

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBERS F702502, F603490 & F712036

**IRIS VARNADOE,
EMPLOYEE**

CLAIMANT

**SMITH BLAIR, INC.,
EMPLOYER**

RESPONDENT

**INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA c/o ESIS, INC.,
CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 11, 2008

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

The respondent was represented by HONORABLE NELSON SHAW, Attorney at Law, Texarkana, Arkansas.

STATEMENT OF THE CASE

A hearing was held regarding the above-styled claims on August 7, 2008, in Texarkana, Arkansas. A Prehearing Order was entered in this case on April 16, 2008. The following stipulations were submitted by the parties 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 a compensable back injury February 26, 2007, and the respondents accepted

and paid for medical treatment through the Gabbie Medical Clinic and Dr. Norris Knight associated with this compensable injury.

4. The respondents accepted and paid temporary total disability benefits for the compensable back injury in the amount of \$377.00 per week.
5. Pursuant to a Change of Physician request concerning the compensable back injury of February 26, 2007, the claimant's primary treating physician is now Dr. Christopher Mocek pursuant to the Order entered September 18, 2007.
6. The respondents have controverted and refused to pay for any additional medical treatment being recommended by Dr. Mocek following his initial evaluation conducted October 16, 2007.

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

1. Whether the claimant is entitled to the additional medical treatment being recommended by Dr. Christopher Mocek associated with the claimant's compensable back injuries.
2. Attorney's fees.

3. All other issues regarding the claimant's back and shoulder claims are hereby reserved.

The record consists of the August 7, 2008, hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant sustained an admittedly compensable back injury on February 26, 2007, while performing an inventory for Smith Blair. The respondents accepted treatment and paid for medical benefits provided by Gabbie Medical Clinic and Dr. Norris Knight.

Dr. Knight diagnosed the claimant with spondylolisthesis of the L5 vertebrae over S1 with secondary degenerative changes of the lumbar spine. During the claimant's second visit to the office, Dr. Knight concluded that the claimant's two options were to either live with her condition with continued non-operative conservative treatment or to have a spinal fusion from a spine surgeon, Dr. Buono. On May 8, 2007, Dr. Knight further indicated on the claimant's third and final visit, "She has not had an MRI. Case manager thinks she will be denied the spine fusion because of pre-existing disease, i.e., spondylolysis and spondylolisthesis. Therefore she will have an MRI on

her personal insurance if she decides to proceed with surgery and referral to Dr. Buono. She is at MMI today.”

On June 13, 2007, the claimant presented to her family physician, Dr. Paul Pappas, who ordered an x-ray and an MRI of the lumbar spine. However, the claimant did not return to Dr. Pappas for follow-up. The claimant instead sought and received a change of physician to Dr. Christopher Mocek, a physician at Innovative Spine Care in Little Rock.

Dr. Mocek examined the claimant on October 16, 2007. Dr. Mocek interpreted the June 27, 2007, MRI as indicating a herniated disk at L4-5 and an annular tear at L5-S1. Dr. Mocek proposed a series of three epidural steroid injections followed by an aggressive physical therapy program. If the claimant continued to have pain after injections and physical therapy, Dr. Mocek indicated that he would recommend a lumbar discogram and post-discogram CT to try to determine which disc is the pain generator for a possible percutaneous disc procedure.

In the present claim, the claimant seeks a finding that the course of additional treatment proposed by Dr. Mocek is reasonably necessary for treatment of her compensable injury. In addition, the claimant contends that the respondents should be liable for the lumbar MRI ordered by

Dr. Pappas after her release by Dr. Knight. The respondent contends that no additional treatment after May 8, 2007, is reasonably necessary in light of Dr. Knight's release of the claimant at maximum medical improvement with no permanent impairment on May 8, 2007.

The 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. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003).

What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

A claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004), citing Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In the present case, I find that the claimant proved by a preponderance of the evidence that the MRI testing she

underwent on June 27, 2007, was reasonably necessary diagnostic treatment for her admittedly compensable lumbar injury. In this regard, I am persuaded by Dr. Knight's comments on May 8, 2007, that an MRI was appropriate in relation to possible treatment for a work-related exacerbation to the claimant's pre-existing spondylolisthesis and degenerative disk disease. The claimant's testimony and the complete lack of any contradictory evidence in the record to the contrary persuade me that the claimant had never experienced any back symptoms before February 26, 2007, consistent with Dr. Knight's conclusion that the claimant experienced a traumatic exacerbation at work.

Dr. Knight's reports on May 8, 2007, also persuade me that the claimant would require an MRI evaluation to determine whether spinal fusion was appropriate treatment for her back, but any MRI and work-up for a spinal fusion by Dr. Buono would be placed on the claimant's personal insurance because the workers' compensation case manager thought spinal fusion would be denied because the spondylolysis and spondylolisthesis pre-existed the work injury.

I note that the Commission and the Arkansas Court of Appeals both concluded long before May 8, 2007, that an employer can be liable for treatment and surgery where a work-related injury exacerbates a pre-existing condition. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004) [Doctors were under the mistaken belief that a work injury must be the major cause of the need for treatment; employer liable for knee replacement surgery where the work injury was a factor in a need for surgery.]; Thomas Ford v. Dependable Air Conditioning Co., Full Workers' Compensation Commission, Opinion filed May 9, 2002 (E804697 & E606890) [Employer liable for surgery for extreme pain where work injury combines with pre-existing spinal stenosis.] Based on Dr. Knight's diagnosis on May 8, 2007, that the claimant's work-injury exacerbated her pre-existing condition, I find that the lumbar MRI was reasonably necessary diagnostic testing related to possible spinal fusion treatment for a diagnosed exacerbation of the claimant's pre-existing back abnormalities.

However, I find that the clamant has failed to establish by a preponderance of the evidence that the additional treatment proposed by Dr. Mocek would be reasonably necessary for treatment of her work-related

injury. In this regard, I note that Dr. Alan Jean interpreted the MRI on June 27, 2007, as indicating degenerative disk disease and facette arthropathy with a small central disk protrusion at the L4-5 level, and not a herniated disk.

Dr. Mocek interpreted the MRI as indicating a disk bulge or herniation at L4-5 and a possible annular tear at L5-S1. Dr. Mocek opined that the claimant should avoid any type of open back surgery or fusion, and Dr. Mocek made no reference whatsoever in his four page report of October 16, 2007, to the claimant's previously diagnosed spondylolisthesis.

In light of Dr. Mocek's lack of mention of the claimant's spondylolisthesis and his conclusion that she should avoid fusion or other open surgery, I find that the claimant reached maximum medical improvement for her work-related injury on May 8, 2007, when Dr. Knight released her. I do not find the injections and therapy proposed by Dr. Mocek to be reasonably necessary in light of the claimant's testimony that she already received an injection at the Gabbie Medical Clinic and underwent therapy ordered by Dr. Knight and in light of Dr. Knight's conclusion that without surgery she reached maximum medical improvement on May 8,

2007. I also do not find the discogram and post-discogram CT proposed by Dr. Mocek to be reasonably necessary treatment in light of Dr. Knight's finding of maximum medical improvement on May 8, 2007.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 a compensable back injury on February 26, 2007, and the respondents accepted and paid for medical treatment through the Gabbie Medical Clinic and Dr. Norris Knight associated with this compensable injury.
4. The respondents accepted and paid temporary total disability benefits for the compensable back injury in the amount of \$377.00 per week.
5. Pursuant to a Change of Physician request concerning the compensable back injury of February 26, 2007, the claimant's primary treating physician is now Dr. Christopher Mocek pursuant to the Order entered September 18, 2007.

6. The respondents have controverted and refused to pay for any additional medical treatment being recommended by Dr. Mocek following his initial evaluation conducted October 16, 2007.
7. The claimant proved by a preponderance of the evidence that the MRI she underwent was reasonably necessary medical treatment to evaluate the possible need for fusion surgery due to her diagnosed work-related exacerbation of pre-existing spondylolisthesis.
8. The claimant has failed to establish that any of the additional treatment or diagnostic testing is reasonably necessary for treatment of her compensable back injury.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge