

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F701853**

<b>KENNETH W. BUTLER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>LENNOX INDUSTRIES, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ESIS, INC., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 30, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 25, 2008, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to additional medical treatment.

At issue is whether or not additional treatment for a compensable left leg injury is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508; and whether or not the claimant sustained a compensable back injury pursuant to Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on November 28, 2006 at which time the claimant sustained a compensable scheduled injury at a compensation rate of \$488.00. Medical expenses and temporary total disability benefits were paid for a left lower

extremity injury. Dr. Kulik released the claimant on August 1, 2007 with a 0% rating to the foot and ankle. Dr. Pearce released the claimant on October 7, 2007 with a 0% rating to the knee. The Medical Cost Containment Unit approved a change of physician on December 19, 2007, authorizing the claimant's family physician, Dr. Hord, to treat the compensable left lower extremity injury.

The claimant contends he injured his back at the same time as he injured his left leg. The claimant seeks continuing medical treatment with Dr. Hord for his back and knee.

The respondents contend the claimant's back condition is not causally related to the left leg injury on November 28, 2006. All appropriate benefits have been paid for the compensable injury and continuing treatment for the left leg injury is unreasonable and unnecessary.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant, and supervisor, Joe Gignec.

The claimant, age 52 (D.O.B. January 8, 1956) has a high school education and a college degree in Political Science and Sociology from UAPB. His health history includes an October, 1980 burn injury to his ankle while working at Riceland Foods, a 1999 back injury, a 2002 carpal tunnel syndrome injury, a 2003 back injury and an October 2005 motor vehicle accident (MVA) in which his left shoulder was injured, (Tr. p. 14-15, 19-20, 31-32).

The claimant began work for the respondent-employer on April 6, 1992. On November 28, 2006, the claimant's supervisor, Todd Addison, moved the claimant from his regular job testing air conditioning units to the skinning department, where the outer shell of the unit is constructed, because they were short handed. Mr. Addison still works for the respondent-employer, but was not called as a witness.

The claimant was injured when a co-worker lowered an assembly line track on the claimant's ankle, throwing him forward. The claimant tried to pull his leg free, straining himself. Once he was extricated, he rested for about 40 minutes before returning to the line. The claimant developed swelling, numbness and pain in his leg. By December, he was having symptoms in his back, hip, knee and foot, (Tr. p. 10-13). He returned to work after the Christmas shut-down and requested medical treatment. He complained to his supervisor, Mr. Gignec, and to the nurse case manager, Cheryl Johnson, about his back, but only treatment for his leg was authorized, (Tr. p. 15-17). Ms. Johnson was not called to testify.

The claimant stated he remains symptomatic with pain and swelling in his knee and foot and back pain.

Joe Gignec became the claimant's supervisor in March, 2007. He testified the claimant was provided light duty within his work restrictions. The claimant complained of aches and pains but nothing specific. He did not witness the leg injury and he had no knowledge of any back injury.

### **MEDICAL EVIDENCE**

The claimant sustained a May 15, 2000 back injury with radiating right leg pain at Lennox. An MRI scan was interpreted as negative, but he was kept off work until September 5, 2000.

The claimant sustained the compensable crush injury to the left foot and ankle on November 28, 2006.

On December 27, 2006, the claimant saw his family physician, Dr. Hord, and reported back and left leg pain. A notation reads, "MVA last Oct.," but no medical records from October, 2005 were offered into evidence. In a report dated October 31, 2007, Dr. Hord mentions a January, 2006, MRI scan showing only mild degenerative changes in the lumbar spine.

A January 9, 2007 report shows the claimant was experiencing pain in the entire leg. He reported soaking his foot every day after work. Work restrictions (restricted pushing, pulling, using stairs, lifting more than 30 lbs.) were imposed for two weeks beginning January 22, 2007. X-rays of the foot were negative but a bone scan was positive for a bone contusion of the heel. The claimant was prescribed anti-inflammatories.

The claimant returned to Dr. Daniel on February 5, 2007 complaining of pain. The doctor noted the claimant stood on concrete all day. He recommended a referral to an orthopaedic surgeon. On February 14, 2007 Dr. Daniel changed the work restrictions to include no standing and no lifting over 10 lbs. He was advised to perform work while sitting.

Dr. Steven Kulik, an orthopaedic surgeon, saw the claimant on February 14, 2007. He recommended an MRI scan and limited the claimant to sedentary duty with instructions to avoid weight bearing, and lifting more than 10 lbs. The MRI conducted February 28, 2007 revealed plantar fasciitis. The claimant was excused from work until April 9, 2007, when he was advised to return to full duty. The claimant has received no treatment for plantar fasciitis.

The claimant returned to Dr. Kulik on April 11, 2007. The doctor observed some swelling of the foot. He continued the claimant's medication and restricted him from standing more than one hour without resting. Shifts were restricted to 8 hours and the claimant was advised against pushing, pulling, or stepping up and down.

In May, 2007, the claimant reported ankle, knee and foot pain. Dr. Kulik again observing swelling and surmised the claimant was pronating his foot when walking to avoid pain in the arch. He prescribed physical therapy and continued the April, 2007 work restrictions. The work restrictions were renewed on June 27, 2007.

On August 1, 2007, Dr. Kulik stated the claimant had reached maximum medical improvement although he “probably” had some neuropathic pain. He advised the claimant to enlist the assistance of co-workers in pushing or pulling air conditioning units and he continued the claimant’s medication for 6 months.

The claimant was seen by Dr. Charles Pearce on August 23, 2007 for evaluation of knee pain. His exam showed no swelling but the claimant was exhibiting patellofemoral crepitation. A September 4, 2007 MRI scan showed a “small extruded parameniscal cyst” or “small ganglion versus loculated joint effusion.” The radiologist explained that a cyst would indicate a tear of the medial meniscus.

In his report of September 4, 2007, Dr. Pearce rejected the idea of meniscal pathology as this diagnosis did not correlate with the claimant’s symptoms or clinical examination. Dr. Pearce prescribed medication and a “patellar tracking brace.” The claimant was released to regular work duties. Dr. Pearce noted that the claimant pointed to his quadricep muscle when he described the area of swelling.

Neurologist, Dr. Reginald Rutherford performed an EMG/NCV test on the claimant’s left lower extremity. His report of September 10, 2007 shows a normal study of the leg but there was evidence of a back injury based on denervation of the left S1 myotome. Dr. Rutherford recommended further investigation with a lumbar MRI scan.

In light of the EMG/NCV results, Dr. Pearce released the claimant from his care on October 2, 2007. Both Dr. Kulik and Dr. Pearce assessed 0% for the left leg injury.

On October 31, 2007, the claimant returned to Dr. Hord, his family physician. With regard to the back complaints, Dr. Hord indicated “etiology not fully determined.”

He is still complaining of problems in his left knee, left foot, and back. He has seen Dr. Pearce, an orthopaedic specialist. He blames this on an injury at work. In my physical exam in October '06, he thinks it stems back to a car wreck that he was in. In my exam today, he thinks it all stems back to injuries he sustained at work. Obviously this will get quite complicated and we're going to leave this up to the workman's comp folks to separate this out. At any rate, I do believe he does have some problems in his lumbar spine. We did an MRI of this lumbar spine in January '06 which showed mild degenerative changes at L4 without significant canal stenosis or narrowing.

The claimant returned to Dr. Hord on January 3, 2008 complaining of back, knee and foot pain. Dr. Hord summarized the claimant's history of injury and medical treatment, commenting, "he has complaints of it being a workman's comp injury as well as it being a MVA." Specifically, Dr. Hord noted treatment for sciatica in 2000, low back pain from a November, 2005, MVA treated through December, 2005 and again in December, 2006, and left knee pain from the MVA beginning October, 2006.

A repeat MRI scan taken January 7, 2008 showed desiccation and degenerative changes at L4-5, with a "very minimally" bulging disc but no neural encroachment."

On January 24, 2008 Dr. Hord prescribed physical therapy for the claimant's back and left knee. Dr. Hord commented, "I am unable to separate whether the back pain is a preexisting condition or from workers' comp." However, "the knee pain...does seem to be associated with his injury at the work place."

The claimant returned to Dr. Hord on March 3, 2008 noting improvement in his knee pain following physical therapy. There was no change in his back pain.

The claimant saw Dr. Christopher Mocek on June 26, 2008 for complaints of left leg, low back and right hip pain, symptomatic over one year in duration. The claimant denied any prior back

or leg pain prior to the compensable injury but Dr. Mocek was aware of the MVA in 2005. Dr. Mocek compared the 2006 pre-accident MRI with the 2008 post-accident scan and observed a change in the claimant's condition.. He prescribed a series of LESI's and offered a percutaneous disc procedure if the pain persisted.

MRI of the lumbar spine on January 7, 2008 showed mild dessication and early degenerative (sic) at L4/5 disc and very minimal bulging disc annulus. He had a MRI done a (sic) left paracentral disc protrusion at L4-5 effacing the left L4 nerve root...

MRI from 2006 (before on the job injury) showed no disc protrusion at L4/5 disc level at that time. Slight degenerative changes at the L4/5 disc level...

This patient has clearly had a change in his MRI after the work injury. The pain does line up with the small disc herniation at the L4-5 level on the left by symptoms and exam.

Dr. Mocek does not explain if the change in the claimant's condition is the result of a new injury or merely a progression of the preexisting degenerative disease.

### **DOCUMENTARY EVIDENCE**

Unemployment records from October, 2007 were introduced into evidence. The claimant explained the forms were completed as a precautionary measure after the factory warned the employees of a potential slow-down in hours, (Tr. p. 26-28).

### **FINDINGS AND CONCLUSIONS**

The first issue is continuing medical treatment for the left knee.

Employers must promptly provide medical services which are "reasonably necessary in connection with" the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment

is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Commission opinion February 14, 2003 (E906565).

It is the Commission’s duty to determine the credibility of the witnesses and the weight to be given to their testimony. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). The Commission has the authority to accept or reject medical opinion and to determine its medical soundness and probative force. Beeson v. Landcoast, 43 Ark. App. 132, 862 S.W.2d 846 (1993).

Two specialists, Dr. Kulik and Dr. Pearce, have opined the claimant has reached maximum medical improvement with regard to the compensable left lower extremity injuries and may return to work with no permanent impairment. With regard to the knee injury, Dr. Pearce has opined the claimant’s symptoms and clinical examination are inconsistent with diagnostic test results. The claimant’s general practitioner, Dr. Hord, has offered two conflicting opinions with regard to a causal connection between the compensable knee injury and the claimant’s need for continuing treatment. In his report of January 24, 2008, Dr. Hord stated the knee problem was work-related, but his report of January 3, 2008 indicates the claimant related his knee pain to a 2005 MVA which he treated in October, 2006.

After reviewing the conflicting medical opinions, I have given greater weight to the opinions of Drs. Kulik and Pearce and conclude that further treatment for the left lower extremity is unnecessary.

The second issue is the compensability of the claim for a back injury.

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. Under the Act, the claimant has the burden of proving the following requirements by a preponderance of the evidence of record:

1. An injury arising out of and in the course of employment
2. An injury causing internal or external harm to the body, requiring medical services or resulting in disability or death
3. An injury established by objective medical findings
4. (a) An injury caused by a specific event identifiable by time and place of occurrence  
  
or
5. (b) A gradual injury, caused by rapid and repetitive motion, which is the major cause of the disability or need for medical treatment.

According to Dr. Hord, the claimant attributes his back pain and sciatica to a 2005 MVA. An MRI scan in January, 2006 showed only degenerative changes at L4-5. After the work-related accident, the claimant saw Dr. Hord in December, 2006 for back pain related to the MVA. There is no further mention of back pain in the medical records until the claimant returned to Dr. Hord in October, 2007. A January 2008 MRI showed a small bulging disc with degeneration at L4-5. Dr. Mocek has prescribed treatment for the claimant's back but has not opined if this change represents

a progression of degenerative disc disease or a new injury.

After reviewing Dr. Hord's medical records, the gaps in time for treatment for a back injury, and the claimant's failure to disclose his complete medical history to Dr. Mocek, I find the claimant cannot meet his burden of proving a compensable back injury by a preponderance of the credible evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on November 28, 2006 at which time the claimant sustained a compensable injury to his left lower extremity.
2. The claimant has received adequate medical care for his compensable injury from Drs. Kulik and Pearce. Additional treatment is unreasonable and unnecessary.
3. The claimant has failed to prove he sustained a specific back injury arising out of and in the course of his employment based on Dr. Hord's medical records.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge