

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010377

DIMPLE JENNEN, EMPLOYEE	CLAIMANT
DIAMOND HEAD PROPERTY OWNERS ASSOCIATION, EMPLOYER	RESPONDENT
ZENITH INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 26, 2003

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

Claimant represented by HONORABLE ZAN DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MIKE ROBERTS, 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 January 23, 2003.

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

The medical evidence reviewed as a whole does not support the claimant's contention that the surgery performed by Dr. Michael Young on September 9, 2002, constituted reasonable and necessary medical treatment.

The claimant is not entitled to additional temporary total disability benefits commencing September 9, 2002, since that claim for additional temporary total disability benefits is the result of the surgery performed on September 9, 2002, which is found to be unreasonable and unnecessary.

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

_____For the foregoing reasons, I must respectfully dissent from the majority opinion, which affirms and adopts the finding of the Administrative Law Judge that claimant failed to prove that her September 9, 2002 surgery constituted reasonable and necessary medical treatment.

The facts of this case may be stated summarily. The respondents initially accepted the claim as compensable and paid benefits, including medical treatment. The respondents sent the claimant to Dr. Cathey, Dr. Rutherford, Dr. Krishnan, and Dr. Reddy, each of whom opined that claimant was not a surgical candidate. However, none of the conservative treatment prescribed by these doctors afforded claimant any relief from her back pain, and claimant eventually treated with Dr. Michael Young. Dr. Young eventually performed lumbar surgery. The claimant testified that Dr. Young's surgery was the first treatment which provided any relief from her back pain.

I find that the surgery performed by Dr. Young was reasonably necessary, simply because it worked. It is well established that the success of a treatment is a relevant factor to be considered in determining whether treatment is reasonably necessary. Winslow v. D&B Mechanical Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The respondents essentially argue that the surgery was not

reasonably necessary because four other doctors opined that claimant was not a surgical candidate. However, their treatments did not work, and Dr. Young's surgery did.

I respectfully dissent.

SHELBY W. TURNER, Commissioner