

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F704651**

**BRYAN FOSTER, EMPLOYEE**

**CLAIMANT**

**KANN ENTERPRISES, INC.,  
EMPLOYER**

**RESPONDENT**

**ZURICH AMERICAN INSURANCE CO.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JULY 25, 2008**

Hearing conducted before Administrative Law Judge Mark Churchwell, in Texarkana, Miller County, Arkansas.

Claimant was represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by the Honorable William C. Frye, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 5, 2008, in Texarkana, Arkansas. A Prehearing Order was entered in this case on March 14, 2008. This Prehearing Order identified the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the Prehearing Order or at the start of the hearing and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The employer/employee/carrier relationship existed at all relevant times.
3. The claimant sustained multiple injuries on April 2, 2006, including injuries to his head, neck and left shoulder.
4. Pursuant to a Change of Physician Order entered August 30, 2007, the claimant's primary treating physician is Dr. Thomas Hart.
5. The respondents have controverted any and all treatment following the initial evaluation conducted by Dr. Hart on September 28, 2007.
6. The claimant's average weekly wage was \$136.48, entitling him to compensation rates of \$91.00 per week for temporary total disability or permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the present time are limited to the following:

1. Additional medical treatment proposed by Dr. Hart.

### **DISCUSSION**

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a).

Injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury.

Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163,

924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant sustained admittedly compensable injuries on April 2, 2006, at work when a pallet fell, striking him on the head and sliding down the left side of his body. The claimant received emergency room treatment and diagnostic tests that day at Christus St. Michael Hospital. Two days later, the claimant came under the care of Dr. Mark Gabbie who treated Mr. Foster until October 6, 2006, when Dr. Gabbie released Mr. Foster. Through the assistance of an attorney, the claimant received a Change of Physician Order from the Arkansas Workers' Compensation Commission on August 30, 2007. The claimant presented to Dr. Thomas Hart on September 28, 2007.

Dr. Hart has proposed diagnostics left cervical facet injections for the claimant's neck complaints, referral to Dr. Reginald Rutherford for a neurological evaluation, and referral to Dr. Scott Bowen for an orthopedic shoulder evaluation.

After reviewing the entire record, I find that the claimant has failed to establish by a preponderance of the evidence that the diagnostic injections and evaluations proposed by Dr. Hart are reasonably necessary for treatment of his work related injuries.

In this regard, I note that the claimant has already undergone diagnostic testing including a CT of the head and brain, a CT of the cervical spine, X-rays of the pelvis, X-rays of the cervical spine, and an MRI of the cervical spine. I am also persuaded that additional testing and treatment are not reasonably necessary in light of the claimant's failure to attend his last three scheduled physical therapy sessions in September and October of 2006. The claimant attributes his failure to attend physical therapy to oversleeping from medications prescribed by Dr. Gabbie. I do not find this testimony persuasive. I note that Dr. Gabbie did at one time prescribe the claimant medication which made the claimant very sleepy when he appeared at Dr. Gabbie's office on June 28, 2006. However, by July 7, 2006, the claimant did not appear to be sedated when seen at Dr. Gabbie's office. Furthermore, in addition to not appearing for three physical therapy sessions, the claimant also did not retain the band prescribed for home physical therapy sessions, and the claimant did not attend an evaluation for his shoulder with Dr. Charles Pearce arranged by the respondents in 2008. The preponderance of the evidence persuades me that the claimant had abandoned his therapy in October of 2006 when he was released from further treatment by Dr. Gabbie.

In light of the diagnostic testing which the claimant has already undergone, and his abandoned therapy in 2006 and Dr. Gabbie's release from further treatment in 2006, I find that the claimant has failed to establish that the additional evaluations and diagnostic injections proposed by Dr. Hart in September of 2007 would be reasonably necessary in connection with the claimant's compensable injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times.
- 3) The claimant sustained multiple injuries on April 2, 2006, including injuries to his head, neck and left shoulder.
- 4) Pursuant to a Change of Physician Order entered August 30, 2007, the claimant's primary treating physician is Dr. Thomas Hart.
- 5) The respondents have controverted any and all treatment following the initial evaluation conducted by Dr. Hart on September 28, 2007.
- 6) The claimant's average weekly wage was \$136.48, entitling him

to compensation rates of \$91.00 per week for temporary total disability or permanent partial disability.

- 7) The claimant has failed to establish by a preponderance of the evidence that the additional medical treatment proposed by Dr. Hart is reasonably necessary for treatment of his work related injuries.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

**IT IS SO ORDERED.**

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**MARK CHURCHWELL**  
**Administrative Law Judge**