

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607089

RATRY XAYSANASY	CLAIMANT
SIMMONS FOODS	RESPONDENT
S. B. HOWARD & COMPANY CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 12, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On June 5, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 26, 2008, and a pre-hearing order was filed on February 27, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas workers' Compensation Commission has jurisdiction of the within claim.

2. The employee/employer relationship existed among the parties at all relevant times.

3. The claimant sustained a compensable injury on June 13, 2006.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to additional medical treatment as directed by Dr. Capocelli for her low back.

Claimant's contentions are:

"The claimant contends that she is entitled to additional medical treatment for her low back as directed by Dr. Capocelli."

Respondents' contentions are:

"The respondents contend that claimant is not entitled to additional medical treatment for her low back injury."

#### DISCUSSION

The central issue in this matter is whether the claimant is entitled to additional medical treatment in regard to her admittedly compensable injury of June 13, 2006. The claimant contends that during that fall she sustained an injury to her low back and to date continues to have difficulties associated with the admittedly compensable injury. The claimant testified that on June 13, 2006, while at her work station she fell and injured her knee, hip, head, and back. The claimant further testified that the injury to her back was around her waist area.

A review of the claimant's medical records indicate that on March 6, 2006, the claimant reported to Sparks Preferred Medical Care and in a progress report it is noted, "The patient is a sixty-two-year-old Laotian female complaining of low back pain with occasional radiation down her right leg off and on for more than a

year. The weather change seems to make her feel worse. She works at OK Foods. She denies any history of trauma or accident.” The impression given in that progress report by Dr. Von Phomakay shows, “Lumbar osteoarthritis and hypertension.” On March 6, 2006, an x-ray was taken of the claimant’s lumbar spine. The clinical information noted on the report of the lumbar spine x-ray states, “Low back pain for years.” Impressions were, “Mild scoliosis, osteoporosis, and mild anterior hypertrophic changes at L2-3 and L4-5.” This medical record was dictated by Dr. Neil Crow, Jr. and the x-rays were done at the request of Dr. Von Phomakay of Sparks Preferred Medical Clinic.

On June 13, 2006, the claimant sustained the admittedly compensable injury and reports to the Sparks Emergency Room. The ER report reflects a chief complaint of, “Fall at work complaint of pain to left hand, left shoulder, left side of head also chest pain.”

On June 14, 2006, the claimant reports to Cooper Clinic in Fort Smith, Arkansas, where she complains of low back pain and right shoulder pain. The impression given by Dr. Terry Clark are that of, “Fall with right shoulder strain and contusion and lumbar strain and contusion.”

On June 21, 2006, the claimant reports to Cooper Clinic for a follow up examination and continued to report pain in the low back and the right side. X-rays of the lumbar were performed again and show mild scoliosis suspected versus positioning. The impression given by Dr. Terry Clark is, “Right hip pain.” The radiology

report given by Dr. Richard Nelson on June 21, 2006, has the following findings,

“Three views reveal an underlying mild levocurvature to the thoracolumbar spine, similar or all of which positional. There is disc space narrowing and a vacuum disc at L5-S1. There are scattered small inplate osteophytes throughout the lumbar spine. It is possible that there is a unilateral spondylosis at L5 on the right.” The impressions that were given by Dr. Nelson are, “Mild degenerative changes at the lumbar spine...”

On July 6, 2006, a radiology report was made by Dr. William Hocott regarding the claimant. The CT of the lumbar spine revealed,

“Multiple axial images were performed T11-12 to S3. Very prominent trabecular pattern is seen throughout the lumbar vertebral bodies consistent with significant osteopenic change and recommend bone density study. No gross lytic lesions are seen. No definite fracture. Mild broad disc bulge seen L2-3. Probable small broad disc protrusion L3-4. More prominent broad disc protrusion L4-5 with at least mild canal stenosis and this is more prominent left posterolateral and may abut the exiting L4 nerve root in the foramen. Disc bulge seen centrally L5-S1 with central calcification that could be osteophyte or calcified disc fragment centrally. Mild narrowing of the lateral recesses bilaterally but does not obviously compress nerve roots.”

The impressions of Dr. Hocott were, “what appears to be significant osteopenia and recommend bone density study. Disc bulges L2-3, L3-4 with possibly a protrusion L3-4 and more prominent broad protrusion L4-5 greater towards the left side.”

On July 27, 2006, the claimant was seen through referral by Dr. Borian B. Matinchev. The report of that visit states the

reason for the referral is, "Right sided muscle spasm of her upper and lower back after fall she suffered at work. Specific reason is for painful back, arm, and shoulder on the right side after a fall on the job." After examination, Dr. Matinchev states,

"At this point, I would like to recheck the x-rays to make sure there was not any subacute fracture that may have not been seen on the initial x-rays. If they are negative I do believe that she should initiate the use of a little bit stronger pain medication as well as muscle relaxants and start a physical therapy program to stretch out those muscles and regain her overall functional independence as quickly as possible. They are in agreement with this plan and will initiate obtaining plain x-rays of her thoracic, lumbar, and sacral regions of the back area. If they are negative, she is to start with some pain medications as well as a low dose Valium or muscle relaxation. She will also start with home physical therapy program to maximize her overall functional independence. She will follow up with me on an as needed basis. I have also given her a note to be off work for the next month until this is resolved."

On August 24, 2006, the claimant revisited Dr. Matinchev and in a clinic note he states,

"Since my last visit with her on July 27, 2006, she has continued to do therapy program. She has been taking, on a routine basis, her Valium as well as her pain medications. She has not gone back to work. Overall she feels that she has gotten better, but she is still quite weak and she still has quite a bit of pain in her left side. I visited with her and she states that she is sleeping some better and overall she has improved, but she still has a ways to go."

Dr. Matinchev also notes in the report that the x-rays obtained of her back were essentially unremarkable from the previous ones. He

also set out a plan for the claimant which included her being off work for another month so that she could continue to work and improve her work and stability. He notes that he intends to reassess her in about three weeks to see how she is doing and if she has gotten any better.

On June 8, 2007, the claimant had an initial evaluation at the River Valley Musculoskeletal Center with Dr. Capocelli. Dr. Capocelli's impression of the initial evaluation are,

“Multilevel degeneration, degenerative disc changes and bulging and protruding disc of the lumbar spine, right hip disease. At this point, I think further evaluation should include x-rays of the right hip to see if there is any fracture or other problems in the hip that could account for some of her symptomatology and her back pain will be managed with maximal non-operative intervention course which should include lumbar epidural steroid injections and ongoing physical therapy course at which time she will eventually return to me and we will issue an impairment rating, etc. at this point.”

An MRI report dated June 8, 2007, done by Dr. Capocelli shows the following impressions, “Multilevel degenerative disc disease with disc protrusions with multiple tearing of the annular. There is also noted L5-S1 with advanced degenerative disc disease at L5-S1.” Also on June 8, 2007, an x-ray report from the River Valley Musculoskeletal Center by Dr. Capocelli states, “Anterior posterior and lateral lumbosacral spine x-ray demonstrates five non rib bearing lumbar vertebra. No evidence of fracture or subluxation. There is mild scoliosis. This may be functional. There is mild

degenerative disc change noted at L5 with mild loss of disc space height." His impressions were degenerative changes as described.

On September 19, 2007, and November 1, 2007, the claimant received lumbar epidural steroid injections at the Physicians Day Surgery Center both performed by Dr. Robert Fisher at the direction of Dr. Capocelli.

On November 21, 2007, the claimant again reported to the River Musculoskeletal Center and was seen by Dr. Janet Canada, APN. The progress notes state,

"She was last seen in June 2007 with complaints of low back pain radiating down her right leg. On her last visit she was scheduled for a series of epidural steroid injections and was instructed on home physical therapy. She returns today for reevaluation of her pain symptoms...She has completed two epidural steroid injections. She does inform me that her pain is still in her low back radiating down her right buttock, right lateral thigh, right lateral lower leg. She does state that she has been doing home physical therapy, but has not gotten any relief from it."

The stated plan in the progress report is to, "Proceed with Dr. Capocelli's suggestions and schedule her for lumbar physical therapy with traction for three times per week for three weeks. I am also going to give her an anti-inflammatory Celebrex to take one per day."

On December 13, 2007, the claimant was seen at the River Valley Musculoskeletal Center by Janet Canada, APN. The progress report states,

"She did state that she has had one lumbar epidural steroid injection by Dr. Fisher, and

even though she thought it did not help her she felt like it helped at least 50 percent improvement of her symptoms. She does state that she is less symptomatic in her left leg. She was to have physical therapy of her lumbar spine with traction, but her workmans' comp agency did not approve this. At this point I would like to schedule the patient to see Dr. Fisher again and would like to have him focus on a lumbar transforaminal epidural steroid injection of the right L5/S1 nerve root."

On December 20, 2007, the claimant was seen at the Physicians' Day Surgery Center by Dr. Fisher and was given an injection for chronic L4-5 and 5-1 radiculopathy. On February 14, 2008, the claimant was seen at the River Valley Musculoskeletal Center. The progress note states, "At this point she has failed to receive adequate relief with physical therapy, epidural steroid injections, anti-inflammatories and pain medications." The stated plan is to, "Proceed with scheduling a lumbar mylogram with post CT scan to evaluate her lumbar pathology." This progress note was signed by Janet Canada, APN.

On February 28, 2008, the claimant underwent a CT scan of the lumbar spine post mylogram done in the axial plane with coronal and sagittal reformatted images obtained. The impressions given were that of, "Multilevel bulging annuli, worse at L4-5 level extending into the left neuroforamina with mild narrowing in the left neuroforamina at that level. No other significant abnormalities.

On February 28, 2008, the procedure of lumbar spinal mylogram was done on the claimant and the impressions were, "Multilevel bulging annuli noted. Question of a right paracentral disc herniation."

On March 18, 2008, the claimant was seen at the River Valley Musculoskeletal Center by Dr. Capocelli. A progress report states, "The patient known to me status post lumbar myelography study, which showed some degenerative changes and mild foraminal stenosis 4-5 and 5-1, but no definitive correlated findings for the right leg pain that she has at this time. The discography does have moderate degenerative disease and multilevel foraminal impingement left worse at L4-5 and mild bilateral at 5-1 that could account for her right leg pain. At this point the discogram is positive and surgical intervention may be offered. If not then we will just continue her with ongoing nonoperative intervention at this point. I discussed this with her and her husband, who is a doctor in Fayetteville today and they do understand and will proceed with that plan. At this point we will see her back after discography and make the final decision and determination at that point."

#### ADJUDICATION

On February 8, 2008, the claimant's counsel sent a letter to Dr. Capocelli which in part posed the following question, "My question to you is whether this tearing of the annular, or indeed any other findings, is consistent with damage that would be inflicted by a fall such as the one described by Ratry?" On February 18, 2008, Dr. Capocelli responded to the claimant's attorney as follows, "In response to your recent communication, I believe that it is possible that though Ratry did have some prior lumbar problems, the accident in June 2006 resulted in a significant exacerbation of her ongoing degenerative changes as well as a possible disc protrusion and annular tear multiple levels within the lumbar spine at L4-5 and L5-S1."

The medical records prior to the date of the admittedly compensable injury do show that the claimant had degenerative damage to her lower back prior to the work related incident. The medical records after that time also indicate degenerative changes that most likely have caused difficulties with the claimant's lower back. It seems clear that the claimant's preexisting and most likely degenerative condition was aggravated when she fell on June 13, 2006. However, it appears that while under the care of Dr. Matinchev in mid 2006 she made improvements with her overall back difficulties. In the clinic note of August 24, 2006, it is noted that, "Overall she feels that she has gotten better, but she is still quite weak and she still has quite a bit of pain in her left side. I visited with her she states that she is sleeping some better and overall has improved, but she still has a ways to go."

The claimant then, on June 8, 2007, initiates contact with Dr. Capocelli's office who again provides conservative treatment to the claimant including steroid injections through Dr. Fisher. In Dr. Capocelli's February 18, 2008, letter he indicates that it is only possible that the lumbar problems that he is currently treating the claimant for are related to her fall in June 2006.

In this matter it is the burden of the claimant to prove beyond a preponderance of the evidence that the additional medical treatment that she is currently requesting is reasonably and necessarily related to the admittedly compensable injury in June 2006. The improvement that the claimant saw under Dr. Matinchev and the degenerative nature of her difficulties lead me to believe

that although she did have an aggravation of a preexisting condition, that aggravation has most likely resolved itself. Furthermore, with the degenerative nature of her lower back difficulties and her treating physician having the opinion that her current difficulties and need for treatment is only possibly related to the June 2006 fall, I find that she has failed to meet the burden of proof in that the additional medical treatment sought is reasonably and necessarily related to her admittedly compensable injury in June 2006.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 26, 2008, and contained in a pre-hearing order filed February 27, 2008, are hereby accepted as fact.
2. The claimant failed to prove beyond a preponderance of the evidence that she is entitled to additional medical treatment for her lower back.
3. The additional medical treatment sought by the claimant is not reasonable and/or necessary.

ORDER

In accordance with the above findings and conclusions of law,  
this claim is hereby denied.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE