

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F403868**

**DANIEL HERNANDEZ, EMPLOYEE** **CLAIMANT**

**CONESTOGA WOOD, EMPLOYER** **RESPONDENT**

**PENNSYLVANIA MFGRS. ASSOC. C/O  
GALLAGHER-BASSETT SERVICES, INC.,  
INSURANCE CARRIER/TPA** **RESPONDENT**

**OPINION FILED JULY 1, 2008**

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

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

**STATEMENT OF THE CASE**

On April 7, 2008, the above captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on March 5, 2008, and a Prehearing Order was filed on March 6, 2008. A copy of the Prehearing Order was marked as Commission Exhibit "1", and made a part of the record herein without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including March 29, 2004.

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- 3) The claimant's compensation rates were \$247.00 per week for temporary total disability and \$185.00 for permanent partial disability.
- 4) The claimant sustained a compensable back injury on March 29, 2004, for which claimant received a 7% whole body impairment that was paid by the respondents.

At the full hearing, the parties agreed to litigate the following issue:

- 1) Claimant's entitlement to additional medical treatment from Dr. Schlesinger, including, but not limited to, physical therapy.

At the full hearing, the claimant contended that due to his compensable back injury on March 29, 2004, he is entitled to additional medical treatment from Dr. Schlesinger, including, but not limited to physical therapy. The claimant contended that he still suffers from his compensable injury and sometimes requires pain medication. The claimant contends that he is entitled to additional medical treatment.

At the full hearing, respondents contended that they had provided all reasonably necessary medical treatment related to the claimant's compensable injury. Respondents contend that claimant is not entitled to additional medical treatment, because the additional medical treatment requested is not reasonable, necessary, and related to the claimant's compensable injury.

The respondents also contended at the time of the full hearing and in a prehearing response filed March 10, 2008, which was made a part of the record as Respondents' Exhibit No. 1, the following:

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- 1) The respondents contend that the claimant suffered a low back injury on March 29, 2004. The claimant underwent a MRI scan that showed degenerative changes at L4-5 and L5-S1 and a disc protrusion at L5-S1. The claimant underwent three lumbar epidural steroid injections. As of April 3, 2004, Dr. Schlesinger gave the claimant a 7% rating, which was accepted.
- 2) In July 2004, Dr. Schlesinger once again did a lumbar myelogram and CT. It was noted that there were no objective evidence of nerve root compression and no surgery was needed. An epidural blood patch was done as well as another lumbar epidural steroid injection.
- 3) In the interim, the claimant was evaluated by Dr. Shahim, who did another MRI, which showed no change in the disc. The claimant then returned to Dr. Schlesinger in January 2006 and had a third MRI, which, again, showed no change.
- 4) In February 2006, a second myelogram and post-myelogram CT was done that indicated no evidence of a disc. In fact, the only finding was a calcified disc on the CT scan. Subsequent to this, Dr. Schlesinger ordered a Functional Capacity Evaluation. The

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Functional Capacity Evaluation indicated unreliable effort, self limiting behavior, and inconsistent active range of motion. The claimant also reported that he was not receiving any relief from the physical therapy.

- 5) Dr. Schlesinger indicated in March 2006, that there was nothing further he could do and that the claimant was at maximum medical improvement.
- 6) The claimant then returned to Dr. Schlesinger, who noted that the claimant had undergone numerous diagnostic studies, had been treated with medication, lumbar epidural steroid injections, physical therapy, traction, a TENS unit, trigger point injections and light duty restrictions. However, the claimant reported he had no relief. It was mentioned possibly of going through the Med X program. Attached is the last report from Victoria Powell, which is report number 9. In that report, it indicates that Ms. Powell was told by the claimant that he did not wish to participate in the Med X program at that time. Since that time, there has been no further request for medical by the claimant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 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 over this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment related to his March 29, 2004, compensable injury.

**DISCUSSION**

The claimant suffered an admittedly compensable injury to his low back on March 29, 2004. Following the claimant's admittedly compensable injury, the medical records show that the claimant treated with Drs. Wooten, Schlesinger, Fenton, Matchett, Shahim, Finkbeiner, and Meador. The medical records contained in the file show that the claimant treated with numerous doctors and other health care providers from March 30, 2004, through January 10, 2007.

The medical records indicate that Dr. Scott Schlesinger was the claimant's

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primary treating physician during this period of time. The claimant's first MRI of his low back was on April 5, 2004. Said MRI report is contained at pages 3 and 4 of Respondents' Exhibit No. 3 and show that the claimant had disc extrusions at L4-5 and L5-S1. Subsequently, Dr. Schlesinger found that the claimant also suffered from degenerative disc disease at L4-5 and L5-S1. The claimant then underwent lumbar epidural steroid injections and eventually was released by Dr. Schlesinger with a 7% whole body impairment rating.

After the 7% rating from Dr. Schlesinger on May 3, 2004 (R. Ex. 3, pp. 11-12), the claimant continued to have complaints of back pain. Dr. Schlesinger then recommended additional epidural steroid injections and physical therapy. The claimant then underwent additional lumbar epidural steroid injections after which the claimant submitted to an independent medical evaluation.

On November 15, 2005, Dr. Shahim conducted an independent medical evaluation which stated the claimant's symptoms most likely resulted due to the claimant's L4-5 and L5-S1 disc disease. (R. Ex. 3, pp. 27-28). Still with pain and complaints, the claimant continued to treat with Dr. Schlesinger through the early months of 2006. The medical records show that the claimant saw Dr. Schlesinger on March 20, 2006, but not again until January 3, 2007. In his January 3, 2007, report, Dr. Schlesinger states, "I suspect this is all just a recurrent exacerbation of his

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underlying injury to his degenerative disc process.” (R. Ex. 3, pg. 60). On January 3, 2007, Dr. Schlesinger did request another MRI which was done. On January 10, 2007, Dr. Schlesinger, with the benefit of a new MRI, stated “I don’t see anything further I can do for him further from a neurosurgical perspective.” (R. Ex. 3, pg. 61). In Dr. Schlesinger’s January 10, 2007, report he once again states that with the benefit of the new MRI, “This study reveals degenerative changes only at L4-5 and L5-S1 with minor central bulging.”

Dr. Schlesinger in his last report did recommend physical therapy in the form of a Med-X program. Ms. Victoria Powell, case manager, credibly testified that Dr. Schlesinger recommended the Med-X program for the claimant’s degenerative disc disease:

Q And it’s your testimony that Dr. Schlesinger recommended the Med X program for the degenerative disc disease; is that right?

A Correct.

(T. pg. 49, lines 19-22).

The claimant has requested additional medical treatment from Dr. Schlesinger in the form of physical therapy/Med-X program and any other such treatment he may need. The respondent is required to provide medical services that are reasonably necessary for treatment of a compensable injury. Arkansas Code Annotated § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact

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for the Commission. White Consolidated Industries v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 32 (2004).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. Specifically, the claimant has requested the Med-X program as a form of physical therapy from Dr. Schlesinger. It is true that Dr. Schlesinger has recommended the Med-X program; however, as credibly testified to by Ms. Powell, Dr. Schlesinger indicated that the recommendation related to the claimant's degenerative disc disease and not his compensable injury. The claimant also testified at the full hearing that he understood that the degenerative disc disease he had was not caused by work:

Q Well, did he understand that the aging process – the degenerative disc disease was not caused by work? That's what I was asking.

THE WITNESS: Yes.

(T. pg. 24, lines 18-21).

The medical records indicate that Dr. Schlesinger has released the claimant and found that the claimant is not a surgical candidate. Further, the evidence contained in

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the record shows that Dr. Schlesinger relates the claimant's problems to his degenerative disc disease. The records also show that the claimant has worked full duty for over a year for the same employer which he had at the time of his compensable injury.

At this time the only recommendation for additional medical treatment contained in the records is from Dr. Schlesinger regarding the Med-X program. The records also are clear in that the Med-X recommendation is due to the claimant's degenerative disc disease. As such, I find that the additional medical treatment requested by the claimant is not reasonable, necessary, or related to the claimant's compensable back injury. Therefore, I find that the claimant's request for additional medical treatment should be denied and dismissed.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment related to his compensable back injury of March 29, 2004. Therefore, claimant's request for additional medical benefits is hereby denied and dismissed.

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**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb