

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105790

TERESA BROWN,  
EMPLOYEE

CLAIMANT

CITY OF FORT SMITH,  
EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 15, 2004

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

Claimant represented by HONORABLE BRENT STERLING, Attorney  
at Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE DOUG CARSON, Attorney  
at Law, Fort Smith, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals from the decision of the  
Administrative Law Judge that she failed to prove  
entitlement to additional medical treatment for her  
compensable injury. Based upon our *de novo* review of the  
record, we find that the decision of the Administrative Law  
Judge must be reversed. Our review of the evidence  
indicates that claimant met her burden of proving  
entitlement to additional medical treatment.

I. Facts

It was stipulated by the parties that the claimant sustained a compensable injury on May 5, 2001. The respondents initially accepted the claimant's claim as compensable and paid for related medical treatment through February 11, 2002.

The claimant initially presented at the emergency room of Sparks Regional Medical Center on May 5, 2001, the day of her injury. A radiology report from the same day states that the claimant possibly suffered from spondylolysis at the L5-S1 levels, but that otherwise no acute osseous abnormality of the claimant's lumbar spine was observed. Another radiology report, dated May 9, 2001, reports an observation of mild degenerative change of facets in the claimant's lumbar spine. Subsequently, on August 13, 2001, and again on September 24, 2001, the claimant underwent MRI's of her lumbar spine which revealed mild disc dessication at L5-S1 and "very mild degenerative change."

The claimant continued to experience pain in her lower back after her injury and treated at the Cooper Clinic. On May 23, 2001, Dr. Scott Hartford prescribed a TENS unit for the claimant's pain. On September 24, 2001, the claimant saw Dr. Michael S. Wolfe, who prescribed physical therapy for the claimant's pain. The claimant

returned to Dr. Wolfe on October 15, 2001, and again on February 11, 2002. On the latter date, Dr. Wolfe ordered another MRI of the claimant's lumbar spine, which was performed on February 15, 2002. This MRI revealed a small left lateral disk protrusion at L5-S1.

On April 11, 2002, Dr. Wolfe sent a letter to the claimant's attorney in which he gave his opinion as to whether the claimant's low back problems were causally related to the claimant's May 5, 2001 injury. Dr. Wolfe stated in relevant part as follows:

....In my opinion the findings on the MRI done on February the 15<sup>th</sup>, 2002 are consistent with the injuries sustained by Mrs. Brown on May 8<sup>th</sup>, 2002 and are related to initial back injury. Number two, by her history there is no evidence of any new injury, which would be the current cause of her symptoms. Number three, the objective findings for her injury are the MRI findings showing significant disc changes....

After the respondents controverted the claimant's entitlement for any further treatment, the claimant visited Dr. Karl Detwiler on her own. On March 28, 2003, Dr. Detwiler rendered an opinion as to whether the claimant's May 5, 2001 injury was a causal factor of her continuing low back problems. He stated as follows:

1. It is my opinion that Ms. Brown's injury is NOT the current cause of her need for medical care. Ms. Brown's primary cause for her need for medical care is her weight. She is morbidly obese. She stands 5' 6" in height and weighs at least 250 pounds. This is at least 100 pounds over her ideal body weight. Ms. Brown did not have any evidence of neurological deficit. It is true that Ms. Brown's pain came about after her fall, but the changes on her MRI did not come about from this. Ms. Brown has evidence of disc degeneration and desiccation on both MRI's. This is a problem that takes years to develop and does not occur from a singular fall.

2. This should answer the second question as to whether the findings on MRI are consistent with her injury.

3. It is my opinion that the medical care and treatment that she has received is partially a result of her lumbar spine injury. I do believe that it would be appropriate for Ms. Brown to have received approximately three to five weeks of physical therapy after this accident. I do believe that one MRI was appropriate. I do believe routine spine x-rays were appropriate.

4. I do not see any limitations or restrictions on Ms. Brown as a result of the injury.

## II. Analysis

\_\_\_\_\_ Employers must provide medical treatment which is reasonably necessary in relation to the employee's compensable injury. Ark. Code Ann. §11-9-508(a) (Repl.

2002). Whether treatment is reasonably necessary in relation to the claimant's compensable injury is a question of fact for the Commission. See, e.g., Hill v. Baptist Medical Center, 74 Ark.App. 250, 48 S.W.3d 544 (2001). Furthermore, even if a pre-existing condition is also a causal factor of the claimant's need for medical treatment, the claimant has met her burden of proof if she nevertheless shows that the compensable injury bears some causal relation to the need for treatment. General Electric Railcar Servs. v. Hardin, 62 Ark. App. 120, 969 S.W.2d 667 (1998).

This case turns upon a determination of whether the claimant's ongoing need for medical treatment for her lower back bears some causal connection to her May 5, 2001 compensable injury. On this issue there are two medical opinions - those of Dr. Wolfe and Dr. Detwiler. It is the function of the Commission to resolve conflicting medical opinions. Holloway v. Ray White Lumber Co., 337 Ark. 524, 990 S.W.2d 526 (1999). For the reasons stated below, we credit the opinion of Dr. Wolfe over that of Dr. Detwiler, to the extent that their opinions are in conflict.

Initially, it must be observed that Dr. Wolfe was the claimant's treating physician for approximately one year, whereas Dr. Detwiler only saw the claimant once.

Therefore, we find that Dr. Wolfe is more familiar with the claimant's condition, and therefore in better position to state an opinion as to the cause of claimant's lower back problems.

Second, we find Dr. Detwiler's statement of opinion to be somewhat vague and confusing. While Dr. Detwiler does state that in his opinion the claimant's work injury is not the "current cause" of the claimant's need for treatment, he then states that the "primary cause" is her obesity. The use of the phrase, "primary cause," indicates that in Dr. Detwiler's opinion, there must be one or more secondary causes as well. In proving entitlement to additional medical treatment, the claimant's burden is merely to prove that the compensable injury bears some causal connection to the need for treatment; there is no requirement that the claimant's compensable injury be the exclusive or major cause of the need for treatment. Hardin, supra. Therefore, we cannot in any event construe Dr. Detwiler's opinion in such a manner as to preclude the claimant's entitlement to additional medical treatment for her compensable injury.

Third, in stating his opinion, Dr. Detwiler seems to merely opine that the changes noted on the claimant's MRI

were not causally related to the compensable injury. While acknowledging that the claimant's pain "came about" after the work injury, Dr. Detwiler states that in his opinion, the MRI changes were not caused by the work injury. If compensability of injury is not an issue to be litigated, then in order for the claimant to meet her burden of proof it is sufficient for the claimant to show that the pre-existing condition became symptomatic as a result of the compensable injury. Id.

\_\_\_\_\_In any event, we credit the opinion of Dr. Wolfe that the claimant's need for medical treatment for her lower back bears a causal relation to her May 5, 2001 compensable injury. We find that Dr. Detwiler's statement of opinion cannot in any manner be construed in such a manner as to support a finding that claimant's compensable injury bears no causal relation to her need for treatment. For these reasons, we find that the claimant proved by a preponderance of the evidence that she is entitled to additional reasonably necessary medical treatment for her compensable injury. 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).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (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(b) (Repl. 1996).

IT IS SO ORDERED.

---

OLAN W. REEVES, Chairman

---

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment for her compensable injury. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

The majority has assigned greater weight to the opinion of Dr. Wolfe than to the opinion of Dr. Detwiler. However, I give Dr. Detwiler's opinion more weight. Dr. Detwiler examined the claimant and reviewed both the MRIs and Dr. Wolfe's records. In his response to the claimant's attorney's questions, Dr. Detwiler opined the following:

It is my opinion that Ms. Brown's injury is NOT the current cause for her need for medical care. Ms. Brown's primary cause for her medical care is her weight. She is morbidly obese. She stands 5 feet 6 inches in height and weighs at least 250 pounds. This is at least 100 pounds over her ideal body weight. Ms. Brown did not have any evidence of neurological deficit. It is true that Ms. Brown's pain came about after her fall, but the changes on her MRI did not come about from this. Ms. Brown has evidence of disc degeneration and desiccation on both MRI's. This is a problem that takes years to develop and does not occur from a singular fall.

Dr. Detwiler's opinion is supported by the medical evidence in the record. The medical evidence in the form of x-rays, MRIs, and other radiographic studies taken between the time of the accident and up to nine months after the accident are proof that the claimant can not prove that she is entitled to additional medical treatment. The x-ray taken of the claimant on the day of the injury established that the claimant had possible spondolosis at L5-S1. A report dated 4 days after the incident found "mild degenerative changes of the facets" but no injury to the spine. An MRI taken in August of 2001, showed only mild disc dissection, no bulge or herniation at L5-S1. Radiographic studies taken in September 2001 found only "very mild facet degenerative

change" in the lower lumbar spine. An MRI taken in February of 2000, notes "an annular tear and a small left lateral disc protrusion" at L5-S1. In short, the annular tear and disc protrusion were not present shortly after the incident. Although there is no explanation for these findings, Dr. Detwiler explained that the type of problems the claimant has are usually long-standing.

The majority relies heavily on the opinion of Dr. Wolfe stating that the claimant's condition was a result of the injury. However, Dr. Wolfe's opinion is based upon the claimant's history. Dr. Wolfe's conclusions are based upon the fact that the claimant did not tell him of any event or occurrence other than the original injury. A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22, 1996 (E417617). The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

In short, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment. Accordingly, I would affirm the decision of the Administrative Law Judge.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

---

KAREN H. MCKINNEY, Commissioner