

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110570

TOM TROUTMAN, EMPLOYEE	CLAIMANT
CRAIGHEAD FARMERS CO-OP, EMPLOYER	RESPONDENT
AG-COMP SI FUND, CARRIER	RESPONDENT

OPINION FILED MAY 11, 2005

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

Claimant represented by HONORABLE KRISTOFER E. RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE GUY A. WADE, 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 May 25, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On September 7, 2001, the claimant sustained a compensable, cervical injury arising out of and during the course of his employment with Craighead Farmers Co-Op, at which time he earned sufficient wages to entitle him to compensation rates of

\$291.00 per week for temporary total disability and \$218.00 per week for permanent disability.

3. A prior Opinion filed May 31, 2002, is no a final decision.

4. The claimant returned to work for another employer on November 14, 2001, and has apparently remained gainfully employed since that time.

5. The claimant's last medical treatment for his September 7, 2001 admitted [sic] injury was on December 2, 2002.

6. The claimant has failed to prove, by a preponderance of the credible evidence, that additional medical treatment is reasonably necessary in this claim.

7. Respondents have controverted claimant's entitlement to additional benefits.

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

The Majority's decision has effectively denied this claimant further medical treatment for a compensable injury. For the reasons set out below, I respectfully dissent from that result.

I note at the outset that this is not a case where a claimant is motivated by secondary gain. This claimant is not presently disabled and has not requested an award of any monetary benefits. His claim is for additional medical treatment so that he can obtain additional prescription medication and an evaluation to determine if there is any further treatment for the symptoms of his compensable

injury. In other words, he is merely requesting that the respondent provide him a minimal amount of medical treatment as required by A.C.A. §11-9-508, *et. seq.*

During the hearing in this matter, the respondent offered a substantial amount of videotape showing the claimant's job duties. However, there is no dispute that the claimant is carrying out full time work. However, his ability to function in the job place is irrelevant since the issue in this case is his entitlement to further medical treatment. The claimant has never asserted that he is unable to work nor has he denied that he is, at times, capable of engaging in vigorous activities. He is, however, stating that the type of activities he engages in on a daily basis cause him to suffer a substantial amount of pain, discomfort, and paresthesia. The claimant is merely seeking medical treatment for possible relief of these symptoms.

The only basis which the respondent is offering to deny this medical treatment is that the claimant has "abandoned medical treatment." In support, the respondent notes that the claimant missed some appointments with Dr. Bruce Safman, his treating physician. The respondent's position is essentially that, since the claimant missed

those appointments, he has effectively waived his rights to receive necessary medical treatment.

I find that this assertion is without merit. The medical appointments which the claimant missed were not made by him but rather by the respondent's nurse case manager. In making these appointments, she did not consult the claimant. She set the appointments for her convenience, without considering the claimant's work schedule which, as a truck driver, required him to travel frequently and not be available for appointments.

I also question the independence of Dr. Safman's conclusion in December 2002, that the claimant had "abandoned" his medical treatment. In reviewing the reports of Deborah Wilson, the respondent's case manager, I note she mentioned several contacts she had with Dr. Safman in his office regarding the claimant. In a report of November 22, 2002, she states that she received notice that the claimant was ill and was not able to attend an appointment scheduled on November 18, 2002. She then states that she "traveled to Dr. Safman's office and met with Dr. Safman on 11-18-02, I explained that Mr. Troutman had missed and rescheduled several appointments making it difficult to provide an

appropriate course of treatment. Dr. Safman stated he agreed and will explain that if he is not able to attend the appointments as scheduled in the future, he would release him stating that he had abandoned medical treatment." Ms. Wilson then made the claimant another appointment on December 2, 2002, once again, without consulting him regarding this date.

Dr. Safman then authored a note dated December 2, 2002 in which he refers to the claimant not having kept the appointment on November 18th. He stated, "I met with his case manager today. I will declare him as having abandoned medical care."

While medical case management can, in some circumstances, be helpful, it is obvious that the respondent's case manager was more interested in advancing her client's interest in terminating the claimant's receipt of medical benefits than trying to assist him in receiving the medical treatment he is entitled to receive by the Workers' Compensation Act. I believe that the case manager's conduct in scheduling appointments without consulting the claimant and then trying to influence his doctor to terminate medical treatment is inappropriate.

I find that the claimant is, at a minimum, entitled to some medical treatment for what was a compensable injury. He is only asking that the respondent designate a physician to provide him treatment, primarily in the form of medication. I also find that it is reasonable for the claimant to explore any other treatment modalities which could improve his condition. As I have stated before, I do not believe that this Commission should be so quick to cut off a claimant's medical treatment, especially when the claimant is not requesting any extensive or expensive medical procedures. He merely is requesting that the respondent provide him a medical doctor to provide an appropriate amount of medical treatment for a compensable injury.

For the reasons set out above, I respectfully dissent.

SHELBY W. TURNER, Commissioner