

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F511941

LESLIE TOWNSEND, Employee	CLAIMANT
DIAMOND STONE LLC, Employer	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JULY 19, 2007

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

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

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

STATEMENT OF THE CASE

On June 28, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 18, 2007, and a pre-hearing order was filed on April 19, 2007. 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 neck and back on October 17, 2005.

At the pre-hearing conference the parties agreed to litigate the following issue:

1. Claimant's entitlement to additional medical treatment; specifically, pain management as recommended by Dr. Raben.

The claimant contends he is entitled to additional medical treatment.

The respondents contend that claimant is not entitled to additional medical treatment.

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 April 18, 2007, and contained in a pre-hearing order filed April 19, 2007, 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 injury.

#### FACTUAL BACKGROUND

The claimant is a 38-year-old man who began working for the respondent approximately three months prior to his compensable injury on October 17, 2005. On October 17 the claimant slipped and twisted his body as he attempted to take a bag of concrete from another employee. According to claimant's testimony he was knocked to the ground and felt pain in both his neck and shoulder.

After some initial medical treatment from Dr. Hayward, a chiropractic physician, claimant came under the care of Dr. Sitzes on October 21, 2005. Dr. Sitzes diagnosed claimant's condition as acute mechanical pain and ordered a regimen of physical therapy. Dr. Sitzes also released claimant to return to work with restrictions. When claimant's condition did not improve, Dr. Sitzes referred claimant to Dr. de Silva, an occupational medicine specialist. Dr. de Silva ordered an MRI scan of the claimant's lumbar spine

which returned normal and as a result Dr. de Silva released claimant as having reached maximum medical improvement.

When claimant continued to complain of symptoms, respondent sent claimant to Dr. Moffitt who ordered MRI scans of the claimant's cervical spine and shoulder. Dr. Moffitt also ordered physical therapy for the claimant's neck area. When claimant's condition did not improve, Dr. Moffitt referred claimant to a neurosurgeon. Claimant was subsequently evaluated by Dr. Haws and by Dr. Michael Morse, neurologist. When claimant was released by Dr. Morse, claimant filed for and received a change of physician request to Dr. Raben. Dr. Raben evaluated the claimant on January 2, 2007, and diagnosed claimant's condition as a cervical spine strain and fibromyalgia. Dr. Raben also referred claimant to Dr. Piechal for pain management.

The respondent accepted claimant's injury as compensable and paid compensation benefits and medical treatment from various physicians including Dr. Raben's visit of January 2, 2007. However, respondent has refused to pay for the treatment from Dr. Piechal. As a result, claimant has filed this claim contending that he is entitled to the additional medical treatment recommended by Dr. Raben.

### 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 prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary for his

compensable injury.

After some initial treatment with a chiropractic physician, claimant came under the care of Dr. Sitzes on October 21, 2005. Dr. Sitzes ordered x-rays of the claimant's thoracic spine which revealed no abnormalities. Dr. Sitzes diagnosed claimant's condition as mechanical back pain and ordered a period of physical therapy. He also released the claimant to return to work with restrictions. When claimant's condition did not improve, Dr. Sitzes referred claimant to Dr. de Silva, an occupational medicine specialist. Dr. de Silva in her report of November 30, 2005 concurred with Dr. Sitzes' diagnosis of mechanical pain. Given the claimant's three-month duration of pain, she recommended an MRI scan of the claimant's thoracic spine. In a report of that date she went on to note: "If it [MRI of the thoracic spine] is negative, I propose to lift his restrictions, return him to regular duty, and release him with a PPI rating of zero as he is at maximum medical improvement."

When the MRI scan of claimant's thoracic spine was negative, Dr. de Silva on February 1, 2006 returned claimant to regular work and released him from care. Dr. de Silva also noted that the claimant's impairment rating was zero.

When claimant's complaints of pain continued the respondents sent claimant to Dr. Moffitt. Dr. Moffitt ordered an MRI scan of both the claimant's cervical spine and his shoulder. Both of these MRI scans returned essentially normal with no explanation for claimant's continued complaints of pain. Dr. Moffitt subsequently ordered physical therapy for the claimant's cervical spine which provided no benefit.

Significantly, in a report dated March 27, 2006, Dr. Moffitt stated the following:

On his exam today, he had almost no range of motion on testing of his neck, and I had a significant question about the amount of effort he put in. With distraction he moved his head quite freely with shaking it up and down or side to side during conversation.

On April 6, 2006, the claimant was evaluated by Dr. Haws. Dr. Haws in his report of that date made observations similar to those made by Dr. Moffitt.

The patient climbs on and off the exam table under his own power. Interestingly, it is noted that during the exam he displays symptoms of magnification in that he displays a lot of labored breathing and grunting, even when performing rather simple movements, and even though he may display a normal ROM with those movements. It is of note that his ROM and overall movements seem to be much better and much more fluid when he is simply talking about his condition and giving a history of such, and walking around the exam room, as opposed to when I am specifically asking him to perform a certain movement at command, indicating a magnification of his symptoms.

Dr. Haws went on to indicate that his review of the MRI reports of claimant's cervical, thoracic, and shoulder revealed no etiology for claimant's continued complaints of pain. However, Dr. Haws did recommend that the claimant undergo a neurological evaluation by Dr. Morse.

Claimant's evaluation with Dr. Morse occurred on April 13, 2006. As had Drs. Moffitt and Haws, Dr. Morse also noted that claimant was exaggerating his symptoms.

There appears to be pain behavior during my examination in the form of grunting, heavy breathing, and grimacing, even with simple tasks.

Dr. Morse went on to note that he had reviewed the claimant's MRI scans and the fact that physical therapy had provided no benefit. As a result, he stated: "I rate him as maximum medical improvement with no restrictions for future activity. No further evaluation is necessary at this point."

It was after this visit with Dr. Morse that claimant filed for and received his change of physician request to Dr. Raben who subsequently claimant to Dr. Piechal.

In support of his contention, claimant notes that a prior MRI scan revealed that additional testing in the form of a bone scan and/or CT scan might be performed.

However, none of claimant's treating physicians recommended this additional diagnostic testing, including Dr. Raben.

In summary, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable work-related injury. In this particular case, claimant has undergone extensive diagnostic testing in the form of three MRI scans to his thoracic spine, cervical spine, and shoulder. Those scans have been negative as to explaining the etiology of claimant's complaints. Claimant has undergone two periods of physical therapy, neither of which improved his complaints. Three treating physicians have observed symptom magnification during their examination of the claimant. Finally, claimant has been evaluated and released as having reached maximum medical improvement by both Dr. de Silva and Dr. Morse. Given all of this evidence, I simply find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

#### ORDER

\_\_\_\_\_ Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable 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 \$401.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE