

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603255

JOHN POMORANSKY	CLAIMANT
OZARKS ELECTRIC COOP CORP	RESPONDENT
REGIONS CLAIMS MANAGEMENT CARRIER	RESPONDENT

OPINION FILED APRIL 18, 2011

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by BETTY HARDY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 18, 2011, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 1, 2010, and a pre-hearing order was filed on December 3, 2010. 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 this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back.

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

1. Additional medical treatment in the form of physical therapy.

Claimant's contentions are:

"Claimant sustained a compensable injury while working for Respondent on or about December 28, 2005. At that time, Claimant was in a company vehicle in the course and scope of his employment with Respondent when he was rear-ended by another driver. Dr. J. Michael Standefer referred Claimant for physical therapy, which was denied by Respondent, along with medication prescriptions, which were also denied. Additionally, the Respondents have failed to pay medical bills."

Respondents' contentions are:

"It is the contention of the respondents that all appropriate benefits to which the claimant is entitled have been paid and the claim has not been controverted. Respondents are unaware of any benefits that have been sought and not paid. Respondents reserve the right to assert additional contentions as may become known through discovery."

The claimant in this matter is a fifty-nine-year-old male who, at the time of the hearing, had been employed by the respondent for thirty-two and one-half years. His current job duties include that of courier and office worker.

On December 28, 2005, while performing employment services for the respondent, the claimant was rear-ended in an automobile accident. At that time, the claimant suffered an admittedly compensable low back injury.

The claimant's admittedly compensable low back injury eventually resulted in the claimant undergoing surgical

intervention performed on November 14, 2007, by Dr. Michael Standefer. The report of operations submitted into evidence from the November 14, 2007, operation gives a preoperative and postoperative diagnosis of "overt ruptured L5 disc with lateralization to the left."

After the claimant's operation, he continued to receive medical treatment through Dr. Standefer regarding his admittedly compensable low back injury. On December 26, 2007, the claimant had an appointment with Dr. Standefer. At that time Dr. Standefer recommended physical therapy for strengthening exercises to be conducted at Total Spine pending the approval of the workers' compensation insurance carrier. At that time, the claimant was to remain off work.

On February 5, 2008, the claimant was again seen by Dr. Standefer. At that time, the medical report indicates that the claimant has begun physical therapy and that the assessment performed on the claimant shows him to be somewhat below average in terms of strength. Dr. Standefer recommended continued physical therapy for the next two months under the direction of Total Spine. The claimant was also recommended to resume light duty employment.

At the claimant's March 11, 2008, appointment with Dr. Standefer he recommended that the claimant continue with light duty work and advised him to increase his light duty work but to avoid lifting more than thirty to thirty-five pounds. Dr. Standefer indicated that the claimant was doing reasonably well; however, the claimant did have some residual left lower extremity pain.

At the claimant's April 14, 2008, visit with Dr. Standefer he noted that the claimant "has made a nice recovery from his lumbar disc surgery." Dr. Standefer also indicates that the claimant wants to continue his current work level and gradually increase his weights. At that time, lifting no more than forty to forty-five pounds only on an occasional basis was recommended. Dr. Standefer also reiterated that the claimant should, however, continue with light duty restrictions with a weight limit of thirty to thirty-five pounds only increasing that according to how he feels.

A medical record from the claimant's March 11, 2009, visit with Dr. Standefer in part states:

"HPI: The patient is seen in clinic for follow-up purposes. He is status post lumbar disc surgery for treatment of an overt ruptured disc at L5 on the left side. He had symptoms for about 1-1/2 to 2 years prior to surgery. Since surgery, he has noted some residual muscle cramping, particularly in the calf and hamstring muscles. He is not really having any pain radiating from the back into the lower extremity, but merely the cramps tend to be present at night and often awaken him from sleep he is not having any symptoms referable to the right lower extremity. There has been no history of bowel or bladder impairment.

He returns to clinic to determine if there are any additional treatment options that are available for him.

PLAN: I reviewed my thoughts with the patient. We will provide him with a prescription for Requip. I have also advised him to try some soda water to see if this helps his cramps. We will arrange for him to get routine lumbar spine films with flexion/extension views, and a follow-up MRI scan of the lumbar spine with/without gadolinium.

I will see him again for a follow-up report in the next week or so (sic). I have reviewed this with him. The patient is amenable with these plans and, as such, we will proceed forthwith."

On February 3, 2010, the claimant again saw Dr. Standefer and the following is a portion of the medical record generated from that office visit:

"HPI: The patient is seen in clinic for routine follow-up purposes. In the interim since the previous clinic visit, he has had a follow-up MRI scan of the lumbar spine with and without gadolinium. He returns for a report.

In talking with him, he continues to have problems with pain in the low back, and he is also having some problems with intermittent cramps and fasciculations in the left gastrocnemius soleus muscle.

RADIOGRAPHIC STUDIES: His MRI scan has been reviewed and really betrays no evidence of recurrent disc protrusion. I have reviewed this with him.

PLAN: With the above facts in mind, the mainstay of therapy for him will continue to be conservative in nature. Physical therapy may well play a role here. Fasciculations and local muscle cramping will have to be managed medically.

I have reviewed this with him. The patient is amenable with these plans and, as such, we will proceed forthwith. I will coordinate his referral to physical therapy.

I am going to recommend an EMG/NCV of the lower extremity to see if there is any evidence of active denervation in the gastrocnemius soleus muscle. If such is the case, the myelography and post-myelogram CT scanning might well be necessary to more fully and completely evaluate this problem. If the EMG demonstrates only chronic nerve dysfunction, then I do not believe any

additional surgery would have a high likelihood of improving his situation.”

On May 4, 2010, the claimant was seen by Dr. Standefer and the following is a portion of the clinic note generated from that visit:

“HPI: The patient is seen in clinic for follow-up purposes. He has had a recent EMG, the results of which are normal. I have reviewed this with him. Dr. Morse has provided him with a prescription for Vitamin B6 for treatment of his cramps. This has been helpful.

PLAN: I am going to provide him with another prescription for Requip. I plan to release him from clinic as of today and he can return p.r.n.”

The claimant, in this matter, has asked the Commission to consider his entitlement to additional medical treatment in the form of physical therapy. At the hearing, the claimant continued to complain of problems with cramping in his legs. A following is a portion of the testimony that the claimant gave describing his current difficulties:

“Q. Okay. We have introduced a record that indicates Dr. Standefer had recommended some physical therapy for you, is that right?

A. Yes, sir.

Q. And do you know what the therapy is supposed - what were you complaining about to Dr. Standefer to get the recommendation for therapy?

A. Muscle spasms in my leg and tightness of the muscles. I described it as a charley horse, cramp in my leg. It's so painful at times I'm just in tears and roll in the floor at times. It knots up instantly, you know. It doesn't take just certain movement of my leg, sometimes roll over in bed or whatever,

just comes and goes. I mean, there's maybe three or four times a week it happens, numbness in my toes, muscles will, you know, go like that all that day and night (indicating).

Q. Between the time of your surgery and today, is that muscle cramping in your leg and the numbness in your toes, is it getting worse, staying the same, getting better?

A. It's not getting any better at all.

Q. And that's what we are here for today -

A. Right.

Q. - to see if you can go back and get some physical therapy?

A. Yes, sir.

Q. Is that what you are asking for?

A. Yes."

I note that I find the claimant's testimony to be credible. I believe that he was forthright in answering questions and I also believe that the cramping he has described in his legs is consistent with the medical evidence that has been submitted in this case. After review of the medical records and the claimant's testimony, I find that the claimant's request for physical therapy ordered by Dr. Standefer is both reasonable and necessary medical treatment for his admittedly compensable low back injury. Dr. Standefer has treated the claimant over an extended period of time and I do believe that he intended for the claimant to receive physical therapy for his current difficulties which had not been received as of the time of the hearing. I find that the claimant is entitled to receive that physical therapy treatment ordered by

Dr. Standefer at the claimant's February 3, 2010, visit with Dr. Standefer.

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 witness and to observe his 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 December 1, 2010, and contained in a pre-hearing order filed December 3, 2010, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to the physical therapy ordered by Dr. Standefer for the treatment of his compensable low back injury.

ORDER

The respondents shall bear the burden of paying for the claimant's physical therapy treatment ordered by Dr. Standefer.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE