

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F113710 & F113474

BOBBY EMERY,
EMPLOYEE CLAIMANT

AUTOZONE, INC.,
EMPLOYER RESPONDENT

LIBERTY MUTUAL INS. CO.,
INSURANCE CARRIER RESPONDENT

OPINION FILED JULY 18, 2005

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

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

Respondents represented by the HONORABLE MICHAEL R.
MAYTON, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of
the Administrative Law Judge filed January 26, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.
2. At all times pertinent hereto, the employee, employer, carrier relationship existed among the parties.
3. On August 10, 2001, and November 25, 2001, the claimant earned wages sufficient to entitle him to weekly compensation benefits of

\$252.00/\$189.00, for temporary total/permanent partial disability.

4. On August 10, 2001, and November 25, 2001, the claimant sustained injuries arising out of and in the course of his employment.
5. The medical treatment as recommended by Dr. Mutchiah Garlapati is reasonably necessary medical treatment in connection with the compensable injuries sustained by the claimant.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's compensable injuries of August 10, 2001, and November 25, 2001.
7. The respondents have controverted the claimant's entitlement to the recommended medical treatment as offered by Dr. Garlapati, to include the stimulator/pump.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 26, 2005 decision of the Administrative Law Judge, including all

findings of fact and conclusions of law therein, and adopt the opinion 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 after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the treatment recommended by Dr. Butchaiah Garlapati is reasonably necessary medical treatment in connection with the claimant's compensable injury. Based upon my de novo review of the record, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove by a preponderance of the evidence that Dr. Garlapati's recommendation for either an infusion pump or spinal cord stimulator is reasonable and necessary medical treatment for the claimant's compensable injury.

The claimant sustained admittedly compensable injuries to his lower back on August 10, 2001, and November 25, 2001, which eventually required a posterolateral interbody fusion at L4-L5 utilizing Ray implant cages and autologous bone which was performed by Dr. Stephen Cathey on January 3, 2003. Following this surgery, the claimant improved to the point that he was no longer utilizing narcotic pain medication and he was able to return to work in May of 2003. After working a few months, the claimant returned to Dr. Cathey on July 28, 2003, with complaints of increasing severe low back

pain with bilateral radiation. After determining that the claimant was not a candidate for any additional spinal surgery, Dr. Cathey referred the claimant to Dr. Garlapati "for consideration of epidural steroids, trigger point injections and other comprehensive pain management." With Dr. Garlapati's care, Dr. Cathey hoped that the claimant would "start to move away from narcotic analgesics." The claimant was first examined by Dr. Garlapati on August 20, 2003. Dr. Garlapati's only recommendations at that time was to evaluate the claimant for an infusion pain pump versus a spinal cord stimulator, seek approval from the carrier and proceed with a psychological evaluation.

Although the claimant was examined by two psychologists who both found that the claimant was psychologically qualified to undergo this type of procedure, neither doctor actually recommended the procedures. The only doctor to recommend the implant procedure was Dr. Garlapati; however, he does not provide a basis for this recommendation. At the respondents' request, the claimant was examined by Dr. Barry Baskins. Dr. Baskins reviewed the claimant's medical records and diagnostic studies, as well as

examined the claimant. Dr. Baskins's physical examination produced the following findings:

Mr. Emery is a 5 feet 8 inch, 180 pound, pleasant, young, white mail in no apparent distress. He is cooperative with the examination. BP: 146/94. Pulse: 68. Respiration: 20. The patient reported his pain on a visual analog scale to be in the 7 range. He did not appear to be in any overt distress. The patient walked into the examining room without difficulty. He moved fairly easily from the chair to the examining table and back to the chair. Attention was turned to neuromuscular exam. His cranial nerves were grossly intact. His deep tendon reflexes were 1+ and symmetric. He had withdrawal plantar responses. Negative Hoffman's reflexes. Functional range of motion in the ankles, knees and hips. His calves were 39 cm bilaterally. He had no obvious sensory deficits noted in the lower extremities to pinprick, light touch or proprioception. Straight leg raise produced low back pain bilaterally. He was a little bit tight in his hamstring muscles bilaterally. Patrick's test produced low back pain bilaterally. He had no apparent sciatic on any maneuvers of the lower extremities. He had good strength in the dorsi and plantar flexors. Good quad and hamstring strength was noted bilaterally. His lumbar spine revealed well healed surgical scars. He had decreased range of motion in the lumbar spine to about 85 degrees in flexion. He had 10 degrees of extension, 30 degrees of lateral bending and rotation bilaterally. His upper extremity examination is

unremarkable. He has good strength.
Functional range of motion. No motor
or sensory deficits were noted.

Dr. Baskins stated in his report that it has been his experience that patients using high doses of narcotic analgesics continue to take these medications even after the implantation of a pain control delivery system. Thus, the stated reason for utilizing the infusion pain pump or the spinal cord stimulator of reducing not only the cost to the insurance carrier, but also the claimant's narcotic usage will more than likely not be achieved.

In support of the claimant's position is the claimant's testimony requesting the controverted procedure and the medical report of Dr. Garlapati recommending either the infusion pump or spinal cord stimulator evaluation. Claimant testified that he would like to undergo this procedure in order to reduce his pain, lower his reliance on oral medications, resume a more normal life, and hopefully return to work. All of these are valid reasons to want to have this procedure. However, the preponderance of the evidence fails to demonstrate that either of these procedures will achieve these goals. Dr. Baskins has clearly stated that he would not treat the claimant with either an intrathecal

pain device or a spinal cord stimulator. As explained by Dr. Baskins, the goal of reducing oral narcotic medication through one of these procedures is not realistic. Dr. Baskins described these procedures as "universally less than satisfactory."

Accordingly, when I weigh Dr. Baskins's reasons not to proceed with either of these procedures against the claimant's testimony and Dr. Garlapati's blanket recommendation for the procedures, I find that the evidence preponderates in favor of Dr. Baskins's reasoning. Consequently, I find that the claimant has failed to prove by a preponderance of the evidence that the recommended treatment is reasonable and necessary in connection with his compensable injury.

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

KAREN H. MCKINNEY, Commissioner