

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010031

SONDRA CLARK,
EMPLOYEE

CLAIMANT

ST. EDWARD MERCY MEDICAL CENTER,
EMPLOYER

RESPONDENT

SISTERS OF MERCY HEALTH CARE SYSTEM,
SELF-INSURED

RESPONDENT

OPINION FILED JULY 6, 2004

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

Claimant represented by HONORABLE RONALD McCANN, Attorney at
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE RANDY MURPHY, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed December 10, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction of this claim.
2. On May 1, 2000, the relationship of employee-
self insured, employer-third party
administrator existed between the parties.
3. On May 1, 2000, the claimant earned wages
sufficient to entitle her to weekly

compensation benefits of \$394.00 for total disability and \$296.00 for permanent partial disability.

4. On May 1, 2000, the claimant sustained a compensable injury to her lower back and lumbar spine.
5. There is no dispute over the payment of medical expenses incurred for the claimant's compensable injury through August 3, 2001.
6. The greater weight of the credible evidence fails to prove that a third MRI study, as recommended by Dr. Luke Knox in his report of September 5, 2001, represents a "reasonably necessary" medical service, within the meaning of Ark. Code Ann. § 11-9-508. Thus, liability for the expense of this test cannot be imposed on the respondents herein.
7. The greater weight of the credible evidence does prove that the plain x-ray panel and the SPECT scan, as recommended by Dr. Knox in his report of September 5, 2001, do constitute "reasonably necessary" medical services within the meaning of Ark. Code Ann. § 11-9-508. These medical services are reasonably necessary to accurately diagnose the nature and extent of the claimant's compensable injury and to formulate an appropriate treatment regimen. Liability for the expense of these tests, subject to the Commission's medical fee schedule, is the liability of the respondents herein.
8. The respondents have controverted the claimant's entitlement to any of the additional tests that were recommended by Dr. Luke Knox in his report of September 5, 2001.
9. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted medical expenses herein awarded.

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. 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 respectfully dissent from the majority's opinion finding that the claimant was entitled to a plain x-ray panel and a SPECT scan as recommended by Dr. Knox. Specifically, the majority found that these tests constituted reasonable and necessary medical treatment. 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.

In my opinion, the tests recommended by Dr. Knox in his September 5, 2001, medical report do not represent reasonable and necessary medical treatment. The medical evidence demonstrates that both Drs. Capocelli and Reynolds evaluated the claimant and concluded that no additional tests were necessary. Particularly, Dr. Capocelli reached his conclusion after reviewing a CT scan and two MRIs. Each of the studies determined that the claimant had no significant abnormalities and simply suffered from a lumbar strain. His course of treatment involved physical therapy, lumbar epidural steroids and medication. Dr. Capocelli did not recommend any additional testing and also concluded that the claimant had a zero percent (0%) anatomical impairment.

Dr. Reynolds also reached a similar conclusion. Dr. Reynolds proposed a course of treatment that was similar to Dr. Capocelli's and found that no additional tests were needed. Although Dr. Reynolds saw the claimant on two other occasions after making his initial recommendation, he did not alter his proposed course of treatment. In fact, Dr. Reynolds concluded that the claimant's problems were in part due to hysterical overlay and malingering.

Dr. Knox concluded that the claimant needed these additional tests without explaining why he thought the tests were necessary. He agreed that the claimant's previous assessments were "relatively unrevealing".

In my opinion, the opinions of Drs. Capocelli and Reynolds are entitled to more weight than that of Dr. Knox. Dr. Knox has failed to explain his reasoning behind the additional tests. The Commission has a duty to translate the evidence on all the issues before it into findings of fact. The Commission need not base a decision on how the medical profession may characterize a given condition, but rather primarily on factors germane to the purposes of the Workers' Compensation Law. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). The Commission is never limited to medical evidence in arriving at its

decision. Further, 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). The Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993). It is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. Id.

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

KAREN H. MCKINNEY, Commissioner