

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609191

JEFF HECKMAN

CLAIMANT

RHEEM MANUFACTURING COMPANY

RESPONDENT

OLD REPUBLIC INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED **APRIL 23, 2008**

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 DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 8, 2008, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on October 30, 2007. 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 stipulations were offered by the parties and are hereby accepted:

1. On August 11, 2006, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$475.00 for total disability and \$356.00 for permanent partial disability.
3. On August 11, 2006, the claimant sustained a compensable injury to his low back.
4. There is no dispute, at present, over temporary disability benefits.
5. The claimant has sustained a permanent physical impairment rating of 10 percent to the body as a whole for his compensable injury

and the respondents are paying permanent partial disability benefits for this degree or percentage of permanent physical impairment.

6. There is no dispute over accrued medical expenses.

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

1. The claimant's entitlement to additional medical services by and at the direction of Dr. Swicegood.

In regard to these issue, the claimant contends:

"The claimant contends that the respondent/carrier wrote a letter to Dr. Standefer implying that the claimant did not receive improvement from injection that Dr. Swicegood had provided and that Dr. Standefer relied on a material mistake of fact in indicating that the claimant did not appear to need any further injections."

In regard to these issue, the respondents contend:

"Claimant had pre-existing low back problems prior to August 11, 2006, and apparently had prior treatment including LESIs and MRIs reflecting a disc protrusion. Claimant reported a low back injury on August 11, 2006. Respondents provided medical treatment with Dr. Loyd, the company physician, who subsequently referred claimant to Dr. Standefer, a neurosurgeon. Dr. Standefer performed surgery on September 21, 2006. Claimant began seeing Dr. Swicegood March 8, 2007. It is unclear if he was referred by a treating physician; however, his treatment was paid for by respondents. Claimant underwent three LESIs-March 8, 2007, April 9, 2007, and May 7, 2007. Immediately following the first LESI, claimant reported marked improvement in pain. The improvement apparently lasted 8 days according to Dr. Loyd's record. Immediately following the second LESI, claimant reported mild improvement. Claimant again reported mild improvement following the third LESI performed on May 7, 2007.

Dr. Standefer advised in his May 25, 2007 letter that he would not anticipate claimant would require further injections. He also advised that claimant should use

over the counter medication and did not need prescription medication.

It appears to be claimant's position that Dr. Standefer, who noted in his records that claimant reported improvement from the LESIs, somehow forgot that and was improperly influenced by the adjuster's letter which claimant reads as implying that claimant did not receive benefit from the LESIs and that is why Dr. Standefer states no further LESIs were necessary nor were additional prescription medications necessary. It is respondents position that it is not liable for any further treatment by Dr. Swicegood."

DISCUSSION

_____The sole issue presented for resolution concerns the claimant's entitlement to additional medical services by and at the direction of Dr. John Swicegood. The burden rests upon the claimant to prove that the medical services he now seeks represent "reasonably necessary medical services" for his compensable injury.

Medical services are reasonably necessary when their purpose or goal is related to or connected with the compensable injury. Further, such medical services must have a reasonable expectation of accomplishing their intended purpose or goal. Reasonably necessary medical services are not limited to those services directed toward active treatment to resolve or improve the actual physical damage caused by the compensable injury, and, as a result, are not limited to the healing period. Medical services that are only intended to provide some degree of relief or control of chronic symptoms, long after the healing period has ended, may still constitute "reasonably necessary medical services" under the Act.

In the present case, the claimant sustained an admittedly compensable injury, in the form of a disc herniation at L4-5 with resulting nerve root

impingement. This injury ultimately required surgical intervention by Dr. Michael J. Standefer, a neurosurgeon.

After the claimant's initial follow up period from his surgery, Dr. Standefer referred the claimant for evaluation and treatment by Dr. John Swicegood. Dr. Swicegood is an anesthesiologist and chronic pain management specialist. The records of Dr. Swicegood show that he first saw the claimant on March 8, 2007. Following his review of the claimant's records and his own physical examination of the claimant, Dr. Swicegood diagnosed the claimant as suffering from displacement of an intervertebral disc without myelopathy, post-laminectomy syndrome of the lumbar spine with radiculitis or neuritis, and spondylosis of the lumbosacral spine without myelopathy. Dr. Swicegood's initial course of treatment of claimant consisted of a series of three lumbar epidural steroid injections. These injections were performed on March 8, 2007, April 9, 2007, and May 7, 2007. These injections were made into the area of the lumbar spine that was damaged by from the claimant's compensable injury. All of the evidence presented shows that these injections provided the claimant with some degree of relief from his chronic pain complaints, at least temporarily.

On May 10, 2007, Dr. Standefer assessed a permanent physical impairment of 10 percent to the body as a whole, which he attributed to the claimant's compensable herniated disc and resulting surgery. He continued the previous restrictions he had placed upon the claimant's potential employment activities. At that time, he discharged the claimant from his care to return only on an as needed basis. However, Dr. Standefer did not see or evaluate the claimant on that date and had not seen him since his release from the neurosurgery clinic on March 30, 2007.

On May 25, 2007, Dr. Standefer responded to an inquiry from the respondents, concerning the nature of the claimant's restrictions and his recommended course of continued medical treatment for the claimant's compensable injury. In this letter, Dr. Standefer related that his previously imposed physical restrictions should be considered permanent. He also noted that the claimant had apparently completed his third epidural steroid injection, and he would not anticipate that any further injections would be required. Dr. Standefer did indicate that the claimant would have continued chronic difficulties for which he should use over the counter anti-inflammatories such as Advil, Nuprin, Motrin, or Aleve. He did not, at that time, recommend continuing any prescription medications.

On the basis of Dr. Standefer's report, the respondents appear to have refused to provide the claimant with any further follow up care by Dr. Swicegood, even though a follow up appointment had already been scheduled by Dr. Swicegood. On the basis of this refusal, the claimant was unable to keep his previously scheduled appointment with Dr. Swicegood for July 9, 2007.

The evidence presented unquestionably shows that the claimant's compensable injury resulted in physical damage to both the structural components of his lumbar spine (i.e. the vertebra discs) and the neurological components (the L5 exiting nerve roots). Although Dr. Standefer is a highly competent neurosurgeon with considerable expertise in this area of medicine, the surgical procedure he performed did not and was not expected to restore the claimant's lumbar spine to its pre- injury state. The claimant has obviously experienced some degree of permanent physical damage to this portion of his body for which Dr. Standefer assessed the appropriate degree of permanent physical impairment.

Chronic symptoms, particularly pain, are fairly common place in permanent spinal injuries, such as that experienced by the claimant. Dr. Standefer's area of expertise is the surgical active treatment of the actual physical damage to the spine. He does not deal with conservative or non surgical treatment of chronic symptoms from the permanent residual effects of a spinal injury. It was clearly for this reason that Dr. Standefer referred the claimant to Dr. Swicegood, whose area of medical expertise is associated with the conservative treatment of such chronic symptoms.

It was obviously the expert medical opinion of Dr. Swicegood that he needed to see the claimant in follow up, at least one more time. Otherwise, he would not have scheduled the claimant for an appointment on July 9, 2007. At this point, there is no indication that Dr. Swicegood has or would recommend further epidural steroid injections. In fact, there are a number of other widely recognized and commonly used treatment modalities that Dr. Swicegood might determine to be appropriate. He could even determine that no further treatment would be reasonably necessary.

After consideration of all the evidence presented, it is my opinion that further evaluation and treatment of the claimant's chronic pain symptoms by Dr. Swicegood does represent medical services necessitated by or connected with the claimant's compensable injury and its residual permanent effects. It is my further opinion that at least a follow up evaluation and possibly further treatment would have, at this time, a reasonable expectation of accomplishing the intended purpose of reducing or controlling the claimant's chronic symptoms. Therefore, I find that a further evaluation and possibly further treatment by Dr. Swicegood would be "reasonably necessary medical services"

for the claimant's compensable injury. Under Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On August 11, 2006, the relationship of employee-employer-carrier existed between the parties.

3. On August 11, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$475.00 for total disability and \$356.00 for permanent partial disability, when and if such benefits should be appropriate.

4. On August 11, 2006, the claimant sustained a compensable injury to his low back, in the form of herniated disc at the L4-5 area.

5. There is no dispute, at present, over the payment of temporary disability benefits.

6. The claimant's compensable injury has produced a 10 percent permanent physical impairment to the body as a whole for which the respondents have or are paying appropriate permanent partial disability benefits.

7. There is no dispute over accrued medical expenses, and all such benefits have or will be paid.

8. At least an additional follow up evaluation and possibly further treatment for the claimant's chronic pain, which has resulted from his compensable injury, by and at the direction of Dr. John Swicegood represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Thus,

the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

9. The respondents have controverted the claimant's entitlement to any further evaluation or treatment by Dr. Swicegood.

10. As no controverted indemnity benefits have been awarded to the claimant, no controverted attorney's fee can be awarded to his attorney.

ORDER

The respondents shall be liable for, at least, a follow up evaluation and possibly further treatment of the claimant's chronic pain complaints by and at the direction of Dr. John Swicegood. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE