

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410959

MICHAEL LEE	CLAIMANT
C BEAN TRANSPORT, SELF INSURED	RESPONDENT
COMPENSATION MANAGERS, TPA	RESPONDENT

OPINION FILED MARCH 19, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JERED MEDLOCK and GUNNER DELAY, Attorneys, Fort Smith, Arkansas.

Respondents represented by WALTER MURRAY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 19, 2006, in Fort Smith, Arkansas. A pre-hearing order had been entered in the case on November 8, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the parties significantly changed the stipulations and issues. The respondents' withdrew their denial of the occurrence of a compensable injury to the claimant's low back and stipulated that the claimant sustained a compensable injury to his low back on September 30, 2004. This resulted in the first identified issue being rendered moot. At that time, the claimant also reserved the issue of his entitlement to temporary disability benefits and appropriate attorney's fees. By agreement of the parties, the only remaining issue was the claimant's entitlement to additional medical services, including the initial evaluation by

Dr. Cyril Raben. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1.

The claimant contends that he is entitled to an evaluation and treatment for his compensable injury by Dr. Cyril Raben.

The respondents deny that the claimant is entitled to any medical services by or at the direction of Dr. Raben and contend that he has already been provided with all reasonably necessary medical services.

DISCUSSION

_____The sole issue presented for resolution at the present time is the claimant's entitlement to an evaluation and/or treatment for his compensable injury by Dr. Cyril Raben. On August 16, 2006, the claimant was granted a change of physicians by this Commission to Dr. Cyril Raben. No appeal of this Order was made by the respondents. Instead, the respondents have simply refused to accept liability for the expense of any evaluation or treatment by Dr. Raben, a fact which they have clearly made known to Dr. Raben. As a result, no initial evaluation has ever been obtained.

It appears that the respondents' refusal to accept liability for the expense of the evaluation by Dr. Raben is based upon the respondents' belief that such an evaluation would be unreasonable and unnecessary. Thus, under Ark. Code Ann. §11-9-508, it would not constitute a reasonably necessary medical expense, sufficient to impose liability on the respondents under this subdivision.

However, in regard to the initial evaluation and testing by Dr. Raben, the respondents' argument and rationale is unfounded.

The Arkansas Court of Appeals has held that Ark. Code Ann. §11-9-514(a)(3)(ii) confers on a claimant an absolute right to a one time change of physicians where the respondent had contracted with the managed care organization and had exercised its right to the initial selection of the claimant's treating physician. The Court further held that the initial evaluation following the granting of such a change of physicians was as a matter of law a reasonably necessary medical expense under Ark. Code Ann. §11-9-508. Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3rd 204(2002). Since this holding in Collins, the Court and this Commission has consistently followed this rule. I see no logical reason for a different result here.

As previously noted, the Order granting the change of physicians was not appealed and has become final. Such an Order is res judicata in regard to the corollary issues of whether the respondents contracted with the managed care organization, whether the respondents exercised the right to select the claimant's initial physician, or any other issues regarding the basis and validity of the Order. Thus, it is my opinion that the claimant is entitled, at the respondents' expense, to an initial evaluation and testing by Dr. Cyril Raben. The respondents' liability, in this regard, is subject to the medical fee schedule established by this Commission. Should the respondents continue to obstruct this evaluation by refusing to accept liability for these expenses, they could well be liable under the contempt and penalty provisions of the Act. However, at the present time, there is insufficient

evidence to determine whether any further medical treatment or medical services (other than this initial evaluation and testing) by Dr. Raben would represent “reasonably necessary medical services”, under Ark. Code Ann. §11-9-508. Therefore, any decision on additional medical services by Dr. Raben must be reserved, pending the initial evaluation.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this case.

2. On September 30, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On September 30, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$453.00 for total disability and \$340.00 for permanent partial disability, should such benefits become appropriate.

4. On September 30, 2004, the claimant sustained a compensable injury to his low back. Temporary total disability benefits were paid through November 14, 2004 (apparently, all the medical expenses incurred for the services provided to the claimant by and at the direction of Dr. Keith Holder have also been paid).

5. The claimant was granted a change of physicians by this Commission from Dr. Keith holder to Dr. Cyril Raben, on August 16, 2006. No appeal of this Order was taken by the respondents.

6. The initial evaluation of the claimant's compensable injury by and at the direction of Dr. Cyril Raben represents, as a

matter of law, a reasonably necessary medical service within the meaning of Ark. Code Ann. §11-9-508. Thus, pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the Commission's medical fee schedule.

7. The issue of the claimant's entitlement to additional medical services, after this initial evaluation, should be reserved for determination following the initial evaluation and the reporting of the results and recommendations of Dr. Raben.

8. The respondents deny the claimant's entitlement to any medical services by or at the direction of Dr. Cyril Raben, including the initial evaluation by Dr. Raben, pursuant to the Commission's Order granting the requested change of physicians.

ORDER

The respondents shall be liable for the expense incurred as the result of an initial evaluation and testing of the claimant by Dr. Cyril Raben, in regard to the claimant's compensable back injury of September 30, 2004. Such expense shall be subject to the medical fee schedule established by this Commission.

The issue of the claimant's entitlement to any further medical services by Dr. Raben is reserved, pending the results of the initial evaluation.

The continued refusal by the respondents to accept liability for the expense of Dr. Raben's initial evaluation or to otherwise obstruct the performance of this evaluation may result in appropriate sanctions.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE