

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F508984

COY D. REECE, EMPLOYEE

CLAIMANT

EATON CORPORATION, EMPLOYER

RESPONDENT NO. 1

OLD REPUBLIC INSURANCE COMPANY, CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED DECEMBER 3, 2007

Hearing before Administrative Law Judge O. Milton Fine II on September 5, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by Mr. Terry Pence, Attorney at Law, Little Rock, Arkansas, did not appear.

STATEMENT OF THE CASE

On September 5, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on May 14, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. After the addition of an additional stipulation at the hearing concerning controversion, they are the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including July 23, 2004.
3. This claim was accepted as compensable and a ten percent (10%) rating has been paid that was issued by Dr. Ron Williams.
4. Respondents have controverted Claimant's claim for the medications that were prescribed by Dr. George Lawrence.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

Claimant withdrew the issue concerning controversion because there are no indemnity benefits at issue. He also reserved all other issues, which left one to be determined:

1. Whether the Claimant is entitled to payment of prescription medications Cymbalta, Hydrocodone, Lunesta, Naproxin and Ultracet.

Contentions

Claimant:

1. The Claimant contends that the prescriptions for Cymbalta, Hydrocodone, Lunesta, Naproxin and Ultracet are necessary due to injuries he sustained while in the course and scope of his employment with the Respondents. The

Claimant has provided the Respondents with correspondence by Dr. George Lawrence confirming that these medications are necessary as a direct result of his workers' compensation injury.

Respondents No. 1:

1. The Respondents contend that the Claimant's treating physician is Dr. Ron Williams and not Dr. George Lawrence, who is prescribing the medications at issue.
2. The Respondents contend that if the Claimant desires to be treated by Dr. Lawrence, he should request a change of physician.

Respondent No. 2:

1. None.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he is entitled to payment for the prescription medications Cymbalta, Ultracet and Hydrocodone on and after April 20, 2007, when Dr. Ronald Williams referred

Claimant to Dr. George Lawrence and Dr. Lawrence became his authorized treating physician.

4. Claimant has not proven by a preponderance of the evidence that he is entitled to payment for the prescription medications Cymbalta, Ultracet and Hydrocodone prior to April 20, 2007.
5. Claimant has not proven by a preponderance of the evidence that he is entitled to payment for the prescription medications Naproxin and Lunesta.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, medical records, consisting of a one-page index and 23 individually numbered pages thereafter; and Respondents' No. 1 Exhibit 1, medical records, consisting of a two-page exhibit and 39 individually numbered pages thereafter.

Testimony

Coy D. Reece. Claimant testified that he worked for Respondent Eaton for 25 years. His job was "insulation take up," which he described as taking up on a reel rubber that has been milled out to a really thin sheet. He described the July 23, 2004 injury that caused is compensable injury as follows: "Well, I was proceeding to put a roll into a skid. And I hung my toe in a pipe. And when I started to turn back to the right, I, it, the end of my foot didn't come with me. And I fell backward." He was subsequently found to have a herniated disc. He first went to the emergency room. From there, Dr. George Lawrence treated him for

awhile before referring him to Dr. Ron Williams, who performed surgery on September 10, 2004.

Claimant denied that he had the same types of medical problems before his July 23, 2004 injury that he is having now. He stated that he had perfect attendance while working at Respondent Eaton—his back never kept him from working. Prior to his compensable injury, he enjoyed fishing as well as raccoon, turkey and deer hunting. Claimant testified that he did not have a serious problem with headaches or with his low back prior to this injury. He added that while he did have some problem with impotency prior to the injury, it was due to a prostate problem that treatment took care of at least a year before the injury.

Since the injury, Claimant has needed and taken certain medications on a regular basis. They are Ultracet for pain, Naproxin for inflammation, Lunesta for sleeping difficulties, and Hydrocodone as well. His physician is trying to alternate pain medications to prevent him from becoming addicted. While Claimant stated that he would like to have whatever medications that Dr. Lawrence has prescribed, he said that he stopped taking Cymbalta because while it helped him at first, it got to the point where he could not take it.

While his spouse, Wanda, was listed as a witness, Claimant testified that she was not present at the hearing because she had recent cataract surgery.

Claimant testified that Dr. Williams referred him back to Dr. Lawrence in May 2005 prior to assigning him an impairment rating. At the time that Dr. Williams told him that he could do nothing more for him and was referring him, Tracy Lawson was present. It was not until 2006 that Respondents refused to pay for his medications.

With regard to his coon hunting activity, Claimant stated that due to his condition, he only drives a pickup truck and lets someone else do the work. But he still averages going

15 to 30 times per year. He has not climbed into a deer stand since the accident. In his most recent successful hunt, he simply sat on the tailgate of a pickup. He cannot go hunting as often as he used to. His hunting activities have been seriously curtailed. As for his statement in his medical records that he was "finally getting over the hump," at the time he thought he was going to go back to work. But Respondent Eaton refused to place him on light duty. Also, a functional capacity evaluation he underwent increased his physical problems.

Claimant stated that he has also seen Dr. Robert Kerr, who was in the same clinic as Dr. Lawrence and had Claimant's chart.

When questioned by Respondents, Claimant stated that after his injury, he suffered from low back and right leg pain. Dr. Williams treated him for these problems. His left leg problems did not begin until some time in 2005. At the time of his July 31, 2007 deposition, his left leg was the worse of the two and caused the majority of the trouble. His medication alleviates some of the pain. He did not recall telling Dr. Robert Kerr, his family doctor, in November 2003 that he was having bilateral leg pain. But he testified that he is now having pain in both legs and both hips.

He stated that if Drs. Kerr or Lawrence prescribed something, he generally had the prescription filled. Prior to his injury, he knew that he had arthritis in his hands and knees, but not his back. He also had stiffness in the morning and had difficulty bending and stooping. But Claimant stated that he did not remember Dr. Kerr telling him in November 2003 that he had arthritis in his spine. When he went to the emergency room following his injury, he was told that he had spurs in his back. On August 12, 2004, in his patient history form for Dr. Williams he stated that he had degenerative arthritis, which included his back.

He also noted that he had impotency problems. Dr. Williams did not prescribe anything to treat the impotency. When Claimant went to Dr. Lawrence on September 2, 2004, he told him that he was having knee pain, which was due to the arthritis. However, the doctor did not put him on inflammatories right away because of the scheduled surgery. Once Claimant started to take them, they helped the arthritis.

Claimant testified that his surgery with Dr. Williams helped him; he became generally free of leg pain and only had a little soreness in his back. Two months after the surgery, Dr. Williams told Claimant that his leg muscle that had been bothering him was returning to normal. No one went over the results of his November 2004 functional capacity evaluation with him. Notwithstanding the wording of the FCE, Claimant denied that he was walking two to three miles a day at the time of the evaluation.

On January 28, 2005, he was injured while running his coon dogs and sought treatment with Dr. Lawrence. At the time, he was on Ultracet and Darvocet. He was sent for physical therapy, which increased his range of motion and helped alleviate his sleep disturbance problem. Claimant remembered stating that "I think I am finally getting over the hump," but did not recall when he made the statement. He also could not recall why in April 2005 he told Dr. Lawrence that he was only on Levaquin. He remembered possibly stating that sometimes his back was fine, which to him meant that sometimes he was tolerating the pain and sometimes not.

Claimant testified that Dr. Williams told him that he had done all he could do for him and was referring him back to Dr. Lawrence. He stated that he did not try to return to Dr. Williams after the release. He was never told that he could not return to Dr. Williams. At that point, he gave Claimant Darvocet and Ultracet, with refills, to take when needed. By

the time the refills had run out, Claimant had been referred to Dr. Lawrence. He knew that the referral was in writing. Claimant was sure he was on more than Ultracet when seen by Dr. Lawrence on June 3, 2005, although the record mentions only that drug.

Claimant stated that while he did not discuss his impotency or headache problems with Dr. Lawrence very often, he did discuss the impotency issue with him and get a Viagra prescription, which did not successfully treat it.

Because his wife does not drive, Claimant has to do all of the driving for them. He has driven to Dallas in one day since the accident. He operates a riding lawn mower. In the most recent deer season, he killed a deer. Claimant is on long-term disability through Respondent Eaton as well as on Social Security disability. He pays for his health insurance, which is provided through Eaton.

