

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401948

MICHAEL J. STROUP

CLAIMANT

CITY OF SHERWOOD

RESPONDENT EMPLOYER

MUNICIPAL LEAGUE WCT

RESPONDENT CARRIER

ORDER AND OPINION FILED AUGUST 16, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE REGGIE KOCH, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on July 31, 2007. A prehearing conference was held on May 1, 2007 and a prehearing order was filed the same date. A copy of the prehearing order was introduced into evidence as Commission Exhibit No. 1 without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable February 10, 2004, injury.
2. The compensation rate is \$453.

The claimant contends he sustained a compensable injury and is entitled to continued medical benefits.

Respondents contend that medical benefits were controverted on September 6, 2006 and respondents further contend the claimant's need for treatment on the left

shoulder is not connected with the compensable injury.

ISSUES TO BE LITIGATED

1. Additional medical benefits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a compensable February 10, 2004, injury.
2. The compensation rate is \$453.
3. The claimant has proven by a preponderance of the evidence that additional medical treatment for the left shoulder is reasonable and necessary and related to the compensable shoulder injury.
4. Respondents remain responsible for the reasonable and necessary treatment for the compensable shoulder symptoms that include itching and burning.
5. No indemnity benefits have been awarded here. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

DISCUSSION

The claimant, 44 years of age, is a police officer for the respondent employer.

On February 10, 2004, the claimant was participating in an aggression defense course when he was taken to the ground and he landed on his left shoulder. The claimant knew immediately that his shoulder was injured and he reported his injury to the instructor. Since it was in the evening when this happened, the claimant went home and sought treatment with Concentra the next morning. The claimant was diagnosed at Concentra with a “shoulder strain Grade 2 AC separation” and was referred to Dr. Jason Stewart, a foot specialist. The claimant sought follow-up care with Dr. Stewart on several occasions. Respondents accepted the claim as compensable and paid for medical care through September 6, 2006.

The claimant contends he is entitled to additional and continued medical benefits for his left shoulder. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers’ Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

The claimant began seeking treatment with his family doctor about two months following his compensable injury for a burning and itching in his left shoulder. The

claimant saw Dr. Cerrato, Dr. Schock and Dr. Stamp and the problem was not diagnosed. The claimant finally returned to Dr. Stewart. The claimant described his pain in the shoulder now as minor; however, the itching and burning feels like “somebody slowly pushing a knife into my shoulder.” T., p. 16, line 18. The claimant puts ice on the shoulder to numb the nerve but testified that the pain is debilitating.

Under cross examination, the claimant verified that he injured only his left shoulder in the February 10, 2004, incident as well as verifying that Dr. Jason Stewart is an orthopedic specialist who is a foot specialist. The claimant has seen Dr. Michael Sangster, a dermatologist, and he has recommended the claimant see a neurologist, Dr. Schultz. The claimant is requesting that evaluation be considered reasonable and necessary.

The medical evidence reveals that the claimant was initially diagnosed at Concentra on February 11, 2004, with a “shoulder strain Grade 2 AC separation” and was referred to Dr. Jason Stewart. A MRI on February 16, 2004, revealed that there was no evidence of AC joint separation and noted a normal MRI of the shoulder with some mild degenerative spurring. By March 17, 2004, Dr. Stewart noted the claimant had a resolving AC sprain, left shoulder but did note some slight tenderness dorsally at the AC joint. There was no additional medical regarding the left shoulder until November 8, 2005, when the claimant sought an evaluation with his family doctor for a rash on his left shoulder and intense itching. Some gel was prescribed for the problem. The claimant again sought treatment on July 24, 2006, with his family doctor, again noting the itching in his left shoulder; however, some other maladies were noted in this visit as well and these are unrelated to the shoulder injury. A September 18, 2006,

medical report from Dr. Jason Stewart recommended the claimant undergo another MRI of the cervical spine to evaluate for nerve impingement. Dr. Stewart opined that the nerve impingement is most likely the source with cervical radiculopathy causing the neurologic symptoms in the left upper extremity. The claimant was following up with complaints of numbness and itching in the lateral aspect of the shoulder. The claimant next saw Dr. Reginald Rutherford and a MRI was ordered. According to Dr. Rutherford's December 11, 2006, report, the MRI revealed in the left shoulder a partial tear of the rotator cuff, tendonosis and evidence for impingement. Dr. Rutherford referred the claimant to Dr. Charles Pearce and on May 16, 2007, Dr. Pearce evaluated the claimant and diagnosed him with left shoulder and arm dysesthesias. Dr. Pearce discussed the claimant's symptoms:

. . . The scan from 2006 is here today and I have reviewed this and although there was discussion about a partial tear of the rotator cuff, I see only a small blush of fluid within the tendon and I doubt that this could in any way cause the symptoms that he is describing. He apparently did have an AC separation in 2004 and he asked me if that could be causing some problem in his shoulder and although it can cause some pain I doubt that it would cause the pruritic or dysesthetic type pain that he describes. Certainly, an AC joint injury can cause arthrosis and discomfort specifically in that area and he does have some prominence in the AC joint, I do think that it probably emanated originally from the injury of 2004. I am unconvinced that the finding in the rotator cuff on the MRI of 2006 compared to that of 2004 is a significant find or change. I do not find any evidence that this is part of his symptom complex that he describes.
(Resp. Exh. No. 2, p. 2.)

Finally, we have the dermatologist, Michael Sangster, opining on January 9, 2007, that the claimant "has a condition known as Brachioradial Pruritus. This is related to nerve compression or injury to the sensory nerve to the left arm. There is no

pathology of the skin causing the itch.” (Cl. Exh. No. 1.)

The claimant was a credible witness with his testimony that he sustained the left shoulder injury and received some conservative treatment. It was only about two months after the injury that he began experiencing the burning and itching sensation in his shoulder. Initially, the claimant did not attribute the symptoms to his compensable injury; however, he had no other explanation since he had not sustained another injury to his left shoulder since the February 10, 2004, work injury. The claimant testified that the major problem he currently has is the itching and burning in his shoulder. I found Dr. Stewart’s September 18, 2006, opinion that he found the “nerve impingement which is most likely the source with cervical radiculopathy causing the neurologic symptoms in the left upper extremity” and Dr. Sangster’s January 9, 2007, opinion that the claimant has Brachioradial Pruritus and “this is related to nerve compression or injury to the sensory nerve to the left arm” to be persuasive that the claimant’s current problems are related or are a compensable consequence of his compensable injury. Dr. Sangster and Dr. Stewart provide the most definitive diagnosis of the claimant’s condition. Dr. Pearce provided a report on May 16, 2007, and he ended his history discussion of the claimant’s condition stating that the partial tear in the rotator cuff found in the 2006 MRI compared to the 2004 MRI was not a significant find or change and that he did not find any evidence that this is part of the claimant’s symptom complex that he describes. Dr. Pearce did not relate the claimant’s symptoms of itching and burning to another condition or finding.

After considering the claimant’s credible testimony and considering the medical evidence, I find the claimant’s current need for treatment of his shoulder symptoms of

burning and itching are related to the compensable injury and the treatment is both reasonable and necessary. I give more weight to the opinions of Dr. Jason Stewart and Dr. Michael Sangster since they are definitive and provide an explanation. Dr. Pearce's May 16, 2007, report does not address the nerve impingement that Dr. Rutherford, Dr. Stewart and Dr. Sangster all mention. Dr. Pearce's evaluation seemed to primarily address the partial tear in the rotator cuff. I further find that respondents remain responsible for the reasonable and necessary treatment for the compensable shoulder symptoms that include itching and burning.

ORDER

The claimant has proven by a preponderance of the evidence that additional medical treatment for the left shoulder is reasonable and necessary and related to the compensable shoulder injury. Respondents remain responsible for the reasonable and necessary treatment for the compensable shoulder symptoms that include itching and burning.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**