

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005412

MELANIE KELLEY,
EMPLOYEE

CLAIMANT

COOPER ENGINEERED PRODUCTS,
SELF-INSURED EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,
TPA

RESPONDENT

OPINION FILED MARCH 29, 2005

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

Claimant represented by the HONORABLE F. MATTISON
THOMAS, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE NORWOOD
PHILLIPS and HONORABLE CASEY CASTLEBERRY, Attorneys at
Law, El Dorado, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed March 9, 2004. 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 this claim.
2. The stipulations agreed to by the
parties are reasonable and are hereby
accepted as fact.
3. The opinions of Drs. Vernon Mark and
Bill Mastrodimos are entitled to more
weight than the opinion of Dr. Thomas
Hart.

4. The claimant has failed to prove by a preponderance of the evidence that the percutaneous discectomy procedure recommended by Dr. Thomas Hart is reasonably necessary in connection with the compensable injury.

5. 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.

Therefore we affirm and adopt the March 9, 2004 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

The majority has denied the claimant's requested medical care because of their findings that the treatment in question was not reasonable or necessary. For the reasons set out below, I respectfully dissent from that denial.

The claimant's treating physician is Dr. Thomas Hart, a Little Rock surgeon specializing in spinal injuries. Based upon his evaluation of the discogram performed on the claimant's lumbar spine, he has recommended that she undergo a percutaneous discectomy at L5-S1. According to Dr. Hart's letter of October 6, 2003, he has performed more than 400 of those procedures on patients with conditions similar to the claimant's and has generally received positive results. Based upon his review of diagnostic testing performed on the claimant and his physical examination of her, he is of the opinion that the percutaneous discectomy would provide her relief from her chronic back pain.

The respondent objected to providing this procedure to the claimant and to support their position, obtained reports from consulting physicians

affiliated with Systemedic. The first of these physicians was Dr. Bill Mastrodimos from California. This doctor opined that the claimant was not an appropriate candidate for a percutaneous discectomy since she was suffering from discogenic pain and the procedure in question is only for treatment of radicular pain secondary to nerve root impingement.

The other physician was Dr. Vernon Mark of Massachusetts who likewise was of the opinion that the percutaneous discectomy was not an appropriate treatment for the claimant. His opinion was that this procedure should only be performed on people with extruded disc material impinging upon a nerve root. Both doctors noted that there were no MRI or CT scans establishing L5-S1 nerve root impingement.

The Administrative Law Judge relied on the consulting doctors to deny the claimant's request for further medical treatment. In reaching this conclusion, the Administrative Law Judge, and the Majority by virtue of their adoption of his findings, concluded that the consulting physicians more clearly stated their reasons for objecting to a percutaneous discectomy and therefore their opinions were entitled to greater weight than that of Dr. Hart.

I believe that the opinion of Dr. Hart is entitled to greater weight than that of two consulting physicians who never saw the claimant. Neither of the two consulting physicians indicated that they had any expertise in performing percutaneous discectomies. In fact neither doctor referred to any personal experience having performed this procedure nor do they seem to be aware of any actual patients who had ever undergone such treatment. Their entire report was based upon their review of academic journals and their citations of medical text. On the other hand, Dr. Hart is a noted local physician who is greatly experienced in the area of the treatment of spinal injuries and has performed a large number of percutaneous discectomies with good results.

In short, I believe that it is clear error to rely upon the opinions of faceless doctors who seem to have no real experience with actual patients instead of a local physician, who is well known to this Commission and has considerable experience in dealing with real people and with this claimant in particular. For that reason, I dissent.

SHELBY W. TURNER, Commissioner