

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E404373

FRANK CLINGAN,
EMPLOYEE

CLAIMANT

GEO SPECIALTY CHEMICAL, INC.,
EMPLOYER

RESPONDENT

HARTFORD UNDERWRITERS INS. COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 17, 2007

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

Claimant represented by the HONORABLE DONALD S. RYAN,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE A. GENE
WILLIAMS, 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 August 16, 2007. 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 employer/employee/carrier relationship existed on February 28, 1994, when the claimant sustained a compensable injury.
3. The claimant's earnings were sufficient to entitle him to a temporary total disability rate of \$267.00.

4. Claimant sustained work related back injuries at Stauffer Chemical on 3/6/79 and 7/15/85.
5. Dr. John Adametz assigned a 2.5% permanent physical impairment rating on 7/25/86 for back problems.
6. Dr. Thomas Fletcher performed a bilateral discectomy at two levels, L4-L5 and L5-S1, on 12/17/91.
7. On 10/1/92 Dr. Fletcher assigned a 15% permanent physical impairment rating for the two level discectomy.
8. GEO Specialty Company became the claimant's employer on 2/9/93.
9. Hartford Underwriters Insurance Company became the workers' compensation insurer of GEO Specialty Company on 2/9/93.
10. Claimant was off work 2/28/94 through 5/15/94.
11. The current claims arise from an incident which occurred 2/28/94.
12. Claimant returned to work for GEO Specialty Chemicals on 5/16/94.
13. The claimant's employment with GEO Specialty Chemicals ceased 1/3/95 due to a reduction in employment at the plant.
14. A hearing on 1/9/96 resulted in an administrative law judge opinion of 2/8/96.
15. The 2/8/96 opinion was affirmed by the Commission on 12/5/96.
16. A hearing was held on 8/4/98 on issues of entitlement to additional medical treatment and permanent disability.
17. The 8/4/98 hearing resulted in an administrative law judge opinion of 9/28/98.

18. The 9/28/98 opinion was affirmed by the Commission on 4/27/99 and the Court of Appeals on 3/22/00 that claimant is entitled to continuing and reasonable necessary medical expenses.

19. Claimant initiated treatment with Dr. Charles Schock on 6/25/99, after an 8 year absence.

20. Dr. Schock performed a lumbar fusion on 8/17/99.

21. Respondents learned of Dr. Schock's treatment on 4/6/00.

22. The Commission's opinion of November 29, 2000, denied compensability of medical treatment rendered by Dr. Charles Schock.

23. The case is governed by the prior final decisions of the Full Commission and the Court of Appeals pursuant to the doctrine of res judicata.

24. The claimant has proven by a preponderance of the evidence that he is entitled to continuing medical treatment for the compensable injuries to his left foot by his primary physician, Dr. Phillip Johnson, or another medical provider designated through the proper exercise of a change of physician request.

25. The claimant has proven that his need for medical treatment for the compensable injuries to his left foot is reasonable and necessary.

26. The right to medical treatment has been controverted by Respondents. Since the claim arose prior to July 1, 2001, Claimant's attorney is entitled to the appropriate statutory attorney's fees as to the medical benefits awarded in connection with this case.

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 August 16, 2007 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant has proven by a preponderance of the evidence that medical treatment for his left foot is reasonable and necessary medical treatment related to his 1994 compensable injury. In a previous opinion which was affirmed by the Court of Appeals the Full Commission found that claimant was suffering from a type of problem related to nerve impingement based upon finding by Dr. David Miles of slow and latent nerve conduction problems. However, since that finding was rendered, the claimant has undergone subsequent testing which does not support our previous finding. Specifically, an Electromyography

performed by Dr. Gordon Gibson on March 30, 2001, revealed motor nerve conduction findings in the right and left Peroneal Nerve within normal limits, as well as normal sensory conduction studies of the bilateral Sural Nerves. Dr. Gibson specifically noted that the "EMG studies of the bilateral lower extremities revealed no definite evidence of motor nerve compression, neuropathy or myopathy." Accordingly, it appears that the previous findings upon which additional medical treatment was awarded have since been proven non-existent. In light of this new medical evidence, I cannot agree with the majority to award additional medical treatment for a condition which is now conclusively shown to not even exist. The claimant does not, and has not had motor nerve compression as a result of his 1994 compensable aggravation injury. Therefore, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner