

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F702135

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| JACOB RAMOS, Employee | CLAIMANT |
| PETRA STONE NWA INC., Employer | RESPONDENT |
| UNION INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED AUGUST 3, 2007

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

Claimant represented by ALAN LANE, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 11, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 2, 2007, 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 a compensable injury to his back on July 31, 2006.
4. The claimant was earning an average weekly wage of \$475.75 which would entitle him to compensation at the weekly rates of \$317.00 for total disability benefits and \$230.00 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.

2. Temporary total disability benefits.
3. Attorney's fee.

At the time of the hearing the claimant withdrew and reserved the issue of his entitlement to temporary total disability benefits. As a result, the only issue to be litigated is claimant's entitlement to additional medical treatment.

The claimant contends that the respondents accepted his claim as compensable and medical benefits were initially paid. Respondents will not authorize additional medical expenses which are both reasonable and necessary.

The respondents contend that any further medical treatment is not reasonable or necessary.

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 May 2, 2007, 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 back injury.

FACTUAL BACKGROUND

The claimant is a 24-year-old permanent resident of the United States, having moved here from Guatemala in 1995. Claimant graduated from Gravette High School in 2002 and is currently enrolled in classes at the Northwest Arkansas Community College.

While in school, claimant began working for the respondent in 2001. The respondent manufactures stone for decorating the interior and exterior of buildings and houses. Claimant had several duties with respondent, but his primary duty was getting orders ready and loading them onto a truck. This required the constant lifting of stones in various sizes which weighed up to 100 pounds.

The claimant described two prior injuries to his back while working for the respondent. The first occurred in February 2006 when he felt a pop in his back while unloading rock. Claimant testified that he reported this incident but did not seek medical treatment. Claimant testified that a second incident occurred in late March or early April of 2006 when he twisted his back while moving a panel of stone and felt a pop. Claimant also reported this incident and was instructed to go to a chiropractor by the respondent. Claimant was treated for this condition by Dr. Estes beginning in April 2006 with a visit occurring on July 26, 2006, only five days before the injury which is the subject of this claim.

The injury which is the subject of this claim occurred on July 31, 2006. On that date, the claimant was stacking stone from one pallet to another and as he twisted his right leg "gave out" and he felt a pop in his back. Claimant testified that he fell to the ground and reported this incident to an individual named Charles in the respondent's office. Claimant was unable to continue working that day and after he went home had his wife take him to the emergency room at St. Mary's Hospital.

X-rays at the emergency room were negative. Claimant was diagnosed as suffering from an acute lumbar strain and probable herniated disc. He was given medication and referred to Dr. Raben, neurosurgeon.

Claimant was initially evaluated by Dr. Raben on August 15, 2006 who diagnosed claimant's condition as a lumbar spine disc herniation. Dr. Raben prescribed medication and physical therapy for the claimant's condition and ordered additional testing. Dr.

Raben's report of August 28, 2006 indicates that an MRI scan revealed disc derangement at L5-S1 with a herniation also at that level. Dr. Raben continued to treat the claimant with medication and physical therapy. On September 18, 2006, Dr. Raben treated claimant with a lumbar epidural steroid injection. In his report dated October 2, 2006, Dr. Raben indicated that claimant was improving with the physical therapy and injection. He indicated that claimant should continue with the physical therapy with a transfer to a home exercise program.

On November 14, 2006, Dr. Raben again evaluated the claimant and noted that claimant had been able to get his pain under control with exercise therapy. He indicated that claimant should continue with home therapy exercises. Dr. Raben also released the claimant to return to work with restrictions and indicated that claimant had reached maximum medical improvement with respect to conservative care in the near future.

Following this visit with Dr. Raben, respondent sent claimant for a second opinion to Dr. Sprinkle, D.O., a physician at the Arkansas Specialty Spine Center in Little Rock. Claimant was initially evaluated by Dr. Sprinkle on December 12, 2006. Dr. Sprinkle indicated that claimant suffered from lumbar degenerative disc disease and a lumbar disc desiccation which he believed were pre-existing. Dr. Sprinkle also believed that claimant had a disc herniation and an annular tear. Dr. Sprinkle indicated that it was unknown whether the disc herniation was new or old, but it was his opinion that the tear was likely new. Dr. Sprinkle did not believe claimant was a candidate for surgery, but instead recommended a nerve root block at the L5 level as well as medication.

Claimant returned to Dr. Sprinkle on December 27, 2006. Dr. Sprinkle's medical report of that date indicates that the medication and nerve root block were not effective. Dr. Sprinkle also noted that prior medication provided to claimant by Dr. Raben and physical therapy had not been effective. He also noted that claimant's EMG/nerve conduction study was negative. As a result, Dr. Sprinkle stated that the claimant's disc

herniation was likely not significant since there was no evidence of nerve root impingement. Dr. Sprinkle went on to state that in his opinion the claimant was at maximum medical improvement. Dr. Sprinkle did assign claimant lifting restrictions, but indicated that those restrictions were due to the pre-existing condition, not his work-related injury.

Claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable back injury.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. *White Consolidated Industries v. Galloway*, 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 failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury. In this particular case, testing did reveal a herniated disc at the L5-1 level. However, claimant has been treated conservatively by his treating physicians. Dr. Raben treated claimant with medication, physical therapy, and an epidural steroid injection. Although Dr. Raben's medical reports indicate that the physical therapy improved claimant's condition, claimant contends that his back condition has not improved. Nevertheless, Dr. Raben was of the opinion that claimant had reached maximum medical improvement as of November 14, 2006, and that he would do so with respect to conservative care in the near future.

Following claimant's evaluation with Dr. Raben at which time he indicated that

claimant had reached maximum medical improvement, respondent sent claimant to Dr. Sprinkle for a second opinion. Dr. Sprinkle initially evaluated the claimant on December 12, 2006, and gave claimant a nerve root block injection at the L5 level. Dr. Sprinkle also provided prescription medication. He also ordered an EMG/nerve conduction study which returned as negative.

At the time of claimant's visit with Dr. Sprinkle on December 27, 2006, Dr. Sprinkle noted that the medication and nerve root block he had provided to claimant was not effective. He also noted that the claimant's EMG which he had ordered was negative. Finally, he noted that the prior medication and physical therapy were not effective in treating claimant's condition according to claimant's statements to him. Based upon those findings as well as his opinion that claimant's disc herniation was not significant because there was no evidence of nerve root impingement, Dr. Sprinkle opined that claimant had reached maximum medical improvement.

Based upon the foregoing evidence, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment. Both Dr. Raben and Dr. Sprinkle have opined that claimant has reached maximum medical improvement for his compensable injury. I find that their opinions are credible and entitled to great weight. In reaching this decision, I also note that claimant admitted during cross examination that the exercises he performed at home as recommended by the physical therapist did improve his condition. Despite that fact, claimant admitted that he only performs the exercises when "I get the time". Claimant testified that "I always got something else to do." Claimant went on to indicate that he only performs the exercises once or twice per week. Thus, according to claimant's testimony, the exercises which he performs at home do improve his condition; however, he does not perform them on a regular basis.

In summary, I simply 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 back injury.

ORDER

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

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$367.75.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE