

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F413071

JUAN MARRON, Employee	CLAIMANT
PETERSON EQUIPMENT SERVICES, Employer	RESPONDENT
CLARENDON NATIONAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED FEBRUARY 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On January 24, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 25, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties at all relevant times.
3. The claimant sustained compensable injuries to his neck and upper back on October 23, 2004.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$333.00 for temporary total disability benefits and \$250.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment in the form of pain management.

The claimant contends he is entitled to additional medical treatment for his compensable injuries.

The respondents contend that claimant is not entitled to additional medical treatment.

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 witness 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:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 25, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

FACTUAL BACKGROUND

The claimant is a 44-year-old man who was hired by the respondent to work as a welder. On October 23, 2004 the claimant was in the process of welding a piece of metal to the roof of a building which was approximately 18 feet off the ground. Claimant testified that as he and another employee were in the process of getting back down to the ground the piece they had been welding came loose and struck claimant on his head. This knocked claimant down to the floor of the cart they were in and injured his neck and upper back area. Claimant was taken by ambulance to the emergency room at St. John's in

Cassville, Missouri.

At the emergency room x-rays were taken of the claimant's cervical, thoracic, and lumbar spine and were interpreted as revealing no significant abnormalities other than degenerative changes in the thoracic spine area. Claimant was given medication and instructed to remain off work until he could be seen by another physician. Claimant's diagnosis at that time was a cervical strain. Two days later claimant was evaluated by Dr. Cooper who diagnosed claimant's condition as a cervical and thoracic pain/strain. Dr. Cooper placed claimant on light duty and prescribed medication.

Claimant subsequently sought medical treatment from Dr. Haws, Dr. Cooper's partner. Dr. Haws diagnosed claimant's condition as musculoskeletal neck and back pain and treated claimant with heat and ultrasound. He also gave claimant an injection and medication. Dr. Haws released the claimant to return to work with restrictions. Even though Dr. Haws' medical reports indicate that claimant's condition was improving, he informed Dr. Haws that his condition had not improved with medical treatment. As a result, Dr. Haws ordered an MRI scan of the claimant's cervical and thoracic spine. Dr. Haws reviewed the MRI results and indicated that the findings were consistent with the claimant's age. Nevertheless, Dr. Haws referred claimant to a neurologist for further evaluation.

Claimant was evaluated by Dr. David Davis, neurologist, on December 14, 2004. Dr. Davis indicated that claimant had a cervical strain which caused pain to radiate into his upper thoracic region. He indicated that claimant's condition was not permanent and would heal with medicine and time. Dr. Davis also indicated that claimant would receive no benefit from remaining off work. Claimant was next evaluated by Dr. Davis on January 18, 2005, at which time Dr. Davis indicated that claimant's MRI scan revealed degenerative changes consistent with claimant's age. He noted that claimant did not have any neural impingement and that he had nothing else to offer claimant in the way of evaluation or treatment.

Following this visit to Dr. Davis claimant again returned to Dr. Haws. Dr. Haws ordered physical therapy which claimant completed at Health South with no improvement. Dr. Haws in a report dated April 13, 2005 indicated that claimant had reached maximum medical improvement.

Following claimant's release by Dr. Haws he requested a change of physicians to Dr. Kaplin, neurologist, which was granted by the Commission in an order dated May 26, 2005. In a report dated July 5, 2005, Dr. Kaplan noted that he had nothing to offer claimant as far as neurologic intervention and indicated that claimant's pain would probably get better over time. When claimant indicated that he wanted to try further treatment, Dr. Kaplan indicated that claimant could receive treatment from Dr. Kathy Low, a pain specialist.

Claimant has filed this claim contending that he is entitled to additional medical treatment in the form of pain management from Dr. Low. Respondent contends that claimant is not entitled to additional medical treatment.

ADJUDICATION

A respondent is required to provide medical services that are reasonably necessary for treatment of a compensable injury. A.C.A. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Gallaway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001). The claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 31 (2004).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

Following his compensable injury the claimant has undergone x-rays and an MRI scan of his cervical, thoracic, and lumbar spine. The x-rays were read as indicating only degenerative changes. Furthermore, the MRI scan was also read as revealing only degenerative changes consistent with claimant's age. In his report of December 7, 2004, Dr. Haws stated:

I reviewed the MRI results with him at great length, and have read the interpretation to him. There is no significant neural impingement seen of the cervical or thoracic spine, only mild annular disc bulging noted which is consistent with the patient's age.

Claimant was subsequently evaluated by Dr. David Davis, neurologist, who also indicated that the only findings were degenerative changes consistent with claimant's age. In his report of January 18, 2005, Dr. Davis noted that he had reviewed the claimant's MRI scan which revealed degenerative changes "as would be expected as [sic] his age. He does not have apparent neural impingement."

In addition, claimant has undergone several different types of treatment for his compensable injury with no improvement according to his testimony. Claimant has been treated with medication, an injection, heat, ultrasound, and physical therapy. Despite all of this medical treatment claimant contends that his condition has not improved.

Furthermore, the medical reports indicate that symptom magnification is suspected. In his report of November 23, 2004, Dr. Haws stated the following:

I think it is prudent to note that on his clinical exam today he displayed a very limited ROM of his cervical spine when specifically testing the cervical spine. As I moved around the exam room talking with him, or when he would deny an issue which I brought forth by shaking his head right to left indicating no, he had much more fluid and full ROM without evidence of discomfort than that displayed when specifically testing his ROM. This would indicate to me that he was magnifying his symptoms during the exam phase, and not consistently showing these limitations

beyond the specific ROM testing phase of his exam.

He has asked me on more than one occasion as to whether he should see a chiropractor. We did treat him with manipulation here in the clinic, as an osteopathic physician I am trained to perform such treatment. He initially admitted to improvement status post treatment, but again questions today as to whether he should be sent to a chiropractor. He feels he needs to be sent to someone else because he is not improving and that his symptoms have continued to worsen. Again, I would take exception to this, given his previous statements and his clinical objective evidence that he has displayed showing improvement up until today.

Today I specifically feel that he is showing magnification of his symptoms, especially in regards to ROM testing of his cervical spine, as noted above. On his last two clinic visits he has voiced no complaint of pain or discomfort to his cervical spine, stating most of his pain is in the right shoulder blade area, now he is complaining of pain primarily in the cervical spine, stating it is worse than before. The bottom line is that his clinical objective evidence does not equal his complaint or display of comfort, which makes me question any objectives he might have for secondary gain in regards to this case.

Dr. Haws again indicated that he suspects symptom magnification in his report dated March 2, 2005:

On gross visual examination of the head, neck, upper back, thoracic and lumbar spine, there is no inflammation, edema, or ecchymosis. He complains of diffuse tenderness to palpation to even light touch, displaying an exaggerated guarding reaction..... Grip strength is intact bilaterally, though with testing of his strength of grip and upper extremities against resistance he displays breakaway weakness. When testing his lower extremities with flexion and extension at the knees he again displays breakaway weakness which is a sign of poor patient effort. On my testing today he displays a weakness of his lower extremities on flexion and extension of the knees which is so weak that he cannot overcome the strength of my single index finger in keeping him from flexing or extending his leg. If he were truly this weak I would find him basically unable to walk, which he does quite well here in the clinic as well as to and from his car on the parking

lot. The patient climbs on and off the exam table under his own power, arises from a supine to a seated position without assist.

Finally, in his report dated April 13, 2005 Dr. Haws indicated that there were no findings which would explain claimant's chronic pain:

I discussed the patient's condition with him at great length. Functionally, he is intact, he displays good strength with no limits or hesitation on testing of strength or ROM. His complaints of pain, of course, are purely subjective. He has no findings on subjective examination which would explain his chronic pain.

In addition to this opinion from Dr. Haws, I also note that the physical therapy discharge assessment from Health South dated April 8, 2005 indicates that claimant had an exaggerated pain response and "suspect symptom magnification."

Finally, I note that following his evaluation by Dr. Kaplin on July 5, 2005, the claimant has been seen by various physicians for other complaints, including bronchitis and abdominal pain. A review of these medical reports reveals that claimant made no mention of any continued back complaints to those treating physicians. Claimant testified that he did not complain of neck or back pain to those physicians because he was seeking treatment for other conditions. However, these medical reports do not simply fail to mention complaints of neck or back pain; but instead, some of the reports indicate that the physicians examined these areas and the examination was normal.

In summary, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. Here, objective testing in the form of x-rays and an MRI scan reveal degenerative changes consistent with claimant's age. Claimant has undergone various types of treatment including medication, injection, heat, ultrasound, and physical therapy. Despite all of that medical treatment, claimant contends that his condition has not improved. The medical

reports from Dr. Haws indicate that claimant was exaggerating his symptoms. The issue of symptom magnification was also noted in the physical therapy discharge assessment from Health South dated April 8, 2005. Based upon this evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE