

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303102

ELIZABETH RODEN VINSON

CLAIMANT

DOLLAR GENERAL CORPORATION  
SELF INSURED

RESPONDENT

OPINION FILED APRIL 27, 2007

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

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by BETTY DEMORY HARDY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 30, 2007, in Fort Smith, Arkansas. A pre-hearing order had previously been entered in this case on November 29, 2006. 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 this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulation was offered by the parties and is hereby accepted:

1. The Opinion of October 31, 2005, 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 as recommended by Dr. Swicegood.

2. The claimant's entitlement to additional temporary partial disability from December 16, 2005 through a date yet to be determined.
3. Attorney's fees.

In regard to these issues, the claimant contends:

- a. The claimant contends that by letter of December 16, 2005 Dr. Swicegood recommended additional treatment and that by letter of December 29, 2005 the claimant's then attorney notified the respondents of the recommendation and requested the preauthorization. However, the recommended treatment still has not been authorized.
- b. The claimant contends that there is a period of temporary disability in connection with the recommended treatment, the claimant's attorney is entitled to an appropriate attorney's fee.

In regard to these issues, the respondents contend:

"It is the contention of the respondent that the claimant has been provided all appropriate benefits to which she is entitled. Specifically, the respondent asserts that any additional benefits sought by the claimant are not reasonably necessary nor are they causally related to the March 13, 2003 work related injury. The respondent requested additional records from Dr. Swicegood following a receipt of the December 16, 2005 letter from Dr. Swicegood to claimant's former attorney, Gunner DeLay. However, respondent did not receive any additional records for review to respond to the December 16, 2005 letter.

The claimant's current need for treatment and disability is now due to a defect involving a different area of her spine and thus must be the result of some new or independent intervening cause or event."

#### DISCUSSION

The first issue to be addressed concerns the claimant's entitlement to the additional medical services recommended by Dr. Swicegood, apparently in the form of a minimally invasive disc decompression or thermoannuloplasty. In order to be entitled to

these particular medical services, at the respondents expense, the claimant must prove that these medical services represent “reasonably necessary medical services”, as that term is used in Ark. Code Ann. §11-9-508.

In order to represent “reasonably necessary” medical services, the medical services must be necessitated by or connected with the compensable injury. Further, the medical services must have a reasonable expectation of accomplishing their intended purpose or goal, at the time such services are rendered.

In his report of January 19, 2007, Dr. John Swicegood recommended that the claimant undergo a discogram and, if her complaints were due to a discal defect at either L4-5 or L5-S1, a minimally invasive disc decompression or thermoannuloplasty. This is similar to Dr. Swicegood’s recommendation, on December 16, 2005, that the claimant undergo a percutaneous disc decompression or targeted disc decompression for a herniated disc and resulting radiculopathy at L4-5.

The record shows that the claimant began to complain of difficulties, primarily in the form of pain, with her mid to lower back and left lower extremity shortly after the compensable injury of March 13, 2003. Since that time, the magnitude of her symptoms has periodically waxed and waned. On several occasions during this period, the claimant’s complaints sufficiently resolved or stabilized to cause her treating physician to opine that she had reached maximum medical improvement and to discharge her from further care. However, the claimant’s complaints seemed to have

always returned, sometimes following subsequent specific stressful or traumatic activities or events.

The medical evidence shows that the claimant's compensable injury was initially diagnosed as being in the form of a lumbar strain. However, when MRI studies revealed the presence of a small focal left lateral recess disc protrusion at L4-5, the subsequent medical evidence attributed the claimant's difficulties to this defect. In the prior opinion of October 31, 2005, it was held that the claimant's compensable injury was in the form of an L4-5 disc protrusion.

However, during the claimant's subsequent course of treatment, numerous physical examinations and testing by various physicians have failed to show any objective findings to support the continued existence of a significant injury to the claimant's lumbar spine or exiting nerve roots. These physical examinations have repeatedly demonstrated no objective indications of neurological abnormalities, such as abnormal reflexes, muscle atrophy, etc. These examinations and x-rays have failed to show the presence of any abnormal lumbar lordosis or for the most part, lumbar muscle spasms (however, muscle spasms were noted during the claimant's FCE on October 18, 2006). The numerous MRI studies performed on the claimant have continued to show no sign of any impingement or compression of the spinal canal or exiting nerve roots. Electroneurological studies, which were performed by Dr. William Griggs on December 20, 2006, were interpreted as entirely normal with no evidence of any radiculopathy or myopathy involving the

claimant's lower extremities. In fact, the most recent MRI study, which was performed on October 19, 2006, no longer showed any focal protrusion or other abnormality involving the L4-5 disc. Instead, this test revealed a new abnormality or defect, in the form of a bulge of the L5-S1 disc. However, again there was no evidence of spinal canal or nerve root impingement. This study also reflected a small right paracentral disc protrusion at the T11-12 level of the claimant's thoracic spine.

On December 8, 2006, the claimant was evaluated by Dr. Michael J. Standefer, a neurosurgeon. At that time, she was complaining of pain involving her low back, left hip, and left leg. She also was complaining of new difficulties, in the form of pain going up her entire spine and into her shoulder. Dr. Standefer interpreted the prior MRI studies of 2003 and 2004, as showing only "minuscule bulging" at L4-5 with no evidence of any overt protrusion. Dr. Standefer appeared to attach no significance to this previously noted abnormality or even to the new central disc bulge at L5-S1. Dr. Standefer's physical examination also recorded no objective findings to support any significant injury or defect involving the claimant's lumbar spine. He specifically indicated in his report that the claimant exhibited no symptoms of an overt radiculopathy and that the subjective sensory deficit noted on the clinical examination was not consistent with any anatomic neurological defect. His ultimate diagnosis of the claimant's difficulties was simply myofascial pain syndrome with no evidence of any underlying

neurosurgical problem. The subsequent testing requested by Dr. Standefer substantiated his findings and opinion.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence fails to establish that the medical treatment recommended by Dr. Swicegood, in the form of a minimally invasive disc decompression or thermoannuloplasty represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508. It is apparent that Dr. Swicegood's opinion that these services are medically appropriate and necessary to treat or improve the claimant's continued extensive subjective complaints are based upon his assumption that these complaints are attributable to discal damage at L4-5 and/or L5-S1 with a resulting radiculopathy involving the claimant's left lower extremity. However, Dr. Swicegood's diagnosis of the existence of a continuing discal disruption at L4-5 with a left lower extremity radiculopathy is based solely upon the claimant's subjective complaints. However, the continued existence of a left lower extremity radiculopathy is overwhelmingly refuted by the results of the extensive testing and multiple examinations performed on the claimant. The normal results of the electroneurological studies performed by Dr. Griggs on the claimant's left lower extremity, the numerous MRI studies showing no canal or nerve root impingement, and the repeated physical examinations showing no objective evidence of ongoing any neurological abnormalities would effectively contradict the diagnosis of a continuing radicular etiology for the claimant's

subjective lower extremity complaints. The same is true for the continuing existence of any disc defect at L4-5. The most recent MRI no longer showed this defect. The physical examination by Dr. Standefer was not consistent with a discal etiology for the claimant's continuing complaints.

Clearly, as the greater weight of the credible evidence shows no nerve root or spinal canal impingement and no radiculopathy involving the claimant's left lower extremity, medical services intended to relieve such impingement and improve such neurological defect would have little expectation of success in accomplishing this purpose. As the most recent MRI study, performed on October 19, 2006, no longer shows any discal defect at L4-5, it would not appear reasonable that the recommended medical services to correct this defect continue to remain necessary or would have a reasonable expectation of relieving the claimant's continued symptoms in her lower back.

In reaching this decision, I have simply afforded more weight and credit to the opinions of Dr. Standefer than to those of Dr. Swicegood. Dr. Standefer is a board certified neurosurgeon with great expertise in the diagnosis and treatment of discal injuries and defects, particularly those involving neurological or radicular consequences. More importantly, his opinions are more in accord with the results of the numerous examinations and extensive testing performed on the claimant.

In regard to the defect noted at L5-S1, in the October 19, 2006 MRI, I find the respondents argument that this defect is

unrelated to the claimant's previous compensable low back injury to be well founded. There is no evidence of the presence of this defect on three previous lumbar MRI's. No injury or damage to this area of the claimant's lumbar spine has ever been diagnosed on the basis of any findings, prior to the MRI study in October of 2006. Clearly, such a defect could have resulted from some subsequent trauma. However, disc bulging (unlike disc herniations or focal protrusions) are generally considered to be degenerative in nature and usually result from multiple cumulative minor stress and trauma over a period of years, as part of the aging process.

The claimant has failed to prove that the objectively documented defect, involving the L5-S1 intervertebral disc, represents either a compensable injury sustained in the employment related incident of March 13, 2003, or a compensable consequence of injuries sustained in that employment related incident. Therefore, any medical treatment necessitated by or connected with this defect has not been shown to represent reasonably necessary medical services for a "compensable injury", as required by Ark. Code Ann. §11-9-508.

Next, is the matter of the claimant's entitlement to temporary partial disability benefits from December 16, 2005 through a date yet to be determined. In order to be entitled to such benefits, the claimant must prove two facts by the greater weight of the credible evidence. First, she must prove that she has continued within her healing period from the effects of her compensable injury of March 13, 2003. Secondly, she must show that she has

continued to experience actual “disability” (a reduction in her wages), as a result of the disabling effects of her compensable injury.

The duration of the healing period is essentially 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 for the healing or stabilization of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, 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 need for continuing medical services only to alleviate or reduce chronic symptoms is not sufficient, in and of itself, to extend the healing period.

The medical evidence shows that the only services received or required by the claimant for her compensable injury, after December 16, 2005, were in the form of chronic pain management by Dr. Swicegood and various tests and evaluations. There is no evidence that the claimant received or required any medical services to resolve or reduce the actual physical damage caused by her compensable injury, after December 15, 2005.

I find that the claimant has failed to prove that she continued within her healing period from the effects of her compensable injury, after December 16, 2005. Her failure to prove this necessary fact prevents her from being entitled to the

temporary partial disability benefits she now seeks. Her request for such benefits must therefore be denied.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation has jurisdiction of this claim.
2. On March 13, 2003, the relationship of employee-self insured employer-third party administrator exists between the parties.
3. On March 13, 2003, the claimant sustained a compensable injury to her lower back that was in the form of a protruding or herniated disc at L4-5.
4. The claimant has failed to prove by the greater weight of the credible evidence that the medical services recommended by Dr. John Swicegood, in the form of minimally invasive disc decompression or thermoannuloplasty represents reasonably necessary medical services for her compensable injury of March 13, 2003. Specifically, she has failed to prove that these medical services would be necessitated by or connected with her compensable injury and would have a reasonable expectation of accomplishing the purpose or goal for which they are intended (i.e. resolving or reducing her continuing subjective complaints).
5. The claimant has failed to prove by the greater weight of the credible evidence that she was rendered temporarily partially disabled, as the result of her compensable

injury, for the period of December 16, 2005 through a date yet to be determined. Specifically, she has failed to prove that she continued within her healing period from the effects of her compensable lumbar injury on and after December 16, 2005.

6. The respondents have controverted the claimant's entitlement to the medical services recommended by Dr. Swicegood and her entitlement to temporary partial disability benefits from December 16, 2005 through a date yet to be determined.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative, but to deny and dismiss the current claims for additional benefits, in the form of medical services recommended by Dr. John Swicegood (i.e. a minimally invasive disc decompression or thermoannuloplasty) and temporary partial disability benefits from December 16, 2005 through a date yet to be determined.

IT IS SO ORDERED.

---

MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE