

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F605077**

**BILLY LACY**

**CLAIMANT**

**DELTIC TIMBER CORP.**

**RESPONDENT EMPLOYER**

**ST. PAUL TRAVELERS**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED AUGUST 12, 2008**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

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

Respondents represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on July 10, 2008, for a determination if additional medical treatment was reasonable and necessary and if a vocational rehabilitation evaluation was warranted. A prehearing conference was held on May 20, 2008 and a prehearing order was filed the same date. A copy of the prehearing order was introduced as Commission Exhibit No. 1 without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable injury on July 17, 2005.
2. The compensation rates will be agreed to.
3. The respondents have paid temporary total disability benefits from April 17, 2006, through July 2, 2006, and from November 8, 2006 through June 12, 2007.
4. The respondents have paid a 10% permanent impairment rating.

5. The claimant had a change of physician to Dr. John Westwood on July 5, 2006 and Dr. Westwood referred the claimant to Dr. Barry Baskins.

The claimant contends he is entitled to additional medical treatment from Dr. Barry Baskins and he is requesting a vocational rehabilitation evaluation, since he is unable to return to work for the respondent employer.

Respondents contend that Dr. Baskins' treatment is not reasonable and necessary. Respondents further contend that since Dr. Phillip Kravetz released the claimant without restrictions, a vocational rehabilitation evaluation is not necessary.

### **ISSUES TO BE LITIGATED**

1. Additional medical treatment.
2. Vocational rehabilitation evaluation.

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 made in accordance with Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was a compensable injury on July 17, 2005.
2. The compensation rates will be agreed to.
3. The respondents have paid temporary total disability benefits from April 17, 2006, through July 2, 2006, and from November 8, 2006 through June 12, 2007.

4. The respondents have paid a 10% permanent impairment rating.
5. The claimant had a change of physician to Dr. John Westwood on July 5, 2006 and Dr. Westwood referred the claimant to Dr. Barry Baskins.
6. The claimant has proven by a preponderance of the evidence that additional medical care and treatment by Dr. Barry Baskins is reasonable and necessary and pursuant to a referral by the authorized treating physician.
7. Respondents remain responsible for the additional medical care.
8. The claimant has proven by a preponderance of the evidence that a vocational rehabilitation evaluation paid by the respondents is reasonable and necessary pursuant to Ark. Code Ann. §11-9-505.
9. No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715.

### **DISCUSSION**

The claimant, 33 years old, started the tenth grade in school before quitting and beginning work in the logging woods. The claimant can read and write and knows math but did not get his GED nor continue any training programs. The claimant began part time for the respondent employer in August 1992 and then went full time in January 1994. The claimant was maintenance lead man, making approximately \$55,000 per year. The claimant had no previous back problems. On July 17, 2005, the claimant was helping another employee pick up a log and he hurt his back.

According to the claimant, he treated with Dr. John Slater who returned him back to work seven different times. The claimant last worked for the respondent employer on August 24, 2006, where he had been working light duty from August 15, 2006 through

August 24, 2006. The respondent employer sent the claimant home and contended he was unable to perform his job. Dr. Slater referred the claimant to Dr. Kravetz and he performed surgery. According to the claimant, since the surgery his legs stay numb and he has constant pain in his back, like joints rubbing together. The claimant has had epidural injections and facet joint blocks.

### **ADJUDICATION**

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). 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).

In the present case, the claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary. The claimant was a credible witness who described his injury and his treatment following the injury. The claimant testified that he last saw Dr. Kravetz on December 19, 2007, and was told to return on an as needed basis. The claimant testified he called in February or March 2008 and was given a June 10, 2008, appointment. When he got to the appointment, he was questioned if he had received pre-authorization from workers' compensation to see the doctor again and the claimant stated that he did not know he had to get another pre-authorization and he was not allowed to see Dr. Kravetz.

The claimant had a change of physician to Dr. Westwood and he referred the claimant to Dr. Barry Baskins. According to the claimant, respondents have not paid any medical for Dr. Baskins' care and treatment. The claimant has some medication to help sleep at night and deal with pain; however, he does not have any medication for pain to take during the day. The claimant first saw Dr. Baskins on December 10, 2007 and he had a return appointment with Dr. Kravetz on December 19, 2007. Dr. Kravetz told the claimant he was healing fine and to do what he could do.

The claimant described his problems now:

A [Witness] I can't sit up straight. When I walk, it feels like somebody has got their hands on my hips and got their knee right on my tailbone and just trying to break my tailbone. That's what it feels like.

When I sleep at night, I have to sleep on my stomach with pillows under my stomach in an arch. I can't lay flat down any way. I just feel like my joints are rubbing the nerves in between my joints. That's what it feels like.

Q [Mr. McNeely] What kind of limitations has this had on your daily activity?

A Quite a bit. I can't go out and do anything like I used to. I mean they wanted me to help coach my little boy's ball team, and I couldn't do any of that stuff. I can't get out and do anything with the kids anymore. (T., p. 22, lines 3-16.)

The claimant testified he can stand 15 to 20 minutes before his legs go numb and he has to sit or lie down. The claimant testified that Dr. Baskins gave him some pills that help him sleep at night and that has helped; however, he wants to pursue the rhizotomy recommended by Dr. Baskins. Dr. Baskins' April 7, 2008, report indicates that the claimant has had a series of three different lumbar facet blocks done and each one gave him almost immediate relief of his pain. Dr. Baskins' April 7, 2008, report recommends the facet rhizotomy procedure for pain management. Even Dr. Kravetz's notes indicate that the claimant was scheduled for the rhizotomy and he would do anything reasonable to give the claimant some pain relief. I found the claimant to be an employee with a consistent work record until his injury and found his testimony to be candid and credible. I find the claimant has presented a preponderance of the evidence in favor of additional pain management treatment following his compensable injury as being reasonable and necessary. Respondents remain liable for the reasonable and necessary care and treatment by Dr. Barry Baskins, a referral from Dr. Westwood.

The claimant has requested a vocational rehabilitation evaluation since he was terminated from the respondent employer following his compensable injury and after having been employed with the respondent employer for 13 years.

Ark. Code Ann. §11-9-505(b)(1) provides:

In addition to benefits otherwise provided for by this chapter, an employee who is entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or reemployment assistance shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation if the commission finds that the program is reasonable in relation to the disability sustained by the employee.

In the instant case, the claimant was terminated from his employment with the respondent and was not provided any re-employment assistance. The claimant has a tenth grade education but has an aptitude for maintenance type work. He has a 10% permanent partial anatomical impairment and has work limitations. The claimant has attempted to find other employment within his capabilities and restrictions and is currently working on a part-time basis with chicken houses. The claimant now works at the chicken houses but he only oversees the feeding and watering of the chickens and he works no more than 4 hours per day and gets paid \$150 a week. He is not able to support his family on the wages he is paid for the part-time work and would be eager to participate in a vocational rehabilitation evaluation. The claimant has attempted skidding logs but could not hold up. He has attempted working chicken houses picking up dead chickens but could not do that. He is aware that obtaining his GED may be the first recommendation and he desires to pursue that but still requests some career assistance.

The stated purpose of Act 796 of 1993 is “to pay timely temporary and permanent disability benefits to all legitimately injured workers . . . . to pay reasonable and necessary medical expenses resulting thereafter and the return of the worker to the

workplace. See, Ark. Code Ann. §11-9-101 (Repl. 1996). Likewise, Ark. Code Ann. §11-9-505(4)(d) provides that “The purpose and intent of this section is to place an emphasis on returning the injured worker to work, while still allowing and providing for vocational rehabilitation programs when determined appropriate by the Commission.” Finally, Ark. Code Ann. §11-9-1001 (Repl. 1996) contains a legislative declaration wherein the Seventy-Ninth General Assembly re-emphasized that “the major and controlling purpose of workers’ compensation is to pay timely temporary and permanent disability benefits to all legitimately injured workers that suffer an injury or disease arising out of and in the course of their employment, to pay reasonable and necessary medical expenses resulting therefrom, and then return the worker to the workforce.”

In light of the respondents’ failure to return the claimant back to his job and considering the claimant’s restrictions, limitations and motivation, I find that respondents are directed to pay for a vocational rehabilitation evaluation pursuant to Ark. Code Ann. §11-9-505. The claimant has demonstrated a desire to work and has attempted other work since his termination from the respondent employer. The claimant continues to work on a part-time basis at the time of the hearing, but the salary was not sufficient to support his family.

### **ORDER**

The claimant has proven by a preponderance of the evidence that additional medical care and treatment by Dr. Barry Baskins is reasonable and necessary and pursuant to a referral by the authorized treating physician. Respondents remain responsible for the additional medical care. The claimant has proven by a preponderance of the evidence that a vocational rehabilitation evaluation paid by the

respondents is reasonable and necessary pursuant to Ark. Code Ann. §11-9-505.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715.

Therefore, no attorney's fees are awarded.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**