

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303259

SHERMAN WHITE,  
EMPLOYEE

CLAIMANT

HAYNIE CO., INC.,  
EMPLOYER

RESPONDENT

ZENITH INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 19, 2005

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

Claimant appears pro se.

Respondents represented by the HONORABLE AMY S. HUFFMAN,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed November 22, 2004. The administrative law  
judge found that the claimant proved "he continued to  
require reasonable (sic) necessary medical treatment  
relative to his February 10, 2001, compensable injury."  
After reviewing the entire record *de novo*, the Full  
Commission reverses the opinion of the administrative law  
judge. We find that the claimant did not prove by a

preponderance of the evidence that he was entitled to additional medical treatment.

I. HISTORY

The parties stipulated that Sherman W. White, age 44, sustained a compensable injury to his low back on February 10, 2001. Mr. White testified that he noticed a pain in his back after moving some chicken. Dr. Charles E. Carpenter's impression on February 13, 2001 was "acute lumbar strain." Dr. Carpenter planned conservative treatment. Dr. Scott R. Archer noted on February 16, 2001, "The patient has a past medical history of a previous back injury about one year ago."

An MRI of the lumbar spine was taken in April 2001, with the following impression: "1. Minimal disc desiccation with accompanying minimal diffuse annular bulging at the L5-S1 level. 2. No focal disc herniation or focal canal stenosis is seen."

Dr. Edward H. Saer, III examined the claimant in April 2001 and reported, "He did have an injury a year ago unloading a truck and was treated non-operatively. He reports that he got better after that but never became totally asymptomatic....X-rays obtained today are

unremarkable. MRI films were reviewed. He has a little desiccation at L5-S1 with an HIZ suggesting an annular tear. His symptoms are most compatible with lumbar sprain or strain. I think an epidural steroid injection would be helpful."

The claimant subsequently underwent a series of lumbar epidural steroid injections.

The claimant testified that he aggravated his back problem at work in February 2002. "I turned around real quick and when I turned around I caught a pain in my back," the claimant testified.

Dr. Saer noted in March 2002, "He started having more trouble around the beginning of February of this year. He cannot relate this to any one specific incident. He had had intermittent symptoms since last year, but this time the pain persisted and has not gone away....His prior MRI just showed some desiccation and annular tear. I suspect he has just gotten things irritated again. I am just going to have him start some physical therapy."

The claimant testified that he did not benefit from physical therapy.

After additional diagnostic testing, Dr. Saer noted in June 2002, "I reviewed the MRI films and reports. His most recent was done on 04/27/02. I compared this to the one done on 04/03/01. It looks like he has central bulge and annular tear at L5-S1. This is basically unchanged."

Dr. Saer referred the claimant to Dr. Sunder Krishnan, who saw the claimant in June 2002 and assessed: "1. L5/S1 annular (sic) tear. 2. Disk bulging."

In July 2002, Dr. Krishnan performed "provocative lumbar discography at the L3-4, L4-5 and L5-S1 levels."

The following impression resulted from a CT scan of the lumbar spine with IV contrast on July 11, 2002: "1. No distinct annular tears are identified. 2. Mild loss of disc space height at the L5/S1 level with small central posterior osteophyte arising from the superior end-plate of the S1 vertebral body. 3. No neurocompressive lesions."

The claimant testified that he did not benefit from steroid injections. Dr. Krishnan noted on July 22, 2002, "I really do not think that he is going to benefit from further injection therapies....From my standpoint there is really nothing that I have to offer to him in the form of interventional pain management....If there is nothing that

can be offered to him from the spine center he will be referred to a rehab specialist. He is agreeable."

Dr. Krishnan noted on August 1, 2002, "a couple of days ago I went through Mr. White's films with Dr. Saer and discussed the results of the provocative discography with him. At this point in time, no surgical alternative can be afforded to Mr. White." Dr. Krishnan referred the claimant to Dr. Thomas M. Ward. The claimant began treating with Dr. Ward, a physical medicine and rehabilitation specialist, in September 2002.

Dr. Ward informed Dr. Krishnan in October 2002, "To date very little, if any, modification in Mr. White's pain has occurred. The primary focus of our work with Mr. White has been in providing him an appropriate lumbar stabilization program with special interest at delegating more of the work related activities that are chiefly responsible for aggravating his back on a day-in and day-out basis....At this juncture we are requesting approval and identifying as a medical necessity a follow up intervention requiring the use of Botulinum Toxin Type A." The record indicates that the respondent-carrier initially denied Dr. Ward's recommendation of "Botulinum Toxin injections" but

approved the treatment after Dr. Ward appealed the denial. Dr. Ward began the injections in March 2003. The record indicates that this treatment did not improve the claimant's condition. The claimant testified that "Botox injections" did not help him.

On May 21, 2003, Dr. Ward gave the claimant "a disability rating of 21% to the total body as a whole." Dr. Ward wrote to the carrier in June 2003, "As per my previous letter to you May 21, I have indicated that he is at a maximum medical benefit."

Dr. Barry D. Baskin evaluated the claimant on July 28, 2003: "This gentleman in my opinion is well beyond the point of maximum medical improvement. His diagnosis is degenerative disc of the lumbar spine....Based on the AMA Guidelines Fourth Edition, Page 113, Table 75, this gentleman would have a 7% impairment based on the L5-S1 disc lesion which is moderate in severity on MRI scan. He also has a smaller mild disc bulge at the L4-5 level which would carry an additional 1%, for a total of 8% impairment to the whole person. This gentleman is at maximum medical improvement. My recommendation for him would be to engage in a regular home exercise program."

The parties stipulated to "payment of permanent partial disability benefits to correspond to 8% permanent physical impairment to the body as a whole."

The claimant followed up with Dr. Krishnan on September 29, 2003:

At this point in time, as I had mentioned over a year ago, there is really nothing I have to offer to this gentleman. He was released and referred to Dr. Ward for further management. It is my understanding that Dr. Ward released him with a 21% impairment rating, and Dr. Baskin evaluated him and, through an independent evaluation, gave him an 8% impairment rating. As his impairment ratings go, I have no EMG results in front of me to determine whether the patient had true EMG/NCV changes. I think Dr. Baskin's rating was appropriate. There is really nothing else I have to offer this gentleman in the form of interventional pain management. I will not be assuming control of his medications. When he had seen me last, I had him on Mobic. He was given a one-time prescription of Norco after his discogram was done. He is aware of this.

Dr. Reginald J. Rutherford provided an EMG report in October 2003: "The nerve conduction study and needle examination are normal. There is no evidence via electrodiagnostic parameters to suggest lumbar radiculopathy, lumbosacral plexopathy or peripheral neuropathy to account for or contribute to Mr. White's complaints referable to the right leg."

On January 8, 2004, the Commission's Medical Cost Containment Department granted the claimant a "one time only change of physician" from Dr. Saer to Dr. Ron Williams. The claimant testified that he selected Dr. Williams. The respondents stipulated that the claimant had "exercised his right to a one-time change of physician."

An MRI of the lumbar spine was taken on January 27, 2004, with the following impression: "L5-S1 displays disc desiccation in keeping with disk degeneration. A small broad-based posterior protrusion is present. There is no compression of adjacent neural structures. A tiny posterior annular tear is seen. The neural foramen are patent bilaterally. Mild degenerative facet hypertrophy is present. The remaining superior lumbar disk levels are unremarkable in appearance."

Dr. Ronald N. Williams, a neurosurgeon, noted on January 27, 2004:

Sherman White is a 43-year-old left-handed male who tells me he has had several injuries to his back with the moist (sic) significant one being in 2001. That has been followed by back pain and pain on the left side of the head. He does not really have any true leg pain. He has had physical therapy and five epidural steroid injections without any long-term benefit. She (sic) has

seen Dr. Ted Saer who did not recommend any surgery. A MRI done today showed a protrusion of disc at L5-S1 with no nerve root compromise....

He has already had about all I know that might help him. He has been able to return to work and has only been working for about a month. Presently he seems to be tolerating that well and I don't have any further recommendations.

A pre-hearing order was filed on September 28, 2004.

The claimant contended that he suffered from worsening pain in his back and right side. The respondents contended that, in February 2002, the claimant aggravated his compensable injury. The respondents contended that additional medical treatment was not reasonably necessary.

A hearing was held on November 16, 2004. The administrative law judge examined the *pro se* claimant:

Q. I'm looking at a report from Dr. Williams dated January 27, 2004, does that sound right?

A. Yes in January.

Q. Okay. You saw him that one time and he told you to come back to him if you wanted to do so?

A. Yes, sir.

Q. Did you attempt to return to Dr. Williams?

A. Yes, sir.

Q. Do you know when you attempted to return to Dr. Williams?

A. Maybe in March or April.

Q. And at that time what happened?

A. They told me that I couldn't go see him unless the insurance company approved it.

Q. Someone from Dr. Williams' office said that?

A. Yes, sir....

Q. What type of symptoms are you experiencing now?

A. My back is still bothering me in my lower back and in my right side.

The administrative law judge found, in pertinent part:

5. In an order filed January 8, 2004, Dr. Ronald N. Williams, a Little Rock neurosurgeon, was designated the claimant's authorized treating physician relative to the February 10, 2001, compensable injury. Claimant has sustained his burden of proof by a preponderance of the evidence that he continued to require reasonable (sic) necessary medical treatment relative to his February 10, 2001, compensable injury.

6. The respondents shall pay all reasonable hospital and medical expenses arising out of the injury of February 10, 2004.

The respondents appeal to the Full Commission.

## II. ADJUDICATION

The 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 he is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). 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 he was entitled to additional medical treatment pursuant to Ark. Code Ann. §11-9-508(a). The parties stipulated that the claimant sustained a compensable injury to his low back on February 10, 2001. Dr. Carpenter diagnosed "acute lumbar strain" and planned conservative treatment. Dr. Saer reviewed diagnostic testing and agreed in April 2001 that the claimant's symptoms were "most compatible with lumbar strain or sprain." The claimant underwent lumbar epidural steroid injections, from which the claimant reported no benefit.

The claimant testified that he aggravated his back problem at work in February 2002. Dr. Saer subsequently arranged physical therapy, from which the claimant reported no benefit. Dr. Saer reviewed additional diagnostic testing

and reported in June 2002 that there had been no change shown on MRI. Dr. Krishnan began treating the claimant in June 2002, but the claimant reported no benefit from Dr. Krishnan's treatment. Dr. Krishnan referred the claimant to Dr. Ward, but the claimant reported no benefit from Dr. Ward's treatment.

Dr. Ward assigned the claimant a disability rating in May 2003 and pronounced "maximum medical benefit." In July 2003, Dr. Baskin pronounced maximum medical improvement and assigned an 8% physical impairment rating, which was accepted and paid by the respondents. Dr. Krishnan stated in September 2003, "there is really nothing I have to offer this gentleman." The claimant treated with Dr. Williams in January 2004, pursuant to the claimant's one-time change of physician. Dr. Williams examined the claimant and stated, "He has already had about all I know that might help him. He has been able to return to work and has only been working for about a month. Presently he seems to be tolerating that well and I don't have any further recommendations."

The Full Commission finds that the claimant did not prove he was entitled to additional medical treatment. The claimant sustained an acute lumbar strain in February 2001.

No treating physician has opined that the claimant sustained an acute disc injury, or that the claimant would require operative treatment for his lumbar strain, even after the February 2002 aggravation. Dr. Krishan has stated that he has nothing further to offer the claimant, and both Dr. Ward and Dr. Baskin have indicated that the claimant has reached maximum medical improvement for his compensable injury. The Full Commission recognizes that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). None of the pain specialists in the present matter, Dr. Krishnan, Dr. Ward, and Dr. Baskin, have opined that the claimant was in need of additional management for his 2001 lumbar strain. In fact, there are no medical opinions of record which indicate that the claimant needs additional medical treatment. Dr. Williams specifically stated in January 2004 that he had no treatment recommendations for the claimant.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was entitled to additional medical treatment pursuant to Ark.

Code Ann. §11-9-508(a). We therefore reverse the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

\_\_\_\_Commissioner Turner dissents.

**DISSENTING OPINION**

I strongly disagree with the Majority's reversal of the Administrative Law Judge's award of medical benefits. This claimant has suffered an admittedly compensable injury and is seeking treatment for that injury from a doctor designated by this Commission to provide him treatment. The Majority's decision denies this injured worker, who continues to suffer debilitating and painful symptoms of an admittedly compensable injury any further medical treatment. For those reasons, I respectfully dissent from the Majority's decision.

As outlined in the Majority's opinion, the claimant has been suffering from job related back problems for several years. As a result of this condition, he has been evaluated and treated by a number of different physicians. However, to date, he continues to suffer from pain, tingling, numbness, and loss of mobility. Nonetheless, he continues to work to the best of his ability with the respondent. However, because of limitations from his back injury, he is no longer able to work full time.

All the claimant is presently seeking is treatment for his ongoing back problems. On January 8, 2004, this Commission approved a Change of Physician to Dr. Ronald Williams, a Little Rock neurosurgeon, and Dr. Williams was thereafter the claimant's authorized treating physician. The claimant saw Dr. Williams on January 27, 2004. In a report of that date, Dr. Williams noted that the claimant's recent MRI demonstrated a disc protrusion at L5-S1. However, Dr. Williams stated that he was not able to provide the claimant with any further treatment at that time.

In the hearing, the claimant testified in regard to his symptoms and his visit with Dr. Williams. The claimant's testimony was that Dr. Williams examined him and had pressed on an area of his lower back and had asked him

if there was any pain. The claimant replied that there was not. However, the claimant also related that his symptoms have increased since seeing Dr. Williams and that when he presses the same area touched by Dr. Williams, he now has radiating pain down his leg and into his toes. This increase in symptoms is the reason that the claimant wishes to see his treating physician again. However, the respondent has advised Dr. Williams's office that they will not pay any further medical treatment for the claimant and have, in this proceeding, taken the position that there is no further medical treatment available to the claimant. In its brief, the respondent asserts that once a claimant has reached his or her maximum medical improvement and has been released to return to work, they are simply not entitled to further medical care. Clearly that position is incorrect and is not in accordance with the principle of the Workers' Compensation Act. The very first provision in the Act, §11-9-101 (b), provides that one of the primary purposes of the Workers' Compensation laws is to pay for reasonable and necessary medical expenses resulting from compensable injuries.

Obviously, merely because a claimant has reached his or her point of maximum medical improvement, does not

mean that they would not benefit from further medical treatment or that there is no possibility that any treatment would be reasonable and necessary. Many workers who have reached the point where their medical conditions have stabilized will still need and benefit from continued medication, pain management and physical therapy, and an array of other treatments which may be necessary to monitor and manage their medical conditions. Additionally, as is the case here, a claimant's condition may begin to deteriorate and he will need to return for follow up visits to determine what other treatments are available for him.

While the Majority does not adopt the ill-informed viewpoint advanced by the Respondent, they reach essentially the same result. The Majority's Opinion seems to hold that since the claimant's physician did not previously recommend any new treatment modalities for him, there is no chance that he would ever benefit from any treatment in the future. However, that holding ignores the testimony of the claimant who stated that his condition had worsened and the MRI scan of the claimant's lower back which indicated a progressive worsening of his condition.

In my opinion, the worsening condition testified to by the claimant, and established by his most recent MRI

scan is clear justification for him seeking additional medical treatment. I believe that the Majority, in denying this medical treatment, is contravening one of the basic purposes of the Workers' Compensation Act. For those reasons, I dissent from the denial of this injured workers' medical treatment.

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SHELBY W. TURNER, COMMISSIONER