

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309925

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| JAMES MITCHELL, JR. | CLAIMANT |
| GUARDIAN BUILDING SUPPLY | RESPONDENT |
| ROYAL INDEMNITY INSURANCE COMPANY, INSURANCE CARRIER | RESPONDENT |

OPINION FILED APRIL 3, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 22, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in the case on December 1, 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. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

At the hearing, the claimant tendered a packet of medical reports and records purportedly totaling 30 pages. However, for some unknown reason, pages 29 and 30 (a two-page narrative report from Dr. Rodney T. Routsong, dated May 2, 2006) did not get placed in the transcript. At my request and without objection by the respondent, this two-page document was subsequently attached to the Commission's original copy of the transcript in the appropriate location indicated by the index of Claimant's Exhibit No. 1.

The following stipulation was offered by the parties and is hereby accepted:

1. The Opinion of December 28, 2005, has become final and is res judicata of all issues raised and addressed therein.

The issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional medical services.

In regard to this issue, the claimant contends:

"Claimant was injured in July 2003, and underwent surgery. Claimant is asking for continuing medical."

In regard to this issues, the respondents contend:

"Respondents contend that benefits have been paid and are being paid in to this claimant. Respondents are not aware of any issues in dispute."

DISCUSSION

_____The sole issue presented for resolution at the present time, is the claimant's entitlement to additional medical services for his compensable back injury. The burden rests upon the claimant to prove what additional medical services represent "reasonably necessary medical services", within the meaning of Ark. Code Ann. §11-9-508.

Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury. Further, such medical services must have a reasonable expectation of accomplishing the purpose of goal for which they are intended, at the time the services were rendered. These purposes or goals include the accurate diagnosis of the nature and extent of a compensable injury. The resolution or stabilization of the actual

physical damage caused by a compensable injury, maintaining of the level of healing achieved, or merely providing symptomatic relief of chronic difficulties. In determining whether medical services have a reasonable expectation of accomplishing their intended purpose or goal, one of the primary factors to consider is whether such services are generally recognized and commonly employed by the medical community in the evaluation and treatment of injuries of the type sustained.

From the medical record, it appears that the only current medical services recommended consist of conservative treatment modalities intended to alleviate the claimant's long term chronic symptoms. In his report of May 2, 2006, Dr. Rodney Routsong recommended the use of non narcotic analgesics, evaluation of the potential benefit of a TENS unit and a physical therapy evaluation and treatment for lumbar stabilization and relief of pain and stiffness. It is apparent from Dr. Routsong's report that it is his expert medical opinion that these services are necessitated by the claimant's chronic and likely permanent pain in his back, sacroiliac joints, and right lower extremity with numbness and weakness in his right lower extremity. Dr. Routsong attributed these chronic symptoms to the permanent damage from the claimant's compensable injury at L5-S1 and resulting radicular nerve dysfunction.

The evidence greatly shows that the claimant's compensable injury of July 8, 2003 has resulted in permanent damage to both the structural components of his lumbar spine at the L5-S1 area and to

the nerve roots that exit or proceed from this area into his lower extremities (particularly, his right lower extremity). In light of such permanent physical damage, some degree of chronic or permanent symptoms, such as those voiced by the claimant, would be reasonably expected. The various conservative treatment modalities that have been recommended by Dr. Routsong are of a type commonly recognized and employed by the general medical community as being appropriate to provide relief of long term and chronic symptoms from injuries such as that experienced by the claimant.

It is my opinion that the greater weight of the credible evidence proves that the medical services, recommended by Dr. Routsong, are necessitated by or connected with the claimant's compensable lumbar injury of July 8, 2003. Further, the medical services recommended by Dr. Routsong are generally accepted as being medically appropriate and are commonly employed for the relief of chronic symptoms that result from permanent back injuries, such as that experienced by the claimant. Thus, such recommended medical services would have a reasonable expectation of accomplishing their intended purpose or goal of providing the claimant with some degree of relief from his chronic symptoms resulting from the permanent damage caused by his compensable injury. Thus, I find that the medical services recommended by Dr. Routsong constitute "reasonably necessary medical services", within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the

expense of these services. This liability is subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On July 8, 2003, the relationship of employee-employer-carrier existed between the parties.

3. On July 8, 2003, the claimant sustained a compensable injury to his lower back in the area of the L5-S1 intervertebral disc.

4. There is no dispute, at present, over the payment of accrued medical expenses.

5. The additional medical services that have been recommended by Dr. Rodney Routsong, in his report of May 2, 2006, from management of the claimant's chronic symptoms and complaints resulting from his compensable injury represent "reasonably necessary medical services", within the meaning of Ark. Code Ann. §11-9-508. The evidence presented shows such services to be necessitated by or connected with the claimant's compensable injury of July 8, 2003, and further show such services have a reasonable expectation of accomplishing the purpose or goal for which they were intended. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

6. The respondents have controverted the claimant's entitlement to the continued medical services recommended by Dr. Routsong.

7. As no controverted benefits have been herein awarded to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney.

ORDER

The respondents shall be liable for the expense of the medical services recommended by Dr. Rodney Routsong for the management of the claimant's chronic symptoms and complaints resulting from his compensable injury. This liability shall be subject to the medical fee schedule established by this Commission.

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