

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113720

BILL JASON,
EMPLOYEE

CLAIMANT

STONE COUNTY,
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 6, 2003

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

Claimant represented by HONORABLE HENRY H. BOYCE, Attorney
at Law, Newport, Arkansas.

Respondents represented by HONORABLE BRUCE ANIBLE, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed October 10, 2002. The administrative law
judge found, "The IDET procedure performed on the claimant
was reasonably necessary for treatment of the claimant's
compensable injuries." After reviewing the entire record *de*
novo, the Full Commission affirms the opinion of the
administrative law judge.

I. HISTORY

The record indicates that Bill Jason, age 47, was
involved in a motor vehicle accident in 1989. Mr. Jason was

treated conservatively by Dr. James Zini and Dr. Ronald N. Williams.

Dr. Williams reported in January 1992 that a myelogram and post-myelogram CT confirmed the presence of degenerative disc disease at L4-5 and L5-S1 with bulging, particularly at L4-5, but no evidence of any herniated disc. The claimant testified that he eventually recovered from the 1989 motor vehicle accident. The claimant testified that after taking medication prescribed by Dr. Zini, "I had complete relief or just almost until this here, other than general backaches."

The parties stipulated that the claimant sustained a compensable injury on March 13, 1999. The claimant, Sheriff of Stone County, Arkansas, testified:

Q. Just so the Judge understands the nature of your injury, tell him what happened.

A. We had had a snow that was probably eight to 10 inches of wet snow that year, and I was going on a call. We'd had some complaints about a four-wheeler in a particular area there in Mountain View that went off of a steep street. I started sliding down through there and went over in about a three-foot deep ditch. It seemed like the more I tried to stop it, the faster it got; and I hit a culvert with the right front part of the vehicle I was driving.

Q. Specifically what was the nature of your injury?

A. My lower back.

Q. How did you know you were hurt?

A. Well, my back started hurting then and my left leg - I had a tingling in the bottom of my left foot, just like it was asleep.

Following the compensable injury, the claimant testified, "The calf of my left leg - I had a lot of pressure in the calf of my left leg and bad pains just right here in the center of my lower back."

Dr. Anthony D. McBride evaluated the claimant on June 11, 1999:

The patient is a pleasant 42-year-old gentleman who injured his back in 1989 following a motor vehicle accident. He was working as a police officer when he sustained a moderately high speed velocity accident. He developed back pain at that time which has persisted. He has had a workup including diskograms which apparently reproduced left leg pain. He was tentatively scheduled for surgery at that point but the patient decided to delay any surgical intervention. He has had intermittent pain since that time but over the past month, he has had more significant radiating left leg pain....

The patient's MRI is reviewed. This is dated June 3, 1999. This study reveals significant degenerative changes at L4-5 and L5-S1 increased signal intensity posteriorly at L5-S1. He has broad-based disk bulging with more protrusion toward the right side than the left side. He has bilateral L4-5 foraminal narrowing. There are no signs of large significant disk herniations.

Dr. McBride assessed, "L4-5 and L5-S1 degenerative disk changes with left lower extremity radiculopathy with active

root tension signs. I believe he is having legitimate sciatica at this point." Dr. McBride prescribed medication and arranged a lumbar epidural steroid injection. The claimant reported significant improvement in his pain following the first epidural injection, and he subsequently underwent at least one additional injection. The claimant requested another epidural steroid injection on October 23, 2000, and it was approved by Dr. McBride and administered on October 26, 2000.

Dr. McBride wrote to a representative of the respondent-carrier on April 4, 2001:

I am in receipt of your letter dated March 12, 2001. I examined Mr. Jason on June 11, 1999, and reviewed the MRI scan of his lumbar spine which was completed on June 3, 1999. My assessment was L4-5, L5-S1 degenerative disk changes with left lower extremity radiculopathy.

I do believe that the motor vehicle accident of March 13, 1999, exacerbated his symptoms, however, as we are now two years post accident, in my opinion any continuing complaints of pain would be due to his degenerative disk disease.

Another MRI of the lumbar spine was taken on June 20, 2001, with the following impression:

1. Overall, not a great deal of change from the older study of June 3, 1999, with L4-L5 and L5-S1 degenerative disk changes, with central protrusions. Again, slight foraminal narrowing is noted bilaterally.

The claimant continued to have problems with his back following the compensable injury. "I continued to get worse," he testified. "The pressure in the calf of my leg got bad, and then the pain in the center of my back - just continual pain medication." Dr. Zini referred the claimant to Dr. Robert G. Valentine, Jr., who evaluated the claimant on September 27, 2001. Dr. Valentine wrote:

He actually had done rather well for a while until a couple of years ago when he assisted some citizens after a bad snow storm, his vehicle slid off an embankment and his back pain was re-exacerbated....

MRI of the lumbar spine is reported to show "degenerative change and disc desiccation at L4-5 and L5-S1. There continues to be evidence of severe disc bulging and even some degree of protrusion." However, on viewing the films, there is desiccation and some bulging or protrusion at L4-5. L5-S1 shows a classic high intensity zone in the posterior annulus on the T2 weighted images. This has been shown to be approximately 80-85% predictive of painful annular tear.

IMPRESSION:

1. Lumbar discogenic pain with painful disc disruption.
2. Degenerative disc disease.

PLAN:

1. Mr. Jason needs to have a repeat diagnostic disc injection at L3/4, L4/5 and L5/S1 with pressure controlled discography. If any level is painful I think he should have intradiscal steroids injected.
2. In the event he does, in fact, have painful disc tear, he may well be a candidate for intradiscal electrothermal annuloplasty.

Following a tri-level "diagnostic disc injection" on October 23, 2001, Dr. Valentine discussed, "L3-4 nucleogram was normal in appearance. L4-5 and L5-S1 were grossly abnormal, with pain produced as contrast was visible in the outer disc margin under fluoroscopy, and pain produced at very low injection pressures."

Additionally, the following impression resulted from a post-discogram CT scan of the lumbar spine on October 23, 2001:

1. Unremarkable disc space at L3-4.
2. Disc space degeneration at L4-5 with circumferential peripheral extension of contrast and posterior extension of contrast within a mild central disc bulge.
3. Disc degeneration at L5-S1 with central posterior annular tear and peripheral extension of contrast. Dr. Valentine noted on November 12, 2001: Mr. Jason did go ahead and bring his June 03, 1999 MRI with him today. This reports "minor degenerative changes including interior traction spurring of a minor degree and altered disc signal at L4/5 and L5/S1 with mild posterior disc protrusion at L4/5 centrally and into both neuroforamina. This is minimal. There is no single significant focus of soft disc herniation noted on this study."

Dr. Valentine noted on November 12, 2001:

Mr. Jason did go ahead and bring his June 03, 1999 MRI with him today. This reports "minor degenerative changes including interior traction spurring of a minor degree and altered disc signal at L4/5 and L5/S1 with mild posterior disc

protrusion at L4/5 centrally and into both neuroforamina. This is minimal. There is no single significant focus of soft disc herniation noted on this study."

Generally this is something I would agree with. Note, however, at L4/5 that there is a suggestion in a couple of the sagittal images of increased signal intensity in the outer annulus suggestive of contained herniation at L4/5. At L5/S1, however, there is a huge, very obvious annular tear visible in a classic high intensity zone as described by Aprill in the British Journal of Radiology. This is predictive of a painful annular tear in approximately 80-85% of cases. It is compatible with the results of his discogram.

Impression:

Internal disc disruption, L4/5 and L5/S1 with previous abnormalities on the June 03, 1999 MRI.

Dr. Valentine suggested to the claimant that "I do think he would be a reasonable candidate for an IDET procedure at both levels." Dr. Valentine performed "Intradiscal electrothermal annuloplasty, 2 levels" on December 28, 2001. The claimant testified that he experienced relief from IDET: "It took the pressure off my left leg. The pains in my back still continue. It's bad, but the pressure in my leg is just all but gone." Dr. Valentine noted on February 18, 2002, "He reports that he is overall somewhat better. He is still having some pressure in his left leg but not as bad as preoperatively. The pain in his back is still significant." Dr. Valentine's

impression was "Internal disc disruption, two levels; status-post IDET at two levels. At this point he is essentially on track and seems to be somewhat improving."

Dr. Valentine wrote to the claimant's then-attorney on March 6, 2002:

... I feel it is only reasonable to opine that the major cause of Sheriff Jason's back pain is, in fact, the injury of March 13, 1999. Of course, this assumes that there was no recent back problem shortly preceding that time.

With respect to the annular tear at L5/S1, this appears to be a more acute problem. The disc is not significantly disrupted internally and there is a more discrete tear present. Certainly this is more compatible with a shorter term problem than a more degenerated disrupted disc would be....

With respect to objective evidence, Mr. Jason has a disc protrusion (contained disc herniation within the annulus) present at L4/5 and L5/S1. This has been reported on the MRI scan and I have seen them myself. In addition, there is an extremely obvious annular tear in the disc at L5/S1 with high intensity zone present. This is also an objective finding. With respect to the discogram, the presence of the disc disruption at L4/5 and the more discrete annular tear at L5/S1 are obvious findings and are objective....

I believe this should answer your questions adequately. I also believe that the medical evidence here strongly suggests that Sheriff Jason's problems are primarily as a result of his accident in 1999....

Mr. Jason claimed entitlement to additional worker's compensation. The claimant contended that he was entitled

to continuing medical treatment. The claimant contended that the respondents were liable for treatment provided by Dr. Valentine. The respondents contended that further medical treatment was not reasonably necessary in connection with the claimant's compensable injury.

Dr. Moore wrote to the respondents' attorney on April 16, 2002:

I have received the radiographs in question. The MRI's of June, 1999, actually two of them, early June and mid June and a diskogram and a CT diskogram in the 10-23-01 era. There is some bulging and minimal degeneration in the MRI's. There is evidence certainly of diskogram having been done showing some degenerative changes at L4/5 and L5/S1. It should be consistent with the MRI's that have been done previously. I have also reviewed some information from Dr. Valentine who was the pain management physician which had been evaluating this patient and apparently had made thoughts of a recommendation for an IDET.

It is not my opinion that IDET is an appropriate procedure to recommend for disk degeneration. I am not a believer (sic) in high intensity zone. I believe that conservative therapy is appropriate in the situation such as this. I do not feel that if IDETS are not done that more aggressive surgery such as fusion, dorsal column implants or pain pumps are a justifiable option either. There can be tears in the annulus but I feel that the reports that I reviewed tend to exaggerate the importance of such a radiographic finding.

After a hearing before the Commission, the administrative law judge found, "A preponderance of the evidence establishes that the claimant's back problems,

which resulted in the need for the IDET procedure, are causally related to the March 13, 1999, injury." The administrative law judge therefore found that the IDET procedure was reasonably necessary, and that the respondents were liable for the procedure. The respondents appeal to the Full Commission.

II. ADJUDICATION

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 857 (1987). In the present matter, the claimant contends that he is entitled to the medical treatment provided by Dr. Valentine. The claimant must prove by a preponderance of the evidence that he is entitled to said treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

The Full Commission affirms the administrative law judge's finding in the present matter that the IDET procedure was reasonably necessary. The record indicates that the claimant experienced back pain after a motor

vehicle accident in 1989. The claimant was shown to have degenerative disc disease at L4-5 and L5-S1 in 1992. The claimant credibly testified, however, that he eventually recovered from the 1989 accident. The parties stipulated that the claimant sustained a compensable injury on March 13, 1999. This compensable accidental injury resulted in acute back pain radiating to the claimant's left leg. Dr. McBride evaluated the claimant in June 1999 and assessed "L4-5 and L5-S1 degenerative disk changes with left lower extremity radiculopathy with active root tension signs."

The claimant was eventually referred to Dr. Valentine, whose impression in September 2001 was "lumbar discogenic pain with painful disc disruption." Dr. Valentine eventually recommended "intradiscal electrothermal annuloplasty," or IDET. After this procedure was carried out in December 2001, the claimant reported complete relief of the left leg pain, which pain had resulted from the compensable injury. Post-surgical treatment is a relevant consideration in determining whether treatment was reasonably necessary. Winslow v. D&B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

The Full Commission recognizes Dr. McBride's opinion in 2001 that the claimant's continued complaints of pain were

related to degenerative disk disease. We also note Dr. Moore's subsequent opinion that IDET was not an appropriate treatment option for the claimant. The Commission is authorized to accept or reject medical opinion and is authorized to determine its medical soundness and probative force. McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989). In assessing the weight to attach to the conflicting medical opinions of Dr. McBride, Dr. Moore, and Dr. Valentine, we first note that Dr. Valentine became the claimant's primary treating physician. Dr. Valentine described an "annular tear" at L5-S1 following the compensable injury. Dr. Valentine's description of an annular tear was objectively confirmed by a post-discogram CT scan taken in October 2001. Dr. Valentine recommended IDET treatment, and the claimant credibly testified that his condition improved following said treatment. The claimant testified that he wished to return to Dr. Valentine for additional treatment. The Commission attaches more weight in the present matter to the opinion of Dr. Valentine.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he was entitled to IDET treatment as recommended by Dr. Valentine.

The Full Commission therefore affirms the opinion of the administrative law judge.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner Yates dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion's finding that the IDET procedure performed by Dr. Valentine was reasonably necessary medical treatment. The claimant was involved in a motor vehicle accident in 1989 which caused injury to his low back, and he received ongoing medical

treatment for low back pain following that MVA for several years. In January 1992, Dr. Zini opined that the claimant suffered from degenerative disc disease at L4-5 and L5-S1, with bulging at L4-5. The claimant's most recent treatment for low back pain prior to the accident at issue in this case occurred on May 12, 1998. The claimant testified that he had been symptom-free for 11 months prior to March 13, 1999, on which date was in a second motor vehicle accident. The claimant testified that he injured his low back in the 1999 accident as well, and stated that his symptoms subsequent to the 1999 MVA were different in nature and severity from the problems he experienced after the 1989 MVA.

After the 1999 accident, the claimant continued to treat with Dr. Zini. He was then referred to Dr. Anthony McBride. In a record dated April 4, 2001, Dr. McBride opined that the claimant's pain was due to degenerative disc disease, and not to the 1999 accident. Specifically, Dr. McBride wrote:

I examined [the claimant] on June 11, 1999, and reviewed the MRI scan of his lumbar spine which was completed on June 3, 1999. My assessment was L4-5, L5-S1 degenerative disc changes with left lower extremity radiculopathy. I do believe that the motor vehicle accident

of March 13, 1999, exacerbated his symptoms, however, as we are now two years post accident, in my opinion any continuing complaints of pain would be due to his degenerative disc disease.

Dr. McBride released the claimant, and he returned to Dr. Zini, who referred the claimant to pain management specialist, Dr. Valentine. Dr. Valentine performed an IDET procedure on the claimant in December 2001. The claimant testified that following this procedure, his left lower extremity complaints resolved; however, he continued to have low back pain.

At the respondents' request, neurologist Jim Moore reviewed the claimant's medical records, including the 1999 MRIs, the results of a discogram and post-discogram CT performed in October 2001, and Dr. Valentine's records. Dr. Moore opined that an IDET procedure was inappropriate for the treatment of the claimant's degenerative disc changes.

Based upon my review of the record, including the fact that the claimant sought medical treatment for lumbar degenerative disc disease eleven months prior to the 1999 accident at issue, I am persuaded by the opinions of Dr. McBride and Dr. Moore that the IDET procedure was not reasonably necessary in connection with the 1999 accident. Because I find that the Administrative Law Judge's opinion

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regarding the IDET procedure should be reversed, I
respectfully dissent from the majority opinion.

JOE E. YATES, Commissioner