

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601584

ROGER RHEA,  
EMPLOYEE

CLAIMANT

RITTER COMMUNICATIONS,  
EMPLOYER

RESPONDENT

AG-COMP SIF CLAIMS,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 1, 2007

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

Claimant represented by the HONORABLE PHILLIP WELLS,  
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE BETTY J.  
DEMORY, 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 January 26, 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. On January 20, 2006, the relationship of employee-employer existed between the parties.
3. On January 20, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$488.00/\$366.00, for temporary total/permanent partial disability.

4. On January 20, 2006, the claimant sustained an injury arising out of and in the course of his employment.

5. The evidence preponderates that the left long finger flexor digitorum profundus tenolysis surgical procedure is reasonably necessary medical treatment in connection to the injury received by the claimant on January 20, 2006.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 20, 2006.

7. The respondent has controverted the claimant's entitlement to the additional surgical procedure relative to his left long finger growing out of his compensable injury of January 20, 2006.

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 January 26, 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.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

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DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the proposed surgery to increase

the claimant's range of motion in the long finger in his left hand is reasonable and necessary medical treatment. Based upon my de novo review of the entire record, I find that the claimant has failed to meet his burden of proof.

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that an employer shall provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of the employee's injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of the compensable injury. Wal-Mart, supra; GEO Specialty Chemical v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000); Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001); White Consolidated Indus. v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396

(2001); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000); Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996).

Further, when the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. Wackenhut, supra. The basic test is whether there is causal connection between the two episodes. Id. When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Gardner v. Area Agency on Aging, Full Commission Opinion, January 4, 2006 (Claim No. F302438); Jones v. Seba, Inc., Full Commission Opinion, December 13, 1989 (Claim No. D512553).

The claimant sustained an injury to his non-dominant hand. After coming under the care of Dr. Michael Moore, a noted hand specialist, the claimant underwent surgery for "Left long finger FDP repair with intact superficialis tendon." Although this surgery was successful, the claimant testified that he continued to have limitation of movement in the joint of the long finger on his left hand. However, the claimant has full passive range of motion in this finger. Nevertheless,

due to the claimant's subjective limitations with active range of motion, the claimant was advised by Dr. Moore that he could either learn to accept this limitation or elect to undergo long finger flexor tenolysis surgery. It is this surgery that is the subject of the present appeal. Dr. Moore wrote in a report dated September 8, 2006:

The treatment options at this point are to accept the final result or proceed with a left long finger flexor digitorum profundus tenolysis, which may improve the active motion of the finger. The surgery is elective in the sense that Mr. Rhea had the option of accepting the final result or proceeding with treatment that may improve the motion of the finger.

At respondents' request, Dr. William C. Collins, a Diplomate with the American Board of Orthopaedic Surgery, reviewed the claimant's medical records. Dr. Collin agreed that this type of procedure "may" be offered with any tendon repair; however he noted the risks involved of an actual decrease in the flexor function was a risk the patient must be made aware of. Without specific DIP joint needs like that of a guitar player, Dr. Williams suggested that the claimant might best be served by accepting his minimal limitations rather than risk the deterioration of function. Likewise, Dr. David Rhodes not only examined

the claimant's medical records, but performed a physical examination of the claimant for a second opinion. Dr. Rhodes opined that there was a possibility of adhesion formation rather than failure of the initial surgical repair. Accordingly, Dr. Rhodes recommended that the claimant continue with physical therapy to increase his range of motion. Only after extensive therapy failed would Dr. Rhodes recommend that the claimant undergo a second surgery.

While the claimant appreciates the risks involved with this proposed surgery, I find that the claimant has failed to prove by a preponderance of the evidence that the surgery is reasonable and necessary in connection with his compensable injury. The claimant's left hand, while lacking active range of motion in the long finger, still allows the claimant to function in his everyday life. The claimant has not exhausted efforts at physical therapy. The record reflects that when he did go to physical therapy, his range of motion improved. Rather than accept his limitations or put forth the time and effort required by physical therapy to improve his range of motion, the claimant seeks to undergo surgery to improve his range of motion. However, there is no guarantee that surgery will even help his condition. In fact, the record reflects that surgery may

even result in just the opposite outcome and actual decrease the claimant's motion.

The proposed procedure is sought to increase the claimant's active range of motion. In my opinion, and at this stage in the claimant's recovery, I cannot find that this proposed procedure is either reasonable or necessary in connection with the claimant's compensable injury. The claimant has not even attempted the extensive therapy recommended by Dr. Rhodes, even though his short attempt at post surgery therapy resulted in some improvement in his range of motion. Moreover, my review of the medical records convinces me that the risks involved of actual deterioration rather than improvement do not weigh in favor of this surgery being a reasonable or necessary option for the treatment of the claimant's compensable injury.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner