

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F510838

JAMES MILLIGAN, Employee	CLAIMANT
CONAGRA FOODS, INC., Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, Carrier	RESPONDENT

OPINION FILED MAY 8, 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 CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On April 12, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 30, 2005, 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 relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his neck and back on June 20, 2005.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$453.00 for temporary total disability benefits and \$340.00 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.

The claimant contends he is entitled to additional medical treatment as a result of his compensable injury.

The respondents contend the claimant has received all authorized, reasonable and necessary medical treatment. Respondents contend claimant was released by Dr. Haws on September 27, 2005 without restrictions and with no permanent impairment. Respondents contend that any additional medical treatment would be unreasonable and unnecessary.

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 November 30, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. This includes surgery and medical treatment provided by Dr. Raben through February 1, 2007. Medical treatment claimant received from Dr. Raben subsequent to February 1, 2007 is not causally related to claimant's compensable injury.

FACTUAL BACKGROUND

The claimant is a 34-year-old man who began working for the respondent in February 2005. Claimant was hired for "Direct Sales and Delivery". Claimant's job duties

required him to drive a refrigerated box truck selling and delivering products to stores such as Dollar General and Fred's.

On June 20, 2005, claimant was in the process of getting out of his truck at Dollar General when he slipped and fell, hitting the steps on his truck. As a result of this slip and fall claimant injured his neck and back. Claimant reported the injury and was sent by the respondent to Dr. Haws for medical treatment.

Dr. Haws' medical report of June 20, 2005 indicates that x-rays taken at that time revealed no bony abnormality. Dr. Haws assessed the claimant's condition as musculoskeletal neck and back pain secondary to a fall. Dr. Haws provided claimant with medication and work restrictions involving primarily sedentary type work. Despite these work restrictions claimant returned to work for respondent performing his same job. Claimant was next evaluated by Dr. Haws on August 11, 2005 and Dr. Haws' diagnosis remained the same. Because of claimant's continued complaints of pain Dr. Haws ordered an MRI scan which was performed on August 17, 2005. The MRI report indicates that claimant had a mild disc protrusion at the L5-1 level with the protrusion in the left paracentral region. The report noted no compression of nerve root at that time.

In a report dated September 7, 2005, Dr. Haws noted that with the MRI scan revealing no compromise of neuro elements and the claimant not complaining of radicular type pain in the left lower extremity, he did not feel the MRI findings were of medical significance and did not explain claimant's complaints of pain. Dr. Haws referred claimant to a neurologist for a further evaluation at that time.

In a report dated September 19, 2005, Dr. Haws indicated that claimant's wife had telephoned requesting pain medication because claimant was in such pain that he could hardly move or walk. Dr. Haws again noted that claimant's objective findings did not explain his complaints and questioned whether the symptoms were related to the June 20, 2005 injury or some other underlying pathology.

On September 27, 2005, Dr. Haws released claimant at maximum medical improvement. Dr. Haws did so based upon his belief that the objective findings did not support claimant's subjective complaints of pain. He also noted that in his opinion claimant had been untruthful as to a prior condition. This prior condition primarily involved complaints involving claimant's upper extremities. As previously noted, claimant did have a stipulated injury to his neck as a result of the accident on June 20, 2005. Medical reports revealed that claimant had previously made complaints of carpal tunnel syndrome for which he had been evaluated by a neurologist. It was claimant's statements to Dr. Haws regarding these complaints that Dr. Haws primarily felt had been untruthful. According to claimant's testimony at the hearing, his neck complaints have resolved and he has not received any medical treatment from Dr. Raben or any other physician for those complaints since that time.

At some point in time claimant quit working for the respondent and went to work for Great Plains Coca Cola. Claimant has performed several jobs for Great Plains Coca Cola, including delivering product to stores.

Claimant testified that after his release by Dr. Haws he continued to have complaints of pain in his low back. As a result, he requested additional medical treatment from the respondent and eventually filed a request for a change of physician. A change of physician order allowing claimant to seek medical treatment from Dr. Raben was filed by the Commission on March 17, 2006.

Dr. Raben first evaluated the claimant on April 17, 2006, and diagnosed claimant as suffering from a lumbar spine disc herniation and sacroilitis. Dr. Raben treated claimant conservatively with medication, injections, and physical therapy. Dr. Raben also ordered a second MRI scan which revealed the bulging disc at the L5-S1 level. When claimant's complaints did not improve with conservative treatment, Dr. Raben performed surgery on October 19, 2006. Following that surgical procedure the claimant again

returned to work for Great Plains Coca Cola and he suffered another injury in February 2007 when he slipped and fell on ice. As a result of that injury the claimant returned to Dr. Raben and has undergone a second surgical procedure.

Claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable injury. The respondent accepted claimant's injury as compensable and paid for Dr. Haws' medical treatment as well as the first visit from Dr. Raben pursuant to the change of physician order. However, respondent has not paid for any additional medical treatment.

ADJUDICATION

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 reasonably 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); *White Consolidated Industries v. Gallaway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

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 medical treatment provided by Dr. Raben is reasonable and necessary and causally related to his original compensable back injury.

In this particular case, claimant was sent by the respondent to Dr. Haws for medical treatment following his compensable injury. Dr. Haws on September 7, 2006 released the claimant as having reached maximum medical improvement. Dr. Haws released claimant based upon a lack of objective findings supporting claimant's subjective complaints of pain. He also believed that claimant had been untruthful with respect to a pre-existing condition involving his upper extremities. First, I note that claimant testified that the injury to his

neck had resolved and he has received no medical treatment for that condition since that time. Furthermore, claimant eventually came under the care of Dr. Raben who treated claimant conservatively and eventually performed surgery on the L5-S1 level. It was the opinion of Dr. Raben that his treatment and the subsequent surgery were causally related to the injury on June 20, 2005. In a letter dated January 24, 2007, Dr. Raben stated:

In regard to your letter dated December 1, 2006, I believe that the damage to his back is consistent with the injury he sustained when he slipped and fell on the step of his truck. The need for his treatment and surgery is due to the lumbar spine disc herniations.

At his deposition, Dr. Raben reiterated his opinion and stated that claimant's lumbar disc derangement with radiculitis was caused by the trauma of claimant falling out of the truck on June 20, 2005.

Q. Doctor, I just have a couple. Dr. Haws' report of June 20th, '05 when he saw him right after the injury reflects that the injury did occur on June 20, 2005, and that he had musculoskeletal neck and back pain secondary to the fall. He was put on muscle relaxers during that time and was treated that way for quite some time before he got to you, and as you said earlier, Dr. Haws had diagnosed him with a strain, I think, or a sprain. Given what you saw ten months after the fall and his history of what Dr. Haws did for him, would you expect that what you saw ten months later would have been related to what he described to Dr. Haws that very first day on June 20th?

A. Yes.

I find that the opinion of Dr. Raben is credible and entitled to great weight. While Dr. Haws was of the opinion that the objective findings did not support claimant's complaints of pain, Dr. Raben believed that the objective findings did support claimant's complaints of pain and that these findings and his medical treatment was causally related to the injury of June 20, 2005. I note that Dr. Haws is a general practitioner while Dr.

Raben is a specialist.

In finding that claimant has met his burden of proof, I do note that there are other issues which should be considered. Admittedly, the claimant did go to work for Great Plains Coca Cola at a job which required physical exertion in the delivering of soft drinks. However, there is no evidence that the claimant injured or aggravated his back condition while working for Great Plains Coca Cola. In addition, the claimant was also involved in a motor vehicle accident in November 2005. While claimant testified that an x-ray was taken of his low back following that accident, there is no indication that claimant received any additional medical treatment or that that accident caused an injury or re-aggravated his compensable injury. In short, while it is possible that claimant suffered a new injury or an aggravation of his pre-existing back condition as a result of his work with Great Plains Coca Cola and/or the motor vehicle accident, there is insufficient evidence supporting such a finding.

Finally, some of Dr. Raben's medical records indicate that claimant had no history of an injury or accident. Dr. Raben was asked about this inconsistency during his deposition. Dr. Raben attributed this inconsistency to his nurse's failure to properly record the history of claimant's injury. As correctly noted by Dr. Raben, his initial medical report of April 17, 2006 indicates that claimant attributed his back pain to the injury having occurred approximately one year previously when he slipped and fell against his truck while working for the respondent. Based upon the history in Dr. Raben's initial medical report, I do not find subsequent reports from Dr. Raben's office which were compiled by his nurse to be significant.

Based upon the evidence presented, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. This includes surgery and medical treatment provided by Dr. Raben up through February 1, 2007. I do not find that any medical

treatment provided by Dr. Raben subsequent to February 1, 2007 is reasonable and necessary and causally related to claimant's compensable injury.

On February 1, 2007, Dr. Raben had a telephone conversation with the claimant regarding his need for additional medication. Subsequent to that date and before Dr. Raben's next visit with claimant on February 16, 2007, claimant suffered a new injury when he slipped and fell two times on ice and snow while working for Great Plains Coca Cola. This incident eventually resulted in a second surgical procedure performed by Dr. Raben. According to Dr. Raben's testimony at his deposition, testing revealed a new fracture after this incident and he also noted that additional medical treatment after this fall was related to the second fall, not the original compensable injury. Based upon this evidence, I find that Dr. Raben's medical treatment subsequent to February 1, 2007 is not causally related to his original compensable injury. Obviously, this ruling should not be interpreted as a finding that claimant suffered a compensable injury while working for Great Plains Coca Cola, only that claimant's medical treatment from Dr. Raben subsequent to February 1, 2007 is not causally related to his injury with the respondent.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee 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), attorney 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 fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. This

includes surgery and treatment provided by Dr. Raben through February 1, 2007. Dr. Raben's medical treatment subsequent to February 1, 2007 is not causally related to claimant's compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney 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 fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE