

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409390

WILLIAM MORGAN

CLAIMANT

QUICK LAY PIPE COMPANY

RESPONDENT

COMMERCE & INDUSTRY INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 26, 2007

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

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 16, 2007, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on September 10, 2007. 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 the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and hereby accepted:

1. On August 27, 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$453.00 for total disability and \$330.00 for permanent partial disability.
3. On August 27, 2004, the claimant sustained a compensable injury to his neck or cervical spine.

4. There is no dispute over the payment of medical services through June 14, 2007.
5. There is no dispute over temporary total disability benefits accruing through July 18, 2007.
6. The Opinion of the Court of Appeals dated April 11, 2007, has become final and is res judicata of all issues raised and addressed therein.

By agreement of the parties, 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 by Dr. Guy Grooms, including whether such treatment is "unauthorized" medical services.
2. The claimant's entitlement to additional temporary total disability from July 19, 2007 through a date yet to be determined.
3. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

"The claimant contends that as a result of the compensable injury of August 27, 2004, he continues to be in his healing period and is in need of additional medical treatment. The respondents have litigated this claim through the Arkansas Court of Appeals to the Opinion of April 11, 2007. During this period of time, the claimant has not received adequate and proper medical treatment. The claimant is requesting additional medical treatment through the physician referred by the primary treating physician, Dr. Randall Carson, to Dr. Guy Grooms. Dr. Grooms has further referred the claimant to the Texas Back Institute. All medical treatment by the respondents with Dr. Guy Grooms and the Texas Back Institute has been refused by the respondents. The respondents have terminated the claimant's

temporary total disability benefits and the claimant is entitled to additional benefits during his healing period. The claimant is entitled to attorney's fee on all controverted indemnity benefits."

In regard to these issues, the respondents contend:

"Respondents contend that all appropriate benefits have been paid with regard to this claim. Respondents have provided reasonable and necessary medical care pursuant to the decision of the Court of Appeals. Respondents have paid for pain management with Dr. Randall Carson. However, the treatment now being sought with Dr. Guy Grooms is not reasonable and necessary as related to the compensable claim. Finally, the medical records do not support entitlement to additional indemnity benefits."

It must also be noted that a prior Opinion was entered in this case by the Full Commission on June 16, 2006. This Opinion was subsequently affirmed by the Court of Appeals on April 11, 2007. Thus, this prior Opinion of the Full Commission has become final and is res judicata of all issues raised and addressed in this Opinion. Judicial recognition will be taken by this Commission of all prior final Opinions and Orders entered in this case.

#### DISCUSSION

##### I. MEDICAL SERVICES PROVIDED OR RECOMMENDED BY DR. GUY GROOMS

Liability for medical services provided to the claimant by and at the direction of Dr. Grooms was not an issue raised and resolved in the prior Opinion of the Full Commission and the Court of Appeals. In order to be entitled to payment of the medical services provided by Dr. Grooms, the claimant must prove that these medical services represent "reasonably necessary medical services", as that term is used in the Act.

Medical services are “reasonably necessary” when they are necessitated by or are connected with the compensable injury. Further, such services must have a reasonable expectation of success, at the time they are rendered. However, it need not be proven that such services were, in fact, ultimately successful. Reasonably necessary medical services are not limited to those medical services intended only to treat the actual physical damage caused by the compensable injury, but also extend to appropriate diagnostic testing and evaluations necessary to reasonably ascertain the nature and extent of the compensable injury and those services intended only to alleviate or reduce chronic symptoms resulting from the compensable injury.

As a corollary matter, the respondents have raised the issue of whether Dr. Grooms’ medical services represent “unauthorized” medical services, under Ark. Code Ann. §11-9-514. The burden rests upon the respondents to prove the elements necessary to invoke the provisions of this subsection.

In the present case, the evidence presented shows that the respondents initially accepted the claimant’s neck or cervical difficulties as a “compensable injury” and provided the claimant with appropriate medical services by a number of physicians. However, on November 19, 2004, the respondents refused to provide the claimant with any further medical services by any of his then authorized treating physicians. Applicable case law clearly provides that when a respondent refuses to provide the claimant with any medical services, the provisions of Ark. Code Ann. §11-9-

514 no longer apply and the claimant is free to seek medical services from any physician of his choosing. The respondents will then be liable for such services (subject to the medical fee schedule established by this Commission), if the claimant can establish that these medical services were “reasonable necessary”, Ark. Code Ann. §11-9-508(b).

For the foregoing reasons, it is my opinion that the medical services provided to the claimant by and at the direction of Dr. Grooms cannot constitute “unauthorized” medical services, within the meaning of Ark. Code Ann. §11-9-514. However, the claimant must still establish that these medical services were “reasonably necessary”.

When the claimant initially saw Dr. Grooms, an orthopaedic surgeon, his primary complaint was his persistent neck or upper back pain. However, he also complained of an abnormality involving the skin of his upper back. A substantial portion of the initial medical services provided the claimant by or at the direction of Dr. Grooms were focused upon ascertaining a reasonably accurate diagnosis of the etiology or cause of the claimant’s continuing neck or upper back pain. These services included various tests and evaluations intended to either establish or eliminate with a reasonable degree of certainty various potential causes of the claimant’s continuing cervical complaints. The fact that these tests eliminated a substantial number of potential causes, both of a traumatic and a systemic nature, does not prevent these tests from being medically appropriate. Arriving at an accurate diagnosis

by a process of elimination is a well recognized and commonly accepted medical practice.

The records of Dr. Grooms show that, by December 4, 2006, a reasonably accurate diagnosis of the nature and extent of the claimant's compensable injury had been reached. This diagnosis was a cervical strain or hyperextension injury with myositis and chronic pain. Tests that were performed at the request of Dr. Grooms had effectively eliminated rheumatoid arthritis, a discal injury, a vertebral fracture, or vertebral instability of the cervical joints as causes of the claimant's persistent complaints. In his report of December 4, 2006, Dr. Grooms indicated that he, personally, had nothing further to offer the claimant in the way of actual medical treatment, except the continuation of oral medications. Dr. Grooms had previously recommended an electric muscle stimulator and a cervical traction unit for the claimant's home use. These items had also been previously and subsequently been prescribed by Dr. Carson. Apparently these devices were ultimately provided by the respondent shortly prior to the hearing.

The only remaining recommendation of Dr. Grooms was an evaluation of the claimant at the Texas Back Institute in Plano, Texas. No reports or records of Dr. Grooms had been offered into evidence, following his report of December 4, 2006.

On May 21, 2007, the claimant was again seen by Dr. Randall Carson, one of his previous authorized treating physicians. At that time, Dr. Carson diagnosed the claimant's difficulties as chronic neck pain and chronic myositis. He indicated that the

claimant should be seen in follow up by Dr. Grooms, as he is an orthopaedic surgeon, whereas Dr. Carson is a family or general practitioner. Dr. Carson further stated that he would recommend the claimant to follow the suggestions of Dr. Grooms.

In a subsequent report, dated June 14, 2007, Dr. Carson informed the respondents that he had nothing further to offer the claimant and that the claimant's follow up care should be conducted by Dr. Grooms.

Finally, on September 12, 2007, Dr. Carson authorized a report stating that the claimant was released to return to work without restrictions as of May 21, 2007, had reached maximum medical improvement by May 21, 2007, and was released from further treatment on May 21, 2007. He also expressed the opinion that the claimant's chronic neck pain complaints would likely persist indefinitely.

After consideration of all the evidence presented, it is my opinion that the medical services rendered to the claimant by and at the direction of Dr. Grooms, with the exception of the recommended evaluation at the Texas Back Institute at Plano, Texas, were necessitated by or connected with the claimant's compensable cervical injury and had a reasonable expectation of success at the time these services were rendered. The medical services recommended by Dr. Grooms were intended to either accurately diagnose the nature and extent of the claimant's compensable injury or to treat the actual physical damage and the resulting symptoms this injury had produced. These services were of such a type and nature as

would be considered by the local medical community as medically appropriate and are commonly used by the local medical community for the purpose of diagnosis and treatment of the injuries of the type experienced by the claimant.

However, I find that the recommended evaluation of the claimant at the Texas Back Institute in Plano, Texas, would not represent reasonably necessary medical services for the claimant's compensable injury. The record reveals that the claimant has been evaluated and treated by three competent physicians, a general practitioner, a neurosurgeon, and an orthopaedic surgeon. He has undergone extensive testing, which included most, if not all, of the various tests recognized as medically appropriate to reasonably insure an accurate diagnosis of the nature and extent of his injury. All of these tests have failed to reveal any defect that would justify anything more than conservative treatment modalities. I find that this recommended evaluation would appear to be duplicative at best and shown to be reasonably necessary to either diagnose or treat the claimant's compensable injury.

I would note that, at the hearing, the claimant testified that he had never received an EMG-NCV study that had been previously recommended, a bone scan that had previously been recommended, a program of physical therapy that had previously been recommended, or an evaluation for possible treatment in a program of chronic pain management that had previously been recommended. All of these medical services were recommended by the claimant's previously authorized treating physicians (i.e. Dr. Carson and Dr. Standefer).

The issue recited in the pre-hearing order to be litigated at this time was the claimant's entitlement to additional medical services by Dr. Grooms. Thus, the claimant's entitlement to these particular medical services would not appear to be an issue to be litigated and resolved at the present time.

However, I would note that the claimant's entitlement to a EMG-NCV testing and an evaluation and possible treatment by a chronic pain management specialist was previously litigated and expressly held by this Commission to be reasonably necessary medical services for the claimant's compensable injury. In essence, these benefits have already been awarded by the prior final Opinion and Order of the Full Commission, which was subsequently affirmed by the Court of Appeals. Thus, the issue of the claimant's entitlement of these specific benefits would be res judicata. In regard to these medical benefits, the claimant need only seek enforcement of the prior Opinion and Order.

#### II. ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS FROM JULY 19, 2007 THROUGH A DATE YET TO BE DETERMINED

\_\_\_\_\_ In order to be entitled to the additional temporary total disability benefits, he now seeks, the claimant must prove that he has continued within his healing period from the effects of his compensable injury on and after July 19, 2007. The claimant must also prove that he continued to be totally disabled from performing regular gainful employment as the result of the effects of his compensable injury on and after July 19, 2007.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in the resolution of the actual physical damage caused by the compensable injury. Once this actual physical damage resolves, or at least stabilizes, at a level where nothing further in the way of medical treatment offers a reasonable expectation of improvement, then the healing period has ended. The mere continuation of chronic symptoms, after the actual physical damage from the compensable injury has resolved or at least stabilized, is not sufficient, in and of itself, to extend the healing period.

In the present case, the medical evidence shows that by December 4, 2006, Dr. Grooms had exhausted all of the potential treatment modalities that he believed offered a reasonable expectation of improving the actual physical damage caused by the claimant's compensable injury. In fact, the various tests, performed at the request of Dr. Grooms, failed to show any continuing physical damage to treat. The only thing that remained to be treated was the claimant's continued subjective complaints of chronic pain.

The records of Dr. Carson reveal that it was his expert medical opinion that the claimant had achieved maximum medical improvement by at least May 21, 2007. He, too, noted only continued chronic pain complaints, which he opined would likely exist indefinitely.

The continuing treatment provided and recommended by both of these physicians consisted of treatment directed toward the claimant's chronic pain complaints, rather than any underlying physical damage produced by the compensable injury. This recommended treatment consisting of pain medication, an electronic muscle stimulator, and a home cervical traction unit, were directed towards alleviating the claimant's chronic pain symptoms, rather than resolving or improving any actual physical damage that may have been caused by the compensable injury.

The reports and records of Dr. Grooms and Dr. Carson show that their ultimate diagnosis of the etiology of the claimant's continuing difficulties is that of a muscular strain or sprain. Clearly, such an injury would be reasonably expected to stabilize, if not resolve, within a three-year period. I would also note that the claimant's testimony further indicated that his pain had remained essentially unchanged or stable for a substantial period prior to the date of hearing.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence fails to prove that the claimant has continued within his healing period from the effects of his compensable injury on and after July 19, 2007. Therefore, he cannot be awarded temporary total disability benefits after July 19, 2007, at this time.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On August 27, 2004, the relationship of employee-employer carrier existed between the parties.

3. On August 27, 2004, the claimant earned wage sufficient to entitle him to weekly compensation benefits of \$453.00 for total disability and \$330.00 for permanent partial disability.

4. On August 27, 2004, the claimant sustained a compensable injury to his neck or cervical spine.

5. With the exception of the medical services provided the claimant by and at the direction of Dr. Guy Grooms, there is no longer any dispute over the medical services provided or recommended for the claimant's compensable injury prior to June 14, 2007.

6. The medical services rendered to the claimant by and at the direction of Dr. Grooms represent reasonably necessary medical services for the claimant's compensable injury. These medical services do not represent "unauthorized medical services" as that term is used in Ark. Code Ann. §11-9-514. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of the medical services provided by Dr. Grooms, subject to the medical fee schedule established by this Commission.

7. The medical services recommended by Dr. Grooms, in the form of an evaluation at the Texas Back Institute of Plano, Texas, do not represent reasonably necessary medical services within the meaning of the Act. Specifically, the greater weight of the credible evidence fails to establish that such an evaluation would be reasonably necessary (i.e. have a reasonable expectation of

accomplishing any beneficial purpose associated with the claimant's compensable injury).

8. There is no dispute over the payment of temporary total disability benefits accruing through July 18, 2007.

9. The greater weight of the credible evidence fails to prove that the claimant is entitled to additional temporary disability benefits beginning July 19, 2007 and continuing through a date yet to be determined. Specifically, the greater weight of the credible evidence presented fails to prove that the claimant has continued within his healing period from the benefits of his compensable cervical injury on and after July 19, 2007.

10. The respondents have controverted the claimant's entitlement to the medical expenses incurred for services rendered him by and at the direction of Dr. Grooms and his entitlement to temporary total disability benefits on and after July 19, 2007.

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

#### ORDER

The respondents are liable for the expense of medical services rendered to the claimant for his compensable cervical injury by and at the direction of Dr. Guy Grooms, with the exception of the recommended evaluation of the claimant at the Texas Back Institute in Plano, Texas. This liability is subject to the medical fee schedule established by this Commission.

For the reasons heretofore set forth in this Opinion, the present claim for additional temporary total disability benefits must be and hereby is denied and dismissed.

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.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE