

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509842

HEATH SPEARS, EMPLOYEE	CLAIMANT
CITY OF VAN BUREN, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 18, 2007

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

Claimant represented by the HONORABLE EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North 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 October 25, 2006. 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 August 22, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on August 22, 2005.
4. Medical expenses have been paid to October 2005.
5. The claimant is entitled to a weekly compensation rate of \$356.00 for temporary total disability based on an average weekly wage of \$534.54.
6. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injuries.
7. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from March 15, 2006, to April 16, 2006.
8. The respondents shall pay both for the reasonable and necessary medical care for this claimant's compensable injury as well as the ordered TTD.
9. The respondents have controverted this claimant's claim for additional benefits in its entirety.
10. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

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 October 25, 2006 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 proved by a preponderance of the evidence that he was entitled to additional medical treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant sustained an admittedly compensable injury on August 22, 2005. The claimant was moving a wood pile when a rat ran up his arm causing him to fall. The claimant was able to continue working and worked the next day but felt he needed medical attention. He obtained chiropractic treatment on August 24, 2005. The chiropractor recommended that the claimant undergo an MRI which was done on August 25, 2005. The radiologist's impression was "central and perhaps very slightly eccentric to the left disc

herniation at L5-S1 confined to the disc level." And that there was "bilateral facet hypertrophy especially at the L5-S1 level and also slightly more pronounced at the left at L5-S1." The claimant also had a small synovial cyst at the degenerative L5-S1 facet level.

On August 25, 2005, the claimant sought treatment from Dr. Terri Lewelling. Dr. Lewelling prescribed medication and removed the claimant from work. Dr. Lewelling released the claimant to return to work on September 22, 2005, with a 50 pound lifting restriction. On September 27, 2005, the claimant was returned to full duty. The claimant testified that he worked light duty for a couple of weeks and was not fully released to perform his concrete work until after he saw Dr. Lewelling in a follow up on October 4, 2005. The claimant complained of a sore hip on that date and Dr. Lewelling's examinations noted no tingling in the claimant's left leg, normal strength, and a full range of motion with mild tightness in the left hip. Dr. Lewelling opined that the claimant could return to full duty. The claimant continued working for the respondent employer without any further medical intervention until January 30, 2006. The claimant again sought chiropractic care for back and leg pain that had been exacerbated. On February 2, 2006, the claimant saw

Dr. Lewelling again. Dr. Lewelling's office notes reveal that the claimant was pulling nails out of a board at home on January 29, 2006, when he felt a sharp in his back on the left. Dr. Lewelling's examination demonstrated a positive straight leg raising test and pain on palpitation to the left sacroiliac joint. Dr. Lewelling suggested that the claimant reduce his lifting at work, continue his home physical therapy and take a muscle relaxer and pain medication.

The claimant continued working for the respondent employer. On March 15, 2006, the claimant was seen by Dr. Robert C. Thompson, an orthopedic physician. Dr. Thompson noted that the claimant had had some low back problems for a considerable time and noted that the claimant had increased pain after bending over to pick up milk. Dr. Thompson noted that the claimant had gotten better but had a relapse. The claimant remained off work for about a month but returned to work at that time.

At this time, the claimant is requesting additional medical treatment. In my opinion, a review of the evidence demonstrates that the claimant received all the medical attention that was reasonable and necessary to treat his compensable injury of August 22, 2005.

Employers must promptly provide medical services which are reasonably necessary for treatment of

compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). 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. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

The evidence demonstrates that the claimant was released to return to full duty work, including his concrete work, in October of 2005. The claimant did not miss any additional time due to his injury and did not require any additional medical treatment until he was pulling nails at his 12-acre farm on January 29, 2006. Furthermore, the medical report of Dr. Thompson dated 3-15-06 states that he had reviewed the claimant's MRI that was performed in August of 2005. He noted that the MRI clearly showed a herniated disk at that time.

Dr. Thompson noted that: "It is from August of 2005 and he obviously was able to get better at that point in time and then have a relapse now."

It is obvious, from my review of the evidence, that the claimant was able to fully recover from his injury of August 22, 2005, and in January of 2006, reinjured his back at home. This is clearly not related to the claimant's employment.

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

KAREN H. MCKINNEY, Commissioner