

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500021

STEVE CRAWFORD	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT, INC. CARRIER	RESPONDENT

OPINION FILED JULY 11, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On April 15, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 29, 2008, and a pre-hearing order was filed on January 30, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. There was an October 28, 2004, injury.
2. The TTD rate is \$360.
3. Respondents accepted a 10% permanent impairment rating to the shoulder.

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

1. Medical treatment.
2. TTD benefits.

3. Contempt of court penalty.
4. Attorney's fee.

The claimant contends:

“1. Entitlement to additional medical treatment by Dr. Knox and his referrals.

2. Claimant also contends he is entitled to additional TTD benefits from June 5, 2007, to a date to be determined.

3. Claimant contends the respondents are in contempt of court and the 36% penalty should apply.

4. Entitlement to attorney's fees.”

The respondents contend:

“1. Respondents contend that Dr. Knox was a second opinion doctor only; that Dr. Armstrong remains the treating physician and the claimant is still able to treat with Dr. Armstrong on an as needed basis.

2. Respondents have not accepted any impairment ratings to the wrist or to the elbow, as respondents contend ratings pursuant to the AMA Guidelines have not been submitted.

3. Respondents also contend there was no elbow injury.

4. Respondents further contend that benefits that were awarded in previous hearings have been paid.

5. Respondents contend that the additional medical treatment by Dr. Knox and his referrals is unreasonable and not necessary.”

DISCUSSION

The claimant was injured on October 28, 2004. The first hearing conducted in this matter was on May 24, 2005, and the following issues were addressed; medical treatment for the neck; left shoulder; left carpal tunnel syndrome; temporary total

disability; and, attorney's fees. After the claim was heard an opinion was rendered on August 10, 2005. The original opinion stated the respondents were to pay reasonable and necessary related medical treatment for the left shoulder, neck, and left carpal tunnel syndrome. They were also ordered to pay temporary total disability benefits from December 20, 2004, to a date to be determined.

On appeal, the Full Commission affirmed and adopted the administrative law judge's opinion on August 1, 2006. After the Commission's August 1, 2006, decision the claimant ultimately had his shoulder surgery and received a 10 percent rating. The respondents paid the rating. The respondents also paid temporary total disability benefits but refused to pay TTD from May 15, 2006, through January 27, 2007, the date Dr. Armstrong suggested the claimant reached maximum medical improvement with regard to his neck.

The claim was again heard on April 10, 2007. The administrative law judge issued an opinion dated May 21, 2007, ordering temporary total disability payments from May 15, 2006, through January 27, 2007, the date the claimant was released by Dr. Armstrong. In addition the opinion also stated the claimant was entitled to ongoing reasonable and necessary neck treatment. This opinion was appealed to the Full Commission and affirmed on September 27, 2007.

ADJUDICATION

The central issue in this matter is whether the claimant is entitled to additional medical treatment offered by Dr. Knox. In a

clinic note dated January 29, 2007, Dr. Larry Armstrong stated "of course, he can get a second opinion from Dr. Blankenship or Dr. Knox should he so desire." The claimant did go see Dr. Knox on June 5, 2007, and the respondents paid for that visit and a related MRI.

The respondents argue that the visit was a consultative exam and that Dr. Armstrong did not refer the claimant to Dr. Knox for any form of treatment. The respondents contend that he was not authorized to perform treatment, while the claimant contends that he was an authorized treating physician referred by Dr. Armstrong.

In review of the clinic note by Dr. Armstrong on January 29, 2007, it is clear that he feels no more can be done for the claimant. Considering Dr. Armstrong's apparent belief that the claimant's condition will not improve, it is clear that he did not refer the claimant for any more additional treatment. Any reference to Dr. Knox seems to be made in an informative manner. Dr. Armstrong appears to have been explaining to the claimant about his ability to have a consultation or second opinion done by another neurosurgeon.

Dr. Knox, recommended two different courses of action. First, he suggested epidural steroids and physical therapy. When the respondents refused to provide that treatment, he stated in a letter dated January 28, 2008, the other course of action was surgery. He seems to suggest that this is an option because the other more conservative option was not available to the claimant and the claimant continues to report significant pain. Dr. Knox also states, "It may be more prudent for him to go ahead and pursue

disability determination if he (claimant) wants to avoid surgical options.”

I find that Dr. Knox’s two different course of treatment are not reasonable and necessary. The physical therapy and epidural steroid injections are very similar to the conservative treatment provided to the claimant by Dr. Armstrong. That treatment course provided no real improvement in the claimant. Dr. Armstrong had the ability to review diagnostic tests of the claimant as his authorized physician and saw the claimant on a more permanent basis. Dr. Knox only saw the claimant on a consultative basis. As such, the treatment recommended by Dr. Knox is not reasonable and necessary regarding the course of conservative treatment that Dr. Armstrong had previously provided without positive result.

Dr. Knox also recommended a surgical option which he was initially against as he believed it not to be in the best interest of the claimant. At that point he and Dr. Armstrong were in agreement that surgery was not recommended. However, Dr. Knox later, after determining the other course of conservative treatment was not available, decided that surgery should be considered due to the claimant’s continued complaints of pain.

Dr. Knox had no new objective evidence of the claimant’s need for surgery. His new recommendation was based on subjective complaints of the claimant and his belief that the conservative treatment was not an option. I find that Dr. Armstrong’s recommendation of not pursuing surgery is the reasonable course of

action in this matter. As such, I do not find that the surgical option is reasonable and necessary.

The previous order of the Commission as related to temporary total disability sets an ending date of June 27, 2007. I find no evidence that temporary total disability should resume past that date. The claimant did not reenter a healing period after that date and as reported by Dr. Armstrong, his healing plateaued on January 27, 2007.

The claimant contends that respondents are in contempt of the Commission's previous order that the claimant was entitled to and the respondents should pay for reasonable and necessary treatment related to his compensable neck injury. I find no evidence that the respondents have failed to follow the previous orders of the Commission. There was no evidence presented that the respondents failed to pay or authorize any treatment by Dr. Armstrong. The respondents did refuse to pay medical expenses of Dr. Knox and his referrals; however, the respondents' have the right to make the contention that the treatment was not reasonable and necessary. They have asserted that contention in this matter, as such I find that the respondents are not in contempt of the Commission's previous orders.

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 January 29, 2008, and contained in a pre-hearing order filed January 30, 2008, are hereby accepted as fact.

2. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

3. Prior are res judicata and the law of this case.

4. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment by Dr. Knox or his referrals.

5. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

6. The claimant failed to prove by a preponderance of the evidence that the respondents are in contempt of the Commission's previous orders.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE