

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F114315

MARTHA BELLE GOSA,
EMPLOYEE

CLAIMANT

NU-WAY PRODUCTS COMPANY, INC.,
EMPLOYER

RESPONDENT

ZENITH INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED FEBRUARY 20, 2004

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

Claimant represented by HONORABLE KEITH BLACKMAN, Attorney
at Law, Jonesboro, Arkansas.

Respondents represented by HONORABLE J. MATTHEW MAULDIN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an Administrative Law Judge's
opinion filed May 21, 2003. The Administrative Law Judge
found that the claimant proved she was entitled to
additional medical treatment. After reviewing the entire
record *de novo*, the Full Commission reverses the opinion of
the Administrative Law Judge.

I. HISTORY

Martha Belle Gosa, age 52, while working for another
employer, complained of lower back pain in approximately
January 1998 after "moving tables x 2 days." Ms. Gosa was

apparently diagnosed with "lumbar strain" at that time. An MR of the lumbar spine taken February 11, 1998 showed "Small early dehydration changes of the disc" at L5-S1. "Minimal annular disc bulge ... with no hernias" was shown at L3-4. The conclusion was "Minor chronic changes noted above. No central neural axis pathology, disc hernias or peripheral neural impingments (sic) are identified at this time." The claimant was treated conservatively for "MS strain."

The claimant testified that she began working for Nu-Way Products Company on April 1, 1998. The claimant testified that she was an inventory worker who loaded trucks for the respondent-employer. The parties stipulated that the claimant sustained a compensable injury to her shoulders and back on January 29, 2001. The claimant testified, "I reached across a shelf, and when I did, I lost my balance and fell. When I fell, I grabbed for a two by four, and my weight was too much for my arm to hold it, and I eventually hit the floor. When I hit, I pulled my arm on the left because of the pole, and my right shoulder hit the floor and I twisted my back all at the same time."

Dr. Trent P. Pierce reported on January 31, 2001, "Musculoskeletal pain. This is a Workman's Comp injury. Tripped over a box hurting her back and shoulder areas."

Most of the discomfort is over the lower lumbar spine with some discomfort into the right hip." Dr. Pierce treated the claimant conservatively. The claimant testified that she continued to have pain. Dr. Pierce referred the claimant to Dr. John D. Brophy, whose impression on February 13, 2001 was "Clinical exam most consistent with myofascial pain syndrome." Dr. Brophy treated the claimant conservatively. On March 6, 2001, the claimant reported "30% improvement in her pain after completing two weeks of physical therapy." The claimant requested continued conservative management.

The claimant was referred to Dr. Moacir Schnapp, who examined the claimant on September 11, 2001 and diagnosed "Osteoarthritis" and "Peripheral neuropathy, etiology unknown."

Dr. Brophy examined the claimant on January 21, 2002:

Ms. Gosa describes her worst pain at the right SI joint. She underwent evaluation with lumbar MRI on 14 January, 2002. This study demonstrates a bulging disc on the left at L3-4. There is no evidence of nerve root compression on the right....

IMPRESSION: Right SI joint pain without definite clinical evidence of radiculopathy or radiographic evidence of nerve root compression on the right.

RECOMMENDATIONS: Ms. Gosa was offered further treatment with a physical therapy program concentrating on the SI joint as well as a right SI joint injection through Anesthesiology. She

plans to consider these options and will notify our office of her decision.

Dr. Brophy reported on March 15, 2002, "Ms. Gosa underwent evaluation for SI joint pain approximately seven weeks ago. She has been treated with a trial of physical therapy and SI joint injection and her symptoms have progressed in severity. Previous evaluation with lumbar MRI on 14 January, 2002 demonstrated no evidence of nerve root compression on the right. There was no definite pathology identified in the SI joint or sacrum." Dr. Brophy's impression was "Atypical sacral SI joint pain." Dr. Brophy recommended additional diagnostic studies.

The impression from a CT of the abdomen and pelvis on March 19, 2002 was "Negative CT examination of the abdomen and pelvis. No explanation for pelvic pain is identified."

Dr. Brophy stated on March 21, 2002:

Ms. Gosa is continuing to complain of lower back pain and hip pain. She underwent screening evaluation with CT of the abdomen and pelvis which was considered negative by report dated 19 March, 2002. AP view of the pelvis demonstrates moderate bony spurring of the right acetabulum....Ms. Gosa describes minimal improvement in her symptoms recently. From a neurosurgical standpoint, I'm unable to identify an etiology of her pain syndrome. I have therefore suggested further evaluation by Dr. Manugian through her regular insurance to evaluate the significance of the bony spurring in the acetabulum. If this evaluation is

negative, I would suggest follow-up with her rheumatologist.

Rather than evaluate the claimant's "acetabulum," the record indicates that Dr. Arsen H. Manugian performed right-shoulder surgery on March 29, 2002. The claimant testified that she had undergone left-shoulder surgery in December 2001. The parties stipulated that the healing period for the claimant's shoulder injuries ended on July 1, 2002. The parties stipulated that the respondents accepted and were paying a 12% anatomical impairment related to the claimant's shoulder injuries.

The claimant's testimony indicated that the respondents eventually controverted further treatment from Dr. Brophy, so the claimant presented on her own to Dr. Edward S. Pratt. Dr. Pratt wrote on August 27, 2002:

Ms. Martha Gosa is a patient of mine who was initially seen by me on August 8, 2002. She had been seen and followed by Dr. John Brophy for an irritability to her right sacroiliac joint related to a workman's compensation injury. As the patient did not respond to an SI joint injection, she was released at that time by Dr. Brophy. My examination and evaluation of Ms. Gosa did not show evidence of SI irritability but rather irritability of the facets and likely posterior annulus of the disc which was simulating SI joint pathology. Ms. Gosa's SI provocation tests were all negative. Nevertheless, her symptom complex has not changed from the outset.

I believe, therefore, that her primary problem while she was being seen by Dr. Brophy was rather that of a mechanical dysfunction of her facets in the low back and right L5-S1 facet irritability. I believe it is appropriate, therefore, for her workman's compensation injury on January 29, 2001.

Ms. Gosa claimed entitlement to additional worker's compensation. The claimant contended that additional medical treatment for her back was reasonably necessary in connection with the compensable injury. The respondents contended that additional medical treatment was not reasonably necessary.

Hearing before the Commission was held on March 28, 2003. The claimant described her pain following the compensable injury as in the lower back, right side. The claimant testified that the pain was worsening - "It's gotten to where now I can't stand for more than 10 or 15 minutes at a time, and I can't sit and I can't walk very far. It hurts to sit or do anything." The claimant testified that she had received a nerve stimulator, which "only works on my feet and my lower legs and up to my knees." The claimant did not causally relate implantation of the nerve stimulator to her back injury.

The Administrative Law Judge found, "The claimant has proven, by a preponderance of the credible evidence, that

further examination, evaluation, and treatment for her low back is reasonably necessary, as well as related to her January 29, 2001, admitted injury and that further evaluation and treatment should be the responsibility of the respondents." The Administrative Law Judge directed the respondent-carrier "to pay and/or reimburse the medical providers for all medical and related expenses as the result of the claimant's back injury and respondents remain responsible for continued reasonably necessary medical treatment."

The respondents appeal to the Full Commission.

II. ADJUDICATION

The 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). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. GEO Specialty Chemical v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). 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 750 (1984).

In the present matter, the Full Commission reverses the Administrative Law Judge's finding that the claimant proved she was entitled to additional medical treatment. The claimant sustained an admittedly-compensable injury to her back in January 2001. The claimant was treated by Dr. Pierce and Dr. Brophy, and Dr. Brophy's impression in February 2001 was "myofascial pain syndrome." The claimant was treated conservatively and reported some improvement. Subsequent diagnostic studies arranged by Dr. Brophy did not show any sort of disc trauma or any other acute injury. One year after the injury, in January 2002, Dr. Brophy's impression was "Right SI joint pain without definite clinical evidence of radiculopathy or radiographic evidence of nerve root compression on the right." Dr. Brophy's impression by March 2002 was "atypical sacral joint SI joint pain." Dr. Brophy did not causally relate the claimant's atypical SI joint pain to the compensable injury.

Dr. Brophy stated on March 21, 2002, "From a neurosurgical standpoint, I'm unable to identify an etiology of her pain syndrome. I have therefore suggested further evaluation by Dr. Manugian *through her regular insurance* (our emphasis) to evaluate the significance of the bony spurring in the acetabulum. If this evaluation is negative,

I would suggest follow-up with her rheumatologist." Based on our review of the record, this opinion from Dr. Brophy is substantial proof that he thought the claimant had reached the end of her healing period by March 21, 2002. Dr. Manugian did not evaluate the claimant's acetabulum. Rather, Dr. Manugian performed bilateral shoulder surgery, which the respondents accepted and paid, in addition to a corresponding anatomical impairment rating, which the respondents also accepted. The claimant failed to prove by a preponderance of the evidence that she was entitled to additional medical treatment for her back at the respondents' expense.

The Full Commission recognizes that in August 2002, Dr. Pratt seemed to suggest that the claimant's "mechanical dysfunction of her facets in the low back and right L5-S1 facet irritability" may have been the result of the claimant's compensable injury. Nevertheless, the claimant testified that Dr. Pratt discontinued his treatment after the claimant received a nerve stimulator (for her unrelated extremity complaints) in January 2003. Moreover, the claimant did not indicate at hearing a desire to return to Dr. Pratt. Rather, the claimant wanted to continued treating with Dr. Schnapp. The Administrative Law Judge

explicitly determined that the claimant was not entitled to treat with Dr. Schnapp, and the claimant did not appeal this determination.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove she was entitled to additional medical treatment. The Full Commission therefore reverses the decision of the Administrative Law Judge, and we dismiss this claim.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant is not entitled to any additional medical treatment.

First, the majority's heavy reliance on Dr. Brophy's March 21, 2002 report is misplaced. Dr. Brophy was simply indicating that he had nothing else to offer claimant "from a neurosurgical standpoint." That is why he wanted to make a referral to an orthopedic surgeon. He certainly

never indicated that claimant's healing period had ended, even if the end of the healing period is somehow determinative of the question of claimant's entitlement to additional medical treatment.

Further, the majority attaches great significance to Dr. Brophy's comment that claimant should be evaluated "through her regular insurance." It must be remembered that at that particular time, respondent had already unilaterally, and without justification, suspended the payment of any medical expenses incurred for treatment of the compensable lower back injury. As a result of being able to claim these expenses on her husband's health insurance, claimant was fully evaluated for any bony abnormalities by Dr. Pratt. Moreover, Dr. Pratt was not in the least equivocal, as suggested by the majority, in his opinion that claimant's lumbar difficulties are causally related to the compensable injury. Dr. Pratt stated the following:

I believe, therefore, that her primary problem while she was being seen by Dr. Brophy was rather that of a mechanical dysfunction of her facets in the low back and right L5-S1 facet irritability. I believe it appropriate, therefore, that her current treatment be included as treatment for her workman's compensation injury on January 29, 2001.

The majority seems to discount the above opinion by Dr. Pratt because Dr. Pratt subsequently discontinued his treatment, and claimant did not express a desire to return to him. A deterioration of the doctor/patient relationship really has no bearing on claimant's entitlement to additional medical treatment.

I believe claimant is entitled to additional treatment for her compensable lower back injury, and the finding to the contrary by the majority is not supported by a preponderance of the evidence. Claimant has met her burden of proof and, accordingly, the opinion of the Administrative Law Judge should be affirmed.

SHELBY W. TURNER, Commissioner