

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300720

REVERTIS GIST,
EMPLOYEE

CLAIMANT

SANYO MANUFACTURING CORPORATION,
EMPLOYER

RESPONDENT

GARMI,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 15, 2005

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

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

Respondents represented by HONORABLE ROBERT J. DONOVAN,
Attorney at Law, Marianna, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed June 24, 2004. The administrative law judge
found that the claimant proved she was entitled to
additional medical treatment provided by Dr. Charles
Schultz. After reviewing the entire record *de novo*, the
Full Commission finds that the claimant did not prove that
treatment provided by Dr. Schultz was reasonably necessary
in connection with the compensable injury. The Full
Commission therefore reverses the opinion of the
administrative law judge.

I. HISTORY

The parties stipulated that the claimant sustained a compensable "electrical shock injury" on October 2, 2002. Revertis Gist, age 60, testified that while putting a back on a television, "I put my hand on the cord to secure it to the back, that's when it just looked like blew up (sic), just popped real loud and a big old flash of light, and I couldn't turn it loose. They was telling me to turn it loose. So I remember dropping the back, and I looked down at my hand and it looked like my hand was burning, you know, because of a big light. After that I don't remember anything else until we were outside and they was putting me in the ambulance out on the parking lot."

Charlotte Gibson, the respondents' plant nurse, testified that the claimant had been shocked with 25 volts of electricity. The claimant was treated at Baptist Memorial Hospital in Forrest City on October 4, 2002, and she was returned to work with no restrictions.

The claimant saw Dr. Sudhir Kumar on October 8, 2002:

Came in complaining she got shocked at work last Friday, went to the emergency room while working on TV set, turned on 2800 volts shocked her very briefly, went to the emergency room, examined her, sent home, patient came here complaining of aches and pains all over, crying, mild tremors of the extremity, no external evidence of thermal injury

on the skin seen, eyes ears nose throat normal, neck supple, lungs clear, CVS normal, regular, abdomen is benign, no organomegaly, axilla bilaterally normal, groin normal, neurologically has mild tremors of the right upper extremity.

Dr. Kumar's impression was "Thermal injury with high voltage, post traumatic stress, a lot of anxiety." On October 10, 2002, a physician's assessment appears to have been "electrical shock," "anxiety with tremor," and "low back pain." Dr. Kumar's impression on October 14, 2002 was "Paresthesia right upper extremity thermal injury right upper extremities."

Dr. Kumar's impression on October 23, 2002 was "thermal injury without any external evidence of any injury, most of her symptoms are possibly functional." Dr. Kumar noted that EMG and nerve conduction studies were normal, and that he referred the claimant for a neurological opinion.

A neurologist, Dr. Michael DeShazo, saw the claimant on October 31, 2002. Dr. DeShazo's impression was "status post electrical injury," and he planned the following:

She's had an EMG which was unremarkable. I think a lot of her findings are functional and more due to anxiety, but she is complaining of persistent headache and lumbar pain. She really doesn't describe much in the way of any radiculopathy, but does complain of back pain. When I did straight leg raising test today the back pain was present bilaterally. I would like to finish her work-up with MRI scan of the head and lumbar spine, and if

these are unremarkable, I don't think any further test will be necessary. She may have suffered a concussion and a lumbar strain when she fell from the electrical shock. There is no evidence of any injury or exit for the electrical injury.

An MRI of the head was taken on November 19, 2002 with the opinion, "asymmetric enlargement of the left lateral ventricle compared to the right, felt to represent a congenital variation. Otherwise negative MRI of the head."

An MRI of the lumbar spine was taken the same date, with the opinion, "1. Mild degenerative disc disease at L3-4 and L4-5 with mild central canal stenosis at L3-4. 2. No other significant abnormalities identified."

Dr. DeShazo noted on November 19, 2002 that the claimant's main complaint was low back pain. Dr. DeShazo noted:

Cranial nerves II-XII are intact. Visual fields are full. Funduscopy was normal. The motor exam showed normal strength and tone. She tends to walk very slowly, but there is no evidence of any Parkinson's disease. She has some occasional rapid tremor at times which is easily distracted and appears to be functional. There is no evidence of any true muscle weakness, and the sensory exam was unremarkable.

I finished her work-up with MRI scan today of the head and lumbar spine. The MRI scan of the head was normal. There was some asymmetry of the ventricles, but this is a normal congenital variant. The lumbar spine showed only some mild degenerative changes, but no disc herniation or other abnormality. I could find no evidence of

any significant neurologic deficit, and at most she may have some lumbosacral strain from when she had the electrical injury. I've recommended that she receive physical therapy for this, and I have really nothing else to offer her in the form of treatment. No follow-up appointment was given. She could probably return to her usual activities once she finishes her course of physical therapy.

Dr. Kumar wrote on December 2, 2002, "to give benefit of the doubt will set up physical therapy for her back pain for one month and then will release from care completely and will return to work with no restrictions at that time."

The parties stipulated that the claimant petitioned for and received "a one-time only change of treating physicians to Dr. Charles Schultz."

Dr. Schultz, a neurologist, saw the claimant on October 7, 2003 and assessed "1. Electrical shock to right arm by history. 2. Neck pain with radicular pain into the right upper extremity with paresthesias. 3. Headaches. 4. Dizziness." Dr. Schultz planned Neurontin for chronic pain, and additional diagnostic testing.

The parties stipulated that the respondents controverted medical treatment "and prescription medications beyond those previously paid."

A pre-hearing order was filed on March 31, 2004. The claimant contended that she had "attempted to fill

prescription medications prescribed by Dr. Schultz which has been denied by the respondents; that the additional medical treatment, including medications is reasonably necessary, as well as related and should remain the responsibility of the respondents." The respondents contended that the additional services provided by Dr. Schultz were not reasonably necessary. The parties agreed that the sole issue was "whether the respondents are responsible for additional medical treatment including reimbursing prescription medications."

The record contains an Upper Extremity Evoke Potentials Study performed by Dr. Schultz on April 13, 2004. Dr. Schultz' impression from the study was "Abnormal Upper Extremity Evoke Potentials Study. The patient demonstrated delay in the right N13, P14, N18 and N20 latencies suggestive of an abnormality involving the central nervous system on the right side. This finding would be consistent with a patient having an electrical injury involving her right side."

The parties deposed Dr. Schultz on April 15, 2004. Dr. Schultz testified that he had seen the claimant on two occasions, October 7, 2003 and December 2, 2003, and that he

was "not a specialist in electrical injury." The respondents' attorney questioned Dr. Schultz:

Q. What is an Evoke Potential Test?

A. Well, an Evoke Potential Test is where we - we have various ways of testing the nervous system. One way to test the nervous system is to test the peripheral nerves, and we use a test called EMG to do that....

Q. EMG?

A. Electromyography, in order to test the peripheral nerves. Evoke Potentials is a test that tests the peripheral nervous system and the central nervous system....

Q. What were the results that you received from the EMG, or the -

A. The Evoke Potential. Basically, we saw a delay on the right side involving the central part of the nervous system, the N-13, P-14, N-18 and N-20 latencies. And that delay on the right side indicates that there was a swelling of the pathway, and I can kind of show you this picture, which will kind of maybe bring things into view....here is the right side, and you can see a swelling....

Q. Well, what could be some of the causes of this delay?

A. It could be from, you know, any type of insult that's happened. I mean, if the person had had a stroke involving their brain stem, that could be a possible cause. It could also be from an electrical injury that's damaged those pathways on the right side. It could be from a large disc that was pushing in the spinal canal....

Q. Could it be a disease process of some kind?

A. It could be a disease process, you know. It could be any disease process that would affect one side, unilaterally, and not affect the other side....

Q. Now, what is the cervical MRI going to add to this?

A. The cervical MRI is going to tell us if there is a cord signal abnormality that could be seen. It's going to tell us if there is a big disc in the cervical spine pushing on the spinal cord that could be causing the swelling process. It will tell us if there is a cord tumor affecting....

Q. Now, the delay in the nerves on the right that was determined in the "Evoke Potential," is that something that would cause the complaints that this lady has expressed to you?

A. The delay could be an explanation for why she is having the complaints that she is having, yes....

Q. All right, let me phrase it this way. Does the abnormality that is demonstrated on this Evoke Potential Test, is that abnormality -

A. It could have been caused from the electrical....I don't really have a great explanation for her lower back symptoms. I don't have a good cause for that. I don't know if the electrical injury could have been so severe that it did spread up and down the cord. I mean, I wouldn't know that....

Q. Let's assume that the MRI comes back negative and there is not any disaster going on there.

A. Right.

Q. What is the treatment plan from there?

A. Well, unfortunately, there is no - this is no good treatment for this. I mean, this is a - we

use anti-depressant medicines. We use seizure medicines, not because the patient is having seizures, but we use them for, basically, pain control. We use medicines like Neurontin for nerve pain. We use medicines like Doxepin, which is an anti-depressant that also works for nerve pain....And, you know, then, if things don't objectively respond well enough to those particular kinds of medicines, then there's other treatments they use, like spinal cord stimulators and other treatment modalities....

The claimant's attorney cross-examined Dr. Schultz:

Q. Is this a condition that's going to improve with - and when I say "improve," I am not only talking symptomatically, but is it going to improve structurally in any way by virtue of taking these medications?

A. No.

Q. Okay. And, in fact, the provision of medication is the treatment? Do I understand that correctly?

A. Well, it's symptomatic treatment....

Q. Would it be fair to assume that, in fact, this list of five medications, plus number six being Neurontin, would be medication that you would, in fact, be recommending as appropriate for ongoing treatment?

A. Right....And Neurontin is probably the gold standard medication for electrical shock injury....

Q. And since we can't change the problem structurally, since we can only treat it symptomatically, could we assume that she is going to need these medications indefinitely?

A. Yes....

Q. Do you have an opinion as to whether or not she has reached maximum medical recovery?

A. I think she has, with the time frame. I mean, I would have, you know, hoped that she would have recovered by now.

At this point in the deposition, Dr. Schultz apparently provided the parties with a report from an MR of the cervical spine taken April 9, 2004, with the impression, "Multilevel degenerative changes, worse at C3-4 and C5-6." Dr. Schultz reviewed the MRI and testified that the claimant "has multilevel cervical spine disease."

The respondents' attorney queried Dr. Schultz:

Q. Doctor, are you telling us that the findings indicated on this MRI report explain the positive findings on the Evoke test?

A. They may.

Q. How are we going to find out?

A. Basically, we know that there is some involvement of the cord, so we know that these findings could be that the pressure on the cord from the discs could be causing the findings on the Evoke Potential Study....But also, you know, there's still the possibility that the injury could have caused an abnormality in the pathway, as well. I just don't know.

Hearing before the Commission was held on May 7, 2004. The claimant described her physical problems since the compensable injury: "I have real bad back pain in the lower part of my back and my right arm, down in my hand, my

fingers are numb and I have noises in my right ear real bad, just keep up a lot of fuss all the time, and I be bothered with stiffness on this side of my neck." The claimant testified that she did not sleep well, and that she suffered from headaches, dizziness, and fatigue. The claimant testified that she had been unable to refill her prescription medications for "about a week." However, the claimant also testified that the respondent-carrier was paying for her Neurontin.

The administrative law judge found:

3. The claimant has proven, by a preponderance of the evidence, that she is entitled to additional medical treatment provided by Dr. Charles Schultz previously approved to be the claimant's primary care physician.

4. The claimant has shown that all outstanding medical and related treatment provided by Dr. Charles Schultz is reasonably necessary treatment, as well as related to the October 2, 2002, admitted injury. Accordingly, respondents are responsible for payment of medications prescribed by Dr. Schultz, together with additional diagnostic testing and any valid referrals deemed reasonably necessary by Dr. Schultz.

The respondents appeal to the Full Commission.

II. ADJUDICATION

An 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 benefits. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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 finds that the claimant did not prove that medical treatment provided by Dr. Schultz was reasonably necessary. The parties stipulated that the claimant sustained an "electrical shock injury" in October 2002. Although the claimant testified that it looked like her hand "was burning ... because of a big light," Dr. Kumar noted "no external evidence of thermal injury on the skin." Dr. Kumar's examination of the claimant revealed no abnormalities, although he did diagnose "thermal injury with high voltage." By October 23, 2002, Dr. Kumar wrote, "most of her symptoms are possibly functional." EMG and nerve conduction studies were normal.

The claimant began treating with a neurologist, Dr. DeShazo. Dr. DeShazo noted that an EMG had been unremarkable, and he described the claimant's symptoms as "functional and more due to anxiety." A subsequent MRI of

the claimant's head showed a congenital left-ventricle enlargement but was otherwise normal. An MRI of the lumbar spine showed degeneration, but there was no evidence of any electrical injury involving the claimant's head or back. Dr. DeShazo noted in November 2002 that the claimant mainly complained of low back pain. He noted that the claimant "has some occasional rapid tremor at times which is easily distracted and appears to be functional." Dr. DeShazo speculated that the claimant may have sustained a lumbosacral strain as a result of the electrical injury; however, there is no evidence in the record to suggest such an injury to the claimant's low back. In December 2002, Dr. Kumar arranged for the claimant to undergo physical therapy for one month. Dr. Kumar thereafter released the claimant from further care.

The claimant was granted a one-time change of physicians to Dr. Schultz in about October 2003. The Full Commission recognizes that Dr. Schultz administered an Upper Extremity Evoke Potentials Study in April 2004, approximately 18 months after the claimant's compensable injury. Dr. Schultz described a delay in the right latencies "suggestive of an abnormality involving the central nervous system on the right side. This finding

would be consistent with a patient having an electrical injury involving her right side." However, Dr. Schultz testified that this delay could have resulted from a stroke, electrical injury, or a large disc pushing in the spinal canal. Dr. Schultz also testified that multilevel cervical degeneration could have caused the abnormality seen in the Evoke Potentials Study. Finally, Dr. Schultz testified, "there's still the possibility that the injury could have caused an abnormality in the pathway, as well. I just don't know."

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to prove a causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). Dr. Schultz's opinion in the present matter, that is, that the electrical injury "could have" caused the abnormality seen on the Evoke Potentials Study, is not stated within a reasonable degree of medical certainty. Dr. Schultz also admitted that the abnormal study could have been the result of cervical degeneration, and there is absolutely no indication that the claimant's electrical shock injury caused any cervical

degeneration or any problem involving the claimant's neck or back.

Finally, the Full Commission notes that Dr. DeShazo released the claimant from his neurological care in November 2002. In December 2002, Dr. Kumar gave the claimant a complete release following one month of physical therapy. Dr. Schultz testified that the claimant would not improve "structurally" by taking prescription medication. Dr. Schultz testified that the claimant had reached "maximum medical recovery." The Full Commission recognizes that medical treatment intended to reduce or enable an injured worker to cope with chronic pain may constitute reasonably necessary treatment. Chronister v. Lavaca Vault, Workers' Compensation Commission D704562 (June 20, 2001). Nevertheless, the respondents owe only those benefits which are reasonably necessary *in connection with the compensable injury*. Dalton, supra; GEO Specialty Chemical v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). In the present matter, the claimant did not prove that treatment provided by Dr. Schultz was reasonably necessary in connection with the claimant's compensable injury. Nor did the claimant prove that prescriptions for Neurontin or other medications were reasonably necessary in connection with the injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she was entitled to additional medical treatment. The claimant did not prove she was entitled to additional medical treatment provided by Dr. Schultz, or additional medication prescribed by Dr. Schultz. The Full Commission therefore reverses the decision of the administrative law judge, and we hereby dismiss this claim.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I dissent from the majority opinion. The Administrative Law Judge found that claimant is entitled to additional medical treatment provided by Dr. Schultz, who was previously approved to be her primary care physician, and that all outstanding medical and related treatment provided by Dr. Schultz is reasonably necessary treatment and related to the October 2, 2002, admittedly compensable

injury. I find that the Administrative Law Judge's decision should be affirmed and adopted.

Claimant has experienced numerous symptoms since her compensable electrical shock injury, including pain in her arms, neck and back, noises in her ear, headaches, dizziness, and fatigue. I find that the evoke potential test conducted by Dr. Schultz demonstrated a delayed response in claimant's peripheral nervous system and that these objective findings support claimant's continued symptoms. Dr. Schultz further testified within a reasonable degree of medical certainty that, when considering claimant's asymptomatic history prior being electrically shocked, she incurred trauma significant enough to cause the damage identified by the testing he conducted.

For these reasons, I dissent.

SHELBY W. TURNER, Commissioner