his stipulated compensable neck injury. This includes the cervical medial branch block/cervical radiofrequencies now recommended by Dr. Boos.

Because claimant's compensable injury occurred after July 1, 2001, and the claimant's attorney's fees is governed by the amendments made by the Arkansas General Assembly in 2001, pursuant to A.C.A. § 11-9-715(a)(1)(B)(ii), the attorney's fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney's fee has been awarded.

**AWARD**

The claimant has met his burden of proving by a preponderance of the evidence that he is entitled to the additional medical treatment now recommended by Dr. Boos for his compensable neck injury. This includes the cervical medial branch block/cervical radiofrequencies now recommended by Dr. Boos in his July 23, 2007, report

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found at Claimant's Exhibit 1, pages 8 and 9, and as such are the sole responsibility of the respondents. Since no indemnity benefits were awarded, attorney's fees are not appropriate in this matter.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb