

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F412598

MATTHEW SHREVE, EMPLOYEE

CLAIMANT

**ARVEST BANK GROUP, INC.,
EMPLOYER**

RESPONDENT NO. 1

**AIG CLAIM SERVICE,
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED APRIL 10, 2008

Hearing conducted before Administrative Law Judge Elizabeth Danielson in Springdale, Washington County, Arkansas, submitted on the record before Administrative Law Judge S. Dale Douthit.

Claimant was represented by Mr. Conrad Odom, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 1 was represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 4, 2007, the above captioned claim came was heard in Springdale, Arkansas, by Administrative Law Judge Elizabeth Danielson. Thereafter, due to Judge Danielson's departure from the Commission, this claim was transferred to the undersigned on January 14, 2008. The hearing before Judge Danielson on December 4, 2007, was to determine whether the claimant was entitled to additional workers' compensation benefits.

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A prehearing conference was conducted in this claim on November 20, 2007, and a Prehearing Order was entered by Judge Danielson on November 26, 2007. The November 26, 2007, Prehearing Order was introduced into the hearing record as Commission Exhibit "1".

It was stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim, and that prior opinions are *res judicata* and the law of this claim.

By agreement of the parties, the sole issue for determination was claimant's entitlement to additional medical treatment.

Claimant contended, in summary, that the employee-employer relationship existed on or about August 15, 2004. On that date, claimant sustained a compensable injury to his mid-back; that claimant was treated by Max Beasley, ANP in Lowell, Arkansas; that claimant was also treated by Drs. Davis, Banks, and Cannon; that Dr. Cannon had referred the claimant to Dr. Gordon for pain management and continued care; that an MRI was requested by Dr. Gordon which has been denied; that the claimant has had continued difficulties as a result of his work related injury and was unable to continue his employment and is entitled to temporary total disability benefits from March 28, 2007, to April 13, 2007.

Respondent No. 1 contended, in summary, that all appropriate benefits have

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been paid with regard to the claimant's mid-back injury; that medical documentation submitted by claimant's counsel does not support entitlement to additional medical treatment. Respondent No. 1 has not controverted this claim. In the event claimant's counsel is able to come forward with medical documentation from the claimant's authorized treating physicians indicating an entitlement or need for additional medical treatment associated with the claimant's compensable injury, Respondent No. 1 will certainly take a position on whether same is reasonable and necessary. It is Respondent No. 1's position the medical documentation does not support entitlement to additional indemnity benefits either.

Respondent No. 2 was represented by Ms. Judy Rudd at the prehearing conference and contended wage loss is premature.

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, 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 are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the evidence that he is entitled to the additional medical treatment requested;

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including but not limited to, the RS Stimulator recommended by Dr. Cannon; the thoracic spine MRI conducted on March 28, 2007; and physical therapy as recommended by Dr. Cannon, as such medical treatment is reasonable, necessary, and related to the claimant's compensable thoracic spine injury. All such medical treatment listed above is the sole responsibility of Respondent No. 1.

DISCUSSION

Respondent No. 1's conduct in failing to provide claimant with medical treatment, clearly related to the compensable thoracic injury, is troubling. First, the claimant testified another insurance company and himself had to pay for his March 28, 2007, thoracic spine MRI. (T. pp. 15-16, lines 15-25 & lines 1-6). The March 28, 2007, thoracic MRI (R. Ex. 1, pg. 37) came over a year after Dr. Cannon (claimant's authorized treating physician) recommended it in his January 24, 2006, report. (R. Ex. 1, pp. 35-36). Dr. Cannon stated in his January 24, 2006, report that he had been treating the claimant for his thoracic problems and that "within a reasonable degree of medical certainty" a repeat thoracic MRI was needed.

It took well over a year for the claimant to finally get the thoracic MRI, and even then the respondents didn't pay for it. Such delay of a procedure from the claimant's authorized treating physician for an admitted compensable injury is unconscionable. Respondent No. 1 offered no explanation of their failure to provide the thoracic MRI. The Workers' Compensation Act requires employers to provide

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such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. § 11-9-508. Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. Artez Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Clearly, I find the March 28, 2007, MRI should have been provided for by Respondent No. 1 and they are ordered to take financial responsibility for it. Said MRI was clearly reasonable, necessary, and related to the claimant's compensable thoracic injury.

Next, Dr. Cannon in his January 24, 2006, letter also recommended the claimant undergo physical therapy. (R. Ex. 1, p. 35). It has now been over two years and the claimant still has not received the physical therapy. Respondent No. 1 indicated in the transcript and in exhibits that they would provide the physical therapy recommended by the IME doctor (Dr. Sprinkle). However, Dr. Sprinkle only recommended two physical therapy sessions. I find that recommendation very strange. Of course in Respondent's Exhibit No. 2, page 4, respondent's counsel offers to provide the two visits for physical therapy per Dr. Sprinkle. That was very kind of the respondents; however, I find that whatever physical therapy recommended by Dr. Cannon over one and one-half years before Dr. Sprinkle to be more reasonable in this case. I find that the physical therapy recommended by Dr. Cannon to be necessary

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and related to the claimant's compensable injury' and such physical therapy is hereby ordered to be **arranged** and **paid** for by Respondent No. 1 forthwith.

Last, the claimant has requested an RS Stimulator per Dr. Cannon's recommendation in his May 2, 2007, report (R. Ex. 1, pg. 39). When Respondent No. 1's counsel was questioned by the administrative law judge at the full hearing about providing the RS Stimulator, Respondent No. 1's counsel responded "I don't know if that has ever been even requested. That's something I'll have to check with the adjuster." (T. pg. 17-18, lines 23-25 & lines 1-2). I find that response and the actions of the respondents extremely troubling. Clearly, Dr. Cannon recommended the stimulator in May of 2007, and the report in which he made the recommendation was the respondents' own exhibit.

Respondents give no reason or explanation for not getting the claimant the RS Stimulator. I find that the RS Stimulator is reasonable, necessary, and related to the claimant's compensable thoracic injury and respondents are directed to provide such forthwith.

AWARD

Respondent No. 1 is hereby directed and ordered to pay for the additional medical treatment requested by the claimant, including but not limited to, the March 28, 2007, thoracic MRI, physical therapy as directed by Dr. Cannon, and an RS

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Stimulator.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb