

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711660

MARK E. GATES

CLAIMANT

NABHOLZ CONSTRUCTION

RESPONDENT EMPLOYER

ACIG INSURANCE COMPANY

RESPONDENT CARRIER

ORDER AND OPINION FILED MARCH 17, 2009

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on February 18, 2009, in Little Rock, Arkansas. A prehearing conference was held on January 6, 2009 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was an August 16, 2007, compensable injury.
2. Respondents paid for the claimant's office visits to Dr. David Stewart on August 16, 2007 and October 9, 2007.

The claimant contends that he is entitled to additional medical treatment by Dr. Michael Moore. The Commission entered an order authorizing a change of physicians to Dr. Moore. The claimant saw Dr. Moore one time and he recommended some additional testing and treatment and these recommendations have been denied by

respondents. The claimant further requests the medical treatment he received from Dr. David Stewart be paid.

Respondents contend the claimant sustained a minor injury on August 16, 2007, and respondents accepted the injury as compensable and paid for medical on August 16, 2007 and in October 2007 and Dr. Moore's initial visit on September 23, 2008. Respondents contend all other medical the claimant has requested is not reasonable and necessary.

ISSUES TO BE LITIGATED

1. Additional medical benefits.

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 an August 16, 2007, compensable injury.
2. Respondents paid for the claimant's office visits to Dr. David Stewart on August 16, 2007 and October 9, 2007, and Dr. Moore's September 23, 2008, visit.
3. The claimant has proven by a preponderance of the evidence that the additional medical treatment he has sought for his hand and the additional testing and treatment recommended by Dr. Moore is reasonable and necessary and related to the

claimant's compensable injury. The claimant has also proved by a preponderance of the evidence the medical treatment with Dr. Stewart and Dr. Yocum is also reasonable and necessary.

4. Respondents are responsible for the reasonable and necessary medical awarded.

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

DISCUSSION

The claimant, 38 years old, worked for the respondent employer as a welder. On August 16, 2007, the claimant was working and sustained a compensable injury when he was attempting to lower a personal lift basket. The claimant went to grasp the handle to crank the basket down when a co-worker tripped a cog and released a gear that caused the crank handle to freewheel. The claimant reached out to grasp the handle and it had begun to spin and had built up momentum and struck the claimant. The handle struck his right wrist and down the back of his right thumb. The claimant was knocked backwards. The claimant knew immediately that his right hand, wrist and the back of his little finger on the left hand were hurt. The claimant's hand had immediate swelling and bruising with pain and some numbness. The claimant was taken to the office and the job superintendent, Derrick Barber, took him to Dr. David Stewart. The claimant had x-rays, a prescription and received an immobilizer for his thumb and wrist and returned to work light duty for the next month. The claimant's

hand continued to swell, have pain, tingle and have numbness. The claimant left the employer and went to work for Union Local 155 with a higher pay. The claimant continued to weld on his new job.

According to the claimant, the respondent insurance carrier only paid for the one visit to Dr. Stewart but he continued to seek treatment and pay for it himself. The claimant testified that he has continued to have problems with his hand. The claimant further testified that his problems continue today with mobility, pain, tingling, throbbing and soreness. It never goes away. The claimant can no longer lift more than 10 or 15 pounds with his right hand. The claimant testified that some days it hurts to even drive and shift gears. The claimant testified that to TIG weld, you have to maintain a constant rocking motion with the hand and he has to stop often. He testified that his production is cut down. The claimant takes hydrocodone and must take it every four hours like clockwork, whether at home or work. The claimant testified that he has a constant pain level of a 7 on a scale of 1 to 10.

The claimant saw Dr. Michael Moore on September 23, 2008 and he ordered some additional testing after his examination; however, respondents have controverted any further treatment. The claimant also saw Dr. John Yocum on two occasions and respondents did not pay for those visits. The claimant verified that after seeing Dr. Yocum in March 2008, he continued to see Dr. David Stewart until he saw Dr. Michael Moore in September 2008. Dr. Stewart continues to prescribe the pain medication he takes.

Under cross examination, the claimant testified that he has not attempted his

hobbies of drawing and metal art since his work injury in August 2007.

Tim Nabholz, manager of the respondent employer, testified that the claimant returned to work for him following the accident and doctor's appointment and continued to work for another month. Mr. Nabholz testified that he only saw the claimant about two times following the accident. Mr. Nabholz testified the claimant's skills were good and that he had worked with him off and on for eight years.

ADJUDICATION

The claimant contends that he has continued to need medical treatment for his hand and requests respondents be responsible for the reasonable and necessary care and treatment. Respondents have paid for two visits with Dr. Stewart and the one visit with the change of physician doctor, Dr. Michael Moore, the hand specialist. 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).

The claimant clearly sustained a compensable right hand injury arising out of his employment. Respondents have acknowledged they have paid for two visits to Dr.

Stewart and a visit to Dr. Michael Moore following a change of physician order. The medical evidence reveals the claimant has continued to see Dr. Stewart for pain and problems associated with his right hand and has also seen Dr. Yocum. Dr. Stewart's medical record of December 20, 2007, reflects:

® hand still hurting. Received call from a 'Lynn' 1 800-250-2511 from W/C and they will let you see a orthopedic Dr. of choice. Still has pain in ® thumb and cannot grip hand - will be back in office. Exh. No. 1, p. 41.)

Following that visit, the medical documents the claimant sought treatment with Dr. John Yocum who ordered an EMG/NCS. A March 14, 2008, report from Dr. Mike Chesser indicates the NCS revealed normal results and no evidence of peripheral nerve injury. On March 17, 2008, Dr. Yocum saw the claimant again and his report notes no swelling; however, he did prescribe Neurostat and advised the claimant of a continuing range of motion program for his hand.

The claimant's family doctor, Dr. S. D. Taggart recommended the claimant see a hand specialist and the claimant then sought a change of physician to Dr. Michael Moore. Dr. Moore examined the claimant on September 23, 2008 and noted the claimant complained of "persistent pain along the radial aspect of the wrist and hand. He describes a burning sensation in the thumb. He complains of pain in the thenar eminence. The pain symptoms are aggravated with activities but can occur at rest." (Jt. Exh. No. 1, p. 55.)

Dr. Michael Moore has the reputation of being a respected hand specialist in the area and has evaluated the claimant and has recommended further testing, to include

an MRI and possibly a repeat NCS/EMG. Dr. Moore indicates the claimant's case is a "complicated problem" but indicates the claimant's pain symptoms are consistent with a neuropathic etiology. Dr. Moore provided the claimant with a Vicodin prescription.

Respondents have controverted all medical except for the first two visits to Dr. Stewart and the one visit to Dr. Moore following a Change of Physician Order. In reviewing the medical evidence, Dr. Stewart's medical report reveals the respondent insurance company authorized an orthopedist visit of the claimant's choice on December 20, 2007; however, the testimony of claimant was that Dr. Yocum's medical bills were not paid by the respondent insurance company. Certainly, there was no testimony or documentation admitted into the record that the insurance company denied Dr. Yocum's treatment before the first office visit. I find respondents are responsible for the medical bills associated with the care and testing ordered by Dr. Yocum, since Dr. Stewart's medical report indicates the insurance company authorized treatment with an orthopedic specialist of the claimant's choice. I find the claimant relied on this care and treatment being the responsibility of the insurance company, since it was approved and find the equitable doctrine of estoppel would prevent the respondent from accepting liability. *Southern Hospitalities v. Britain*, 54 Ark. App. 318, 925 S.W.2d 81 (1996).

Respondents have acknowledged that the medical was controverted after October 7, 2007. The claimant presented credible testimony that he continued to have problems with his right hand of pain, numbness and weakness. The claimant continued working even though he continued to take pain medication during the day while he

worked. I find the claimant has presented credible and substantial evidence to substantiate his need for additional medical evaluation and care and treatment for his right hand. I find that the additional visits the claimant has made with Dr. David Stewart for his hand, with Dr. John Yocum and the additional testing recommended by Dr. Michael Moore are all reasonable and necessary and remain the responsibility of respondents. The claimant sustained an admittedly compensable injury and there is no indication in the medical evidence that further treatment was not warranted.

Further, 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. §11s-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, there has been no indication that the claimant has reached the end of his healing period. In fact, Dr. Moore, a respected hand specialist, has recommended some further testing to diagnose the claimant's hand malady.

I find the additional medical treatment the claimant has sought for his hand condition is reasonable and necessary and remains the responsibility of respondents. Further, the additional testing, as recommended by Dr. Michael Moore, is reasonable and necessary and is the responsibility of respondents, as well as the visits with Dr. David Stewart and Dr. John Yocum.

ORDER

The claimant has proven by a preponderance of the evidence that the additional medical treatment he has sought for his hand and the additional testing and treatment recommended by Dr. Moore is reasonable and necessary and related to the claimant's compensable injury, as well as the additional treatment by Dr. David Stewart and Dr. John Yocum.

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.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE