

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202214

WILLIAM A. DEMPSEY, EMPLOYEE	CLAIMANT
ARKANSAS CO-OP CORPORATION, A SELF-INSURED EMPLOYER	RESPONDENT
ARKANSAS RURAL ELECTRIC SELF-INSURED TRUST; CROCKETT ADJUSTMENT BENEFITS ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 27, 2004

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

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

Respondent represented by HONORABLE BETTY J. DEMORY, 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 September 22, 2003.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent

times; the claimant sustained a compensable injury February 4, 2002; his average weekly wage was \$300.65; temporary total disability benefits and medical expenses had been paid through June 30, 2002; and the claimant first sought treatment from Dr. Krishnan July 10, 2002.

3. The preponderance of the evidence fails to show that the claimant is entitled to additional benefits for temporary total disability after June 30, 2002, because he was no longer in his healing period and totally incapacitated to earn wages at that time.

4. The preponderance of the evidence fails to show that the requested medical expenses were reasonably necessary in connection with the claimant's compensable injury.

5. The preponderance of the evidence fails to show that the claimant is entitled to benefits for permanent anatomical impairment because it fails to show that his compensable injury was the major cause of his permanent impairment.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion denying claimant additional benefits for TTD, medical treatment, and for a permanent anatomical impairment of 6% to the body as a whole.

On February 4, 2002, claimant sustained an admittedly compensable injury to his lower back. His primary

treating physician has been Dr. Christi Williams. Following an abnormal MRI scan, Dr. Williams referred claimant to Dr. Cathey, a neurosurgeon. Dr. Cathey did not believe claimant needed neurosurgery and, therefore, sent claimant back to Dr. Williams with a recommendation to continue conservative treatment. Dr. Cathey explained that this conservative treatment could include physical therapy, prescription medications, time, as well as management by a pain specialist. Thereafter, Dr. Williams set up physical therapy and prescribed muscle relaxants and pain medication. Following physical therapy, Dr. Williams referred claimant to Dr. Meador for pain management.

On June 10, 2002, Dr. Meador administered trigger point injections (which were of no benefit), initiated stretching exercises in lieu of additional physical therapy, and directed claimant to return in one month. However, claimant returned to Dr. Williams on June 12, 2002.

Dr. Williams' note indicates that she was making a referral to a different pain management doctor (Dr. Krishnan) and refilled claimant's prescription medications. On June 28, 2002, claimant returned to Dr. Meador for some reason, and she released claimant to full duty as of July 1 after

complaining that claimant was not doing his exercises as instructed. Thereafter, on July 10, 2002, claimant presented for the first time to Dr. Krishnan, whose treatment forms the basis of part of this appeal.

Dr. Krishnan decided to try lumbar epidural steroid injections because these had not been tried in the past. These injections were administered on July 19 and August 9, but the third was not given because claimant did not show sufficient improvement following the first two. On August 12, 2002, Dr. Krishnan recommended another course of physical therapy, some sort of stimulation therapy, muscle relaxants, and anti-inflammatory medication. Claimant was unable to participate in the physical therapy because of the lack of funds. On claimant's visit with Dr. Krishnan on September 23, 2002, Dr. Krishnan discussed the only remaining option of a diskogram. Dr. Krishnan testified that without the diskogram, he would have recommended a functional capacity evaluation and claimant would have been at maximum medical improvement.

Based on the evidence that a valid and appropriate referral was made by claimant's treating physician, Dr. Williams, to Dr. Krishnan, a pain management specialist;

that such a referral was in fact recommended by the neurosurgeon; and that Dr. Krishnan's treatment, in particular the epidural steroid injections, had not been tried previously, I find that claimant has proven by a preponderance of the evidence that the treatment provided by Dr. Krishnan was reasonably necessary in connection with the compensable injury.

Concerning temporary total disability, benefits were apparently paid until June 30, 2002, based on Dr. Meador's report releasing claimant to return to work as of July 1. However, claimant credibly testified that he was unable to return to work. Further, I find that claimant remained in his healing period as a result of the referral to Dr. Krishnan and the accompanying treatment, at least until September 23, 2002 and would award TTD benefits from July 1 until September 23, 2002.

Finally, I would award benefits for a permanent anatomical impairment of 6% to the body as a whole based on Dr. Krishnan's opinion and utilization of the Guides for a disk abnormality with rigidity supported by severe muscle spasms.

For the foregoing reasons, I must respectfully dissent. The opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner