

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E911422

DEANN E. DURHAM GILPATRICK, EMPLOYEE	CLAIMANT
AEGON INSURANCE, USA, EMPLOYER	RESPONDENT NO. 1
ST. PAUL TRAVELERS, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED AUGUST 4, 2008

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

Claimant represented by the HONORABLE GAIL O. MATTHEWS,
Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by the HONORABLE ANDY L.
CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JUDY RUDD,
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 April 17, 2008. 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 over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that her need for prescription medication after April 4, 2006, was reasonably necessary, as well as related to her February 11, 1998, injury and that said medications remain the responsibility of respondents #1.
4. The claimant has failed to show that she is entitled to statutory penalties for failure to pay a previous Award.
5. Respondents #1 are responsible for a statutory attorney's fee pursuant to, and limited by, Ark. Code Ann. §11090715 on all outstanding and unpaid prescription medications, and respondents #1 remain responsible for a statutory attorney's fee on all future medical treatment, including, but not limited to prescription medications for treatment of the claimant's compensable injury.

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 April 17, 2008, 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 she is entitled to additional medical treatment after April 4, 2006. Based upon my de novo review of the record, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to continued prescription medication after April 4, 2006.

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.

In my opinion, a review of the evidence demonstrates that the claimant failed to prove by a preponderance of the evidence that she is entitled to additional treatment after April 4, 2006, in the form of prescription medicine. The claimant was involved in an accident in the Wal-Mart parking lot where she was a pedestrian struck by a vehicle. The claimant was knocked to the ground and sustained injuries to her low back, neck and right elbow. The claimant was transported by ambulance to Baptist Medical Center and was ultimately discharged and given Lortab and Flexeril. The claimant followed up with her primary care physician, Dr. Laurenzana, on April 10, 2006, at which time she was complaining, among other things, of low back pain radiating down into her left thigh. Dr. Laurenzana

diagnosed her with acute lumbar strain. Dr. Laurenzana noted that the claimant was having no significant pain in her upper extremities, neck or shoulders, as compared to lower back where she had surgery in the past.

Dr. Laurenzana ordered an MRI which was completed on April 13, 2006. The MRI showed a small right paracentral herniation of the L4-5 disc. It is of note that the MRI report of March 18, 2002, indicated that there was no bulge or herniation at the L4-5 level. According to the 2002 MRI report, the claimant only had degenerative changes at L4-5 and L5-S1. It is also of note that Dr. Garlapati testified in his deposition that each individual radiologist can interpret an MRI differently. There is no doubt that there was new evidence of a herniation at L4-5 following the claimant's motor vehicle accident.

In my opinion, this is an independent intervening event. When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary total disability benefits. Ark. Code Ann. § 11-9-102(4)(F)(i)(Supp. 2005). Benefits are not payable for a condition which results from a non-work-related independent intervening cause following a compensable injury which causes or prolongs disability or need for treatment Ark. Code Ann. § 11-9-

102(4)(F)(iii)(Supp. 2005). Whether there is a causal connection between an injury and a disability and whether there is an independent intervening cause are questions of fact for the Commission to determine. Oak Grove Lumber Co. V. Highfill, 62 Ark. App. 42, 968 S.W.2d 637 (1998). Further, there is no independent intervening cause unless the subsequent disability is caused by activity on the part of the claimant that is unreasonable under the circumstances. Davis v. Old Dominion Freight Line, Inc., 341 Ark. 751, 20 S.W.3d 326 (2000).

It is clear that the claimant had new and different symptoms after the April 4, 2006, incident. The parties took the deposition of Dr. Garlapati on February 13, 2008. Dr. Garlapati testified that he began treating the claimant on July 16, 2003, for chronic low back pain and was simply managing the claimant's pain medications. He testified that the claimant was prescribed Celebrex and Oramorph or morphine at that time. Dr. Garlapati also noted that the claimant had been prescribed Lidoderm patches for pain. He testified that he was not sure if the patient had used it on her neck but he knew that she had used it on her back. It is important to point out that, according to the medical records, the claimant has used the Lidoderm patches for

her neck. The claimant continued on these medications until her new independent intervening event of April 4, 2006. Dr. Garlapati testified that when he saw the claimant subsequent to her April 4, 2006, incident she had been taking hydrocodone. Dr. Garlapati also agreed that, according to Dr. Laurenzana's report from the claimant's April 10, 2006, visit, that the claimant was having new complaints of low back pain following her April 4, 2006, incident at Wal-Mart. He also admitted that those were different complaints from those for which he had been seeing her. Dr. Garlapati testified that he began prescribing Skelaxin and Hydrocodone subsequent to her independent intervening incident. Dr. Garlapati further admitted that none of the medications were for any one specific body part with the exception of the Lidoderm patches. It is obvious from the records that even if those patches are prescribed for one body part, the claimant can use them for another. Dr. Garlapati admitted that he had been treating the claimant for her cervical complaints in addition to her lumbar complaints and he had not changed the manner in which he was treating her regardless of what body part he was treating on the visit. Dr. Garlapati reluctantly agreed that the claimant had new symptoms subsequent to her April 4, 2006, incident. He also noted that Dr.

Laurenzana did not think that the claimant had a new cervical injury as a result of this incident, yet he has opined that they were related. Dr. Laurenzana also opined that there was no new injury as a result of the incident despite the new complaints, symptoms and the new finding per the MRI. Dr. Garlapati testified that most of the claimant's complaints after the accident were in the cervical area.

Dr. Garlapati admitted that the claimant continued to get pain medication following her incident and although he was focusing on the claimant's cervical complaints, the medication was addressing the pain in the lumbar spine as well. Dr. Garlapati also points out that the claimant had new findings of positive straight leg bilaterally, per Dr. Laurenzana's report of April 10, 2006, indicative of the claimant's change in symptoms following her April 4, 2006, incident. Finally, Dr. Garlapati admitted that this was a difficult case and admitted that he could not state within a reasonable degree of medical certainty what was the cause of the claimant's continued need for treatment.

In my opinion, a review of the evidence demonstrates that the claimant sustained a non-work-related independent intervening cause following her compensable injury which prolonged her need for

treatment. It is clear that this new incident caused new complaints. As such, the respondents should not be responsible for paying for the subsequent medications and visits with Dr. Garlapati and the medications prescribed by him. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner