

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F014069

TRAVIS EASTRIDGE, EMPLOYEE	CLAIMANT
OX BODIES, INC., EMPLOYER	RESPONDENT
CUNNINGHAM LINDSEY, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 6, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE CAROL WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed November 20, 2002.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing telephone conference conducted on April 18, 2000, and contained in the Prehearing Order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

3. Claimant has failed to prove by a preponderance of the evidence that the medical treatment he sought after April of 2000, is reasonably necessary in connection with his compensable injury.

4. Claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with his compensable injury.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I must respectfully dissent from the Commission's findings that claimant is not entitled to any additional benefits for medical treatment, temporary total disability, or the surgery offered by Dr. Patterson. The opinion of the Administrative Law Judge should be reversed.

On April 18, 2000, claimant sustained an admittedly compensable injury to his lower back when he twisted, turned, and felt a pop. He experienced pain in his lower back and right lower extremity. He had never had any prior problems with his back. Claimant presented to Dr. Sykes the next morning. Dr. Sykes ordered x-rays, prescribed medications, and placed claimant on light-duty work for approximately one week. Claimant returned to Dr. Sykes on April 26, and Dr. Sykes ordered an MRI scan.

The greater weight of the evidence indicates that respondent refused authorization for this MRI scan. Korrine Landcaster's testimony to the contrary is not credible. As a result of this refusal, claimant reasonably believed respondent would not pay for any additional treatment and did not seek such treatment until November 28, 2000.

Claimant's testimony in this regard has been characterized as "self serving." Additionally, it is asserted that claimant "self terminated treatment." These findings are simply not supported by the record as a whole.

Claimant was supposed to have a follow-up visit with Dr. Sykes after the MRI scan scheduled to be performed in May 2000. Respondent's witnesses testified that claimant had said he was feeling better and did not need to return to the doctor. Claimant testified that he did not return to the doctor because respondent had refused authorization for the MRI scan.

Dr. Sykes' answers to the questionnaire prepared by claimant's attorney have been totally discounted and misinterpreted. Claimant's testimony that Dr. Sykes told him respondent refused authorization is first criticized as "hearsay testimony." The Commission also finds that Dr. Sykes' responses to the questionnaire did not corroborate claimant's hearsay testimony, particularly in describing which MRI he was referring to, i.e., May 2000, November 2000, or December 2000.

Even a cursory review of this document reveals that it does corroborate claimant's testimony. In one response, Dr. Sykes stated "MRI ordered in April was denied." Additionally, Dr. Sykes wrote that "MRI was denied - when patient failed to keep follow-up appointment [my receptionist/nurse] contacted Ox Bodies - was told that he was better, the MRI was denied and he was back to work without difficulty." Therefore, there cannot be any doubt that respondent refused authorization for the May 2000 diagnostic study and claimant reasonably believed that

respondent was refusing to fulfill its obligation to provide prompt medical care. Claimant was able to return to Dr. Sykes and get the necessary MRI scan by utilizing his wife's health insurance.

Claimant presented credible testimony that his financial situation required that he work as much as possible. Claimant did return to work with the employer at a fairly heavy duty job. Claimant testified that he "missed a day here and there" as a result of the symptoms in his lower back and right lower extremity. In September 2000, claimant quit the employer to accept a job with Brown and Root for more money. Claimant stated that his condition progressively worsened until he had to return to Dr. Sykes on November 28, 2000. Claimant explained that regular daily activities, particularly twisting and bending, would cause an increase in his symptoms. Claimant added that such activities as bending over to tie his shoe would cause back pain. Respondent appears to be arguing that this represents an independent intervening cause. However, I do not believe the record will support such a finding. There is insufficient evidence that claimant has sustained any intervening incidents which aggravated his condition. Even if the incident involving his shoes actually happened, it is certainly not unreasonable for claimant to bend over to tie his shoes.

In my opinion, claimant is entitled to additional

reasonably necessary medical treatment in connection with the compensable injury. Claimant had no back problems prior to the compensable injury, and his current condition remains causally related to the compensable injury, without sufficient evidence to the contrary concerning an independent intervening cause.

Further, I believe claimant has proven entitlement to benefits for temporary total disability from November 28, 2000 to February 7, 2001 and August 13, 2001 to March 5, 2002. Claimant testified that he was unable to work during this period of time while waiting for diagnostic studies to be performed, and that he had returned to work on or about the ending date of each period of temporary total disability.

Finally, without any evidence to the contrary, I find that the surgery offered claimant by Dr. Patterson, if that is still the recommendation, is reasonably necessary.

SHELBY W. TURNER, Commissioner