

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213600

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| JOE M. BOWMAN, EMPLOYEE | CLAIMANT |
| SOUTHWEST CONTRACTORS, EMPLOYER | RESPONDENT |
| LIBERTY MUTUAL INSURANCE CORP., CARRIER | RESPONDENT |

OPINION FILED JANUARY 28, 2005

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

Claimant represented by HONORABLE GREGORY GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, 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 February 13, 2004.

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. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that

additional medical treatment, specifically the discTRODE procedure proposed by Dr. Hackbarth, is reasonably necessary in connection with the compensable injury.

4. The claimant has failed to prove by a preponderance of the evidence that he remains in his healing period for his compensable injury.

5. The respondents have proven by a preponderance of the evidence that the claimant's healing period for his compensable injury ended on November 25, 2003.

6. The claimant has proven by a preponderance of the evidence that he was totally incapacitated from earning wages from on or about August 20, 2003, the date his benefits were terminated, until November 25, 2003, the date his healing period ended.

7. The claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from on or about August 20, 2003, until November 25, 2003.

8. The respondents have controverted this claim in its entirety.

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 dissent from the majority opinion and find that claimant is entitled to additional medical treatment and benefits for TTD beyond November 25, 2003.

Initially, I agree with the majority's analysis that what the treating physicians are calling a discTRODE procedure is actually what is more commonly referred to as

the IDET procedure. The Commission and the Arkansas courts have on several occasions found that the IDET procedure can be reasonably necessary in connection with a compensable injury. It is used to treat an abnormality within the disc itself as opposed to a strain, which, as noted by the majority, involves the musculature. The MRI scan, CT scan, and discogram performed on claimant all show abnormalities involving the disc at L4-5. Dr. Sklar, the physician hired by respondent, mistakenly refers to claimant's condition as a strain and appears to ignore the evidence of disc abnormalities revealed by the diagnostic tests. Further, if claimant's compensable injury was merely a strain, he would not be experiencing radicular symptoms into the lower extremity. The medical records clearly document pain and numbness in the right lower extremity.

As a result of a positive discogram at L4-5, claimant's primary treatment physician has offered the IDET procedure as a means of avoiding more invasive type surgery. Since claimant has a documented disc abnormality at L4-5 and all other conservative measures have failed, I find that the IDET procedure is reasonably necessary.

The majority finds that claimant experienced only a temporary aggravation of his preexisting degenerative disc disease. However, I point out that claimant had only had one prior experience with back pain, and that was approximately eight years before the compensable injury. During that intervening eight years, claimant had not received any treatment for his back or missed work as a result of problems involving his lower back. It is clear that the need for the IDET procedure or other forms of medical treatment would not have occurred but for the work-related aggravation of any preexisting condition. Pollard v. Meridian Aggregates, ____ Ark. App. ____, ____ S.W.3d ____ (September 29, 2004) (CA04-218). It is equally clear that the compensable injury is at least a "factor" in claimant's current need for treatment and disability. As such, claimant is entitled to additional medical treatment for the compensable injury. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004).

In regards to claimant's entitlement to additional TTD benefits, claimant's treatment physician has indicated that claimant is in need of additional medical treatment and cannot return to work until receiving this treatment.

Therefore, I find that claimant remains in his healing period and totally incapacitated to earn wages, entitling him to additional benefits for TTD from November 25, 2003 to a date yet to be determined.

For these reasons, I dissent.

SHELBY W. TURNER, Commissioner