Respondents did not call any witnesses.

Records

Claimant's Exhibit 1 and Respondents No. 1 Exhibit 1. The medical records of Claimant that were introduced at the September 5, 2007 hearing and are part of Claimant's Exhibit 1 and Respondents No. 1 Exhibit 1 reflect the following:

On October 22, 2000, following a history of prostatitis and bladder neck obstruction, urgency, frequency and dysuria, which led to a transurethral resection, Claimant was given a trial of Viagra by Dr. Russell Webb due to impotency symptoms.

Dr. Robert Kerr on November 19, 2003, saw Claimant. He presented with left hip and back pain along with bilateral leg pain. His upper back was stiffer than his lower back. Dr. Kerr assessed Claimant as probably having degenerative disease of the entire spine and having some spinal stenosis. He prescribed Bextra.

On July 23, 2004, he presented at the emergency room after falling at work. Claimant stated that his right foot became entangled on a pipe at this work station and he twisted in an attempt to catch himself and fell on his right side. He described his feeling as if he had pulled muscles and torn ligaments from the bottom of his back and running down his right hip and leg. He was diagnosed as most likely having a ruptured disc in his lumbar region. X-rays of the lumbosacral region showed severe degenerative changes with large bony spurs and disc space narrowing, but no compression fractures. His pelvic x-ray revealed degenerative changes appreciated with bony spurring and hypertrophic bone, but no definite fracture or dislocation.

Claimant underwent an MRI of his lumbar spine on July 29, 2004. This showed what the radiologist believed was a herniated disc with free fragment extending superiorly from the L4-5 level, which filled the right neural foramina. The L2-3, L3-4 and L5-S1 levels showed degenerative changes, and there were large bony spurs present at L1-2 that extended anteriorly. A handwritten notation on this report reads: "Needs neurosurgeon ASAP."

In a history form dated August 12, 2004, Claimant disclosed that he had arthritis (which Dr. Lawrence found on September 2, 2004 and is disclosed on his September 10, 2004 surgical admission history), along with frequent night urination and erection problems. On that date, Dr. Ronald Williams wrote Dr. George Lawrence, thanking him "for asking me to see your patient." Dr. Williams stated that the MRI showed a ruptured disc at L4-5 on the right with superior migration of a free fragment. He stated that Claimant had elected to proceed with surgery, which he opined was "not a bad idea considering the degree of motor weakness he has."

Claimant underwent a second MRI on his lumbar spine on August 16, 2004. Dr. William Landrum opined that his showed severe degenerative changes throughout the lumbar spine, with bulky osteophytes noted a multiple levels. No fractures, dislocation, spondylolysis or spondylolisthesis were seen.

On September 10, 2004, Claimant underwent a surgical microdiscectomy of L4-5 on the right. His pre- and post-operative diagnosis was a herniated nucleus pulposus, L4-5, right. Dr. Williams, who performed the surgery, wrote Dr. Lawrence about the surgery on September 13, 2004. At Claimant's six-week checkup, Dr. Williams found him to be "considerably better" and wrote Dr. Lawrence to inform him of this.

Because of the strenuous nature of Claimant's job, Dr. Williams determined that a work evaluation was in order to see if it was safe to return Claimant to work. A functional capacity evaluation was performed on November 8, 2004. Claimant was found to have given a reliable effort, demonstrating the ability to perform material handling activities at the MEDIUM level with an occasional lifting ability of up to 55 pounds from floor to shoulder level. A work hardening program was recommended, so Dr. Williams informed Dr. Lawrence that it would be arranged. A subsequent FCE, which Dr. Williams informed Dr. Lawrence that he would arranged, was performed on April 21, 2005 and reflected that while Claimant again gave a reliable effort, he only demonstrated the ability to work in the LIGHT category.

A note dated March 10, 2005 regarding Claimant's physical therapy notes that he is "making excellent gains with PT." Among other things, the therapist noted that his treatment was augmented with the application of EMS post treatment to help with inflammation control and the reduction of pain. The note reflects that Claimant stated, "I think I am finally getting

over the hump.” His April 8, 2005 note reflects that he continued to make “good gains with PT.” He was at the end of his work-hardening regime. However, on April 4, 2005 he presented to the emergency room with increased complaints of general fatigue due to a medication reaction. Nonetheless, he stated that his overall lumbar condition was improved and that “sometimes my back is fine and there is other times it just hits me real quick and especially over in that hip.” The therapist stated that the plan was to release him from PT at the time.

Dr. Williams on April 26, 2005, wrote Dr. Lawrence that he released Claimant following the completion of his work hardening and FCE. He instructed Claimant to take a copy of the latter FCE to his employer reflecting his abilities.

In a May 9, 2005 letter to Tracy Lawson of Genex Services, Dr. Williams wrote that he had assigned Claimant a ten percent (10%) impairment rating to the body as a whole as a result of the lumbar laminectomy he performed.

Claimant was seen by Dr. Lawrence on June 3, 2005. The office note reads in pertinent part: “63YO gentleman comes in for f/u. He’s been released by his back surgeon saying there’s nothing more he can do for him. He continues to have chronic pain but it is tolerable. He’s on Ultracet bid and this seems to be controlling his pain fairly well.” Claimant returned to Dr. Lawrence on September 1, 2005, stating that his pain had gotten worse. Dr. Lawrence noted that Dr. Williams released Claimant and had told him there was nothing more that he could do and that Claimant has scar tissue. He prescribed Elavil for pain in addition to the Ultracet. Returning on October 4, 2005, Claimant was assessed as having chronic back pain. In addition to continuing the Ultracet and Elavil, Dr. Lawrence prescribed Lortab.

Dr. Lawrence referred Claimant for radiology. An MRI of his lumbar spine on March 7, 2006 no longer showed a disc herniation at L4-5, no doubt due to the laminectomy. But it did reveal severe degenerative changes throughout the lumbar spine, along with spinal stenosis at L4-5 and enhancing scar tissue on the left at L3-4. The MRI also showed prominent anterior osteophyte disease at multiple levels.

Dr. Lawrence's August 22, 2006 note reads in pertinent part:

64YO gentleman comes in f/u his back pain. He's had radiculopathy. He's had surgery. A repeat MRI did not show any more surgical interventional need. He continues to have daily pain. I had a very candid discussion with Coy and the fact that I think he will probably always have pain and I don't know [that] he's ever going to be able to do heavy lifting again and physical type work, though I think he can stay functional and do the things he needs to do around the house, but he's always going to have pain. He's going to have to protect his back. He voiced understanding of that . . . [w]e'll try him on Cymbalta which he has not tried . . . and see if we can help some of his discomfort. Also I think he has a little bit of depression creeping in, see if we can treat that.

In his July 25, 2006 note, Dr. Lawrence stated that Claimant had to go to the emergency room recently due to excruciating pain. He was unable to move. The doctor noted the presence of a lot of osteoarthritis in Claimant's back, but added that Claimant was "slowly improving." Naproxin was prescribed in addition to the Hydrocodone and steroid that he was already taking. Claimant on September 12, 2006 reported that the Cymbalta helped him a lot.

Dr. Lawrence wrote the following letter on October 23, 2006:

Mr. Reece has been under my care for some time for his back pain. He has had surgery on this. His current medications include pain medications, which have been Ultracet and Hydrocodone. He is also on Lunesta for sleep and Cymbalta. He's also intermittently required and will continue to require anti-inflammatories such as Naproxin and others. I believe the medications I have just mentioned are needed as a direct result of his injury which occurred on his job and is on a Worker[s'] Comp claim.

When Claimant returned to Dr. Lawrence on March 1, 2007, he continued to present with severe back pain, with it radiating into both legs. Dr. Lawrence stated that “I do think this is consistent with his initial injury.” He added that the back pain appeared to be worsening. For that reason, he prescribed Darvocet to be taken instead of the Ultracet when severe pain is present.

On April 20, 2007, Dr. Williams wrote the following:

Mr. Reece is a patient of mine. It is my opinion within a reasonable degree of medical certainty that Coy Reece will continue to need medication for his ongoing pain and I am referring him back to Dr. George S. Lawrence for the purpose of continuing to manage his pain medications that I believe arise out of his injury of July 23, 2004.

In turn, Dr. Lawrence on May 21, 2007 signed a note that read:

It is my opinion based upon a reasonable degree of medical certainty that the following prescriptions are reasonable and necessary as a result of his injury to his low back, [the words “memory problems” are stricken here and the strikeover is intialed], severe headaches and impotence, said injury occurring on or about July 23, 2004, during the course of and arising out of his employment with Eaton Corporation when he fell over a pallet. [I note here that the evidence actuall indicates that Claimant was injured when he tripped over a pipe.]

ADJUDICATION

Reasonable and Necessary Medical Treatment

As stipulated by the parties, Respondents accepted this claim as compensable and have paid for some of Claimant’s medical treatment to this point, including his September 2004 surgery. Claimant is seeking payment of prescriptions for Cymbalta, Hydrocodone, Lunesta, Naproxin and Ultracet, which the record evidence shows have been prescribed by Dr. George Lawrence. Respondents contended at the time the May 14, 2007 prehearing order was entered that Claimant’s treating physician was Dr. Ron Williams and not Dr.

Lawrence, and for that reason the prescriptions were not reasonable and necessary. As medical records in evidence showed at the hearing, on April 20 2007 Dr. Williams wrote that "I am referring [Claimant] back to Dr. George S. Lawrence for the purpose of continuing to manage his pain medications that I believe arise out his injury of July 23, 2004." Respondents at the hearing conceded that this was a valid referral, but argued that the pain medications supplied after this date were not reasonable and necessary because the pain was due to arthritis and not the compensable injury.

Arkansas Code Annotated Section 11-9-508(a) provides that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). There must be a causal connection between the maladies for which Claimant is seeking treatment and the compensable injury. See *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *Murphy v. Wal-Mart Stores, Inc.*, 2003 AWCC 41 (Full Commission Opinion filed March 4, 2003). "Medical treatments which are required so as

to stabilize or maintain an injured worker are the responsibility of the employer.” *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

With regard to Respondents’ argument that Dr. Lawrence was not Claimant’s authorized treating physician from June 2005 until April 20, 2007, Ark. Code Ann. § 11-9-514(b) provides that treatment by a physician other than the claimant’s authorized treating physician, except for emergency treatment, shall be at the claimant’s expense. However, this provision is inapplicable if the authorized treating physician refers the claimant to another doctor for examination or treatment. *See Am. Greetings Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). The determination of whether treatment was the result of a referral as opposed to a change of physician is a question of fact for the Commission. *Dept. of Parks & Tourism v. Helms*, 60 Ark. App. 110, 959 S.W.2d 749 (1998). I note that when faced with Respondents’ contention, Claimant never argued that Dr. Lawrence’s treatment from June 3, 2005, following the release by Dr. Williams, until the April 20, 2007 referral, was authorized because it was in the chain of referral—even though Dr. Williams’ August 12, 2004 letter to Dr. Lawrence appears to be thanking him for the referral of Claimant. Therefore, I will not consider this argument.

Instead, Claimant has argued in a related vein that Respondents knew that Dr. Robert Kerr would be treating him after Dr. Williams' release. But while Claimant testified that Kerr was a part of Dr. Lawrence's clinic and treated Claimant at one time, and a review of the records for each provider show that they had the same office address and phone number, nothing shows that Kerr was anywhere in chain of referral in this claim. I simply cannot find that Claimant has established this by a preponderance of the evidence.

Claimant testified that Dr. Williams actually referred him to Dr. Lawrence much earlier—in May 2005. But I do not find this credible, especially in light of the fact that (1) Dr. William's April 26, 2005 letter to Dr. Lawrence mentions the release without any reference to a referral; and (2) Dr. William's April 20, 2007 letter is phrased to make clear that his referral took place on that date: "*I am referring* him back to [Dr. Lawrence] for the purpose of continuing to manage his pain medications" (Emphasis added) Hence, I find that Respondents are not liable for any prescriptions prior to the April 20, 2007 referral.

With respect to Claimant's alleged impotency problem, Dr. Lawrence in his May 21, 2007 letter opined within a reasonable degree of medical certainty that this condition was caused by his July 23, 2004 compensable injury. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999).

The parties framed the issues along the lines regarding whether certain medications were reasonable and necessary—not whether Claimant was entitled to treatment for certain conditions. Hence, I will discuss Claimant's alleged ailments with an eye to whether the medications identified above are reasonable and necessary.

With respect to his alleged impotency, Claimant testified that Dr. Lawrence attempted to treat the problem with Viagra, but was unsuccessful. But the medical records in evidence do not reflect this. Nor do they show that he has treated Claimant with any of the drugs cited above. Moreover, the records show that on October 22, 2000, Dr. Webb used Viagra to treat Claimant for impotency following a history of prostatitis and bladder neck obstruction, urgency, frequency and dysuria, which led to a transurethral resection. Claimant testified that while he did have some problem with impotency prior to the July 2004 injury, it was due to a prostate problem that treatment took care of at least a year before the injury. Claimant has not argued, nor do I find based on the evidence that any current impotency Claimant may be suffering from, was an aggravation of or a compensable consequence of his compensable injury. This is clearly a pre-existing condition for which Respondents are not responsible.

Similarly, with regard to his alleged headaches, there is no reference that Dr. Lawrence has treated him for this since going to him in April 2005. The only reference Dr. Lawrence makes to it is in his May 21, 2007 letter. Even Claimant admitted that he did not discuss this with the doctor very often. Therefore, I do not find that he entitled to reasonable and necessary treatment for it with any of the drugs identified in the issue at bar.

Dr. Lawrence wrote on October 23, 2006 that Claimant "has intermittently required and will continue to require anti-inflammatories such as Naprox[i]n or others," which he stated were "needed as a direct result of [Claimant's] injury which occurred on his job and is on a Worker[s'] Comp claim." Dr. Lawrence was aware that Claimant had arthritis in his knees on September 2, 2004. There is nothing to indicate that he was aware of Dr. Kerr's statement in his note on November 19, 2003 that he thought Claimant "probably has

degenerative disease of the entire spine and probably getting spinal stenosis, but I don't think we need to worry about doing an MRI for that unless he's to the point of wanting surgery and he doesn't." Regardless, the record does not indicate the basis for Dr. Kerr's assessment. Based upon my review of the evidence, I cannot credit Dr. Lawrence's opinion. I take particular note of the fact that Claimant's August 16, 2004 MRI, taken less than three weeks after his accident, showed severe degenerative changes throughout the lumbar spine, with bulky osteophytes noted at multiple levels. Claimant himself on August 12, 2004 put on his medical history form for Dr. Williams he stated that he had degenerative arthritis, which included his back. Simply put, it would require me to resort to speculation to attribute Claimant's need for an anti-inflammatory such as Naproxin to be due to his compensable injury. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

With respect to the Lunesta prescription, Dr. Lawrence on October 23, 2006 wrote that this was required for Claimant to sleep, and that it was needed as a direct result of his compensable injury. However, there is nothing in the records to indicate that this has been prescribed. The records do not indicate that Claimant presented with this problem prior to his injury. But neither Dr. Williams' April 20, 2007 letter nor Dr. Lawrence's more recent May 21, 2007 letter cite to any sleeping problems. Consequently, I am not able to find that Claimant has met his burden of proof.

Again, with respect to Cymbalta, Hydrocodone, Lunesta, Naproxin and Ultracet prescriptions provided after that date, Respondents have contended that those pertain to Claimant's arthritis and not to his work-related injury. The medical evidence shows that Cymbalta, Hydrocodone and Ultracet have all been prescribed by Dr. Lawrence to help

Claimant deal with his pain. Both Dr. Williams and Dr. Lawrence have opined that Claimant needs pain medications to cope with the aftermath of his compensable injury. Despite Claimant's pre-existing arthritic condition in his back, the evidence is clear that his pain has substantially increased after the July 23, 2004 injury. Despite the presence of degenerative conditions in his back, both doctors have flagged the injury as the precipitating factor. I credit this and find the pain medications to be reasonable and necessary.

CONCLUSION AND AWARD

Respondents are directed to pay benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge