

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406587

JAMES W. GOYNE, EMPLOYEE	CLAIMANT
CRABTREE CONTRACTING COMPANY, INC., EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 24, 2008

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

Claimant represented by the HONORABLE PHILIP M. WILSON,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE MELISSA WOOD,  
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 December 19, 2007. The administrative law judge found that the claimant proved he was entitled to an EMG diagnostic study recommended by Dr. Chakales. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's decision. The Full Commission finds that an EMG diagnostic study would not be

reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties agreed that James Wesley Goyne, age 47, sustained a compensable back injury on June 4, 2004. The claimant testified, "They were pouring concrete, had a screen hung up, and I tried to lift it out of the jam it was in. It sounded like a shotgun went off, and my back popped and I went down." A Radiology Report was done on June 4, 2004: "The vertebral body height is well maintained. Pedicles and the spinous processes looked unremarkable. No compression fracture or subluxation is seen. SI joints are within normal limits. IMPRESSION: Normal lumbar spine."

The claimant was diagnosed with acute low back pain on June 4, 2004 and it was also noted, "L5 S1 narrowing." The claimant began a course of physical therapy. A physical therapist noted on or about June 24, 2004 that the primary diagnosis was acute back strain. The Rehabilitation Daily Notes generally showed some improvement in the claimant's condition yet with persisting pain. The claimant's last physical therapy session took place on August 27, 2004, where it was noted, "Good temporary success."

Dr. William E. Ackerman, III examined the claimant on January 27, 2005 and assessed, "Sprain/strain injury. He has exceeded the normal healing time for this type of injury. He had no relief with a diagnostic/therapeutic injection. I have not detected muscle spasms. PLAN: Essentially I have no objective criteria to award him an impairment rating. Therefore, it is my medical opinion that he is at maximum medical improvement and has an impairment rating to the body as a whole of 0% using the American Medical Association Guides To The Evaluation of Permanent Impairment, fourth edition, page 110."

Dr. Scott W. F. Carle reported on or about February 3, 2005:

Please let the following information serve as a supplement to the IME performed on Mr. James W. Goyne on November 18, 2004....

With respect for the need for further treatment, he is not likely to benefit from additional medicalization....

It appears Mr. Goyne, by history, incurred a strain injury to the lower spine that was associated with a work place incident on 6/4/4. By history this most probably involved the sacroiliac joint given the character and location of his symptoms. His objective testing to date has detected a variety of MRI abnormalities which cannot, with reasonable medical certainty, be apportioned to a single event. Mild to moderate nerve compression, disc degeneration or bulging,

and central spinal stenosis are not significantly associated with specific pain patterns. The self-report of lower extremity weakness or dysesthesia (an abnormal sensation such as numbness, tingling, prickling) is not significantly related to any specific lumbar impairment....Causation, with respect to his chronic pain disorder, is multifaceted and complex, and I am unable to say that the major cause of that diagnosis is attributed to an occupational incident on 6/4/04....

It is unlikely that treating his pain with narcotic analgesics, at this point in his case duration, will make his current disability improve....

His current diagnosis of Sacro-Iliac Joint Syndrome does not rise to a level of objective impairment as described in the Guides 4<sup>th</sup> Edition. He did however, have involuntary muscle spasm identified by a provider which does place him in Category II....This is associated with a 5% whole person permanent impairment. While he does have subjective symptoms of pain and activity intolerance, to this date, there has been no objective evidence of radiculopathy, fracture or motion segment integrity loss. The results of an annular tear are non specific given this clinical situation....Furthermore, the presence of his MRI findings are non specific and are present in a large population of asymptomatic individuals and there exist (sic) no way to objectively determine the acuteness of the finding....

Regarding prognosis: Without the inclusion of addressing the psycho-social aspects of this clients chronic disability claim he is likely to not improve....

The respondents accepted and paid a 5% permanent impairment rating (assessed by Dr. Carle).

The claimant presented to a hospital on August 14, 2006, where it was noted, "Slipped on water & fell on back. Had previous." The claimant testified, "the only thing I did was hit my head on the floor. Didn't hurt my back any worse than it already was....I had a knot on my head." "Spasm" in the claimant's low back was recorded on physical examination. It was noted on an assessment form, "Pt states he slipped and fell on wet floor at jail, pt c/o low back pain and states he hit his head." A Radiology Report on August 14, 2006 showed the following: "There is seen mild narrowing of L5-S1 disc space. Vertebral body heights are well maintained. Pedicle and spinous processes looked unremarkable. There is seen no compression fracture. No sUBLUXATION is identified. IMPRESSION: Mild degree of degenerative disease L5-S1. No compression fracture or sUBLUXATION is seen. MRI lumbar spine may be considered for further evaluation."

A physician's impression was "back sprain" and the claimant was discharged.

A Commission representative signed a Change of Physician Order dated April 6, 2007: "A change of physician is hereby approved by the Arkansas Workers' Compensation

Commission for James W. Goyne to change from Dr. Scott Carle to Dr. Harold Chakales[.]”

Dr. Harold H. Chakales examined the claimant on May 9, 2007:

Mr. James Goyne is a 46-year-old man who presents with complaints of pain as the result of a work-related injury which he states occurred on June 4, 2004....He describes low back and bilateral leg pain, as well as right arm numbness....He last saw a physician approximately 1 ½ years ago. He continues to have low back pain with pain across his hips and radiating into his legs bilaterally....

Mr. Goyne has sought chiropractic care, physical therapy, and epidural steroid injections for his current condition but states none have been of benefit. He has not had surgery....

Complete x-rays of the lumbar spine were made today and show lumbar degenerative disc disease. AP pelvis is normal....

He has involuntary spasm....

Dr. Chakales diagnosed “1. Lumbar disc syndrome with nerve root irritation....I will review his old medical records and would recommend obtaining an EMG of his back and both legs.” Dr. Chakales informed the carrier on May 9, 2007, “I would recommend we obtain an EMG of his back and both legs. He is to return to see me in two weeks.”

The respondents paid for Dr. Chakales' initial evaluation but controverted the claimant's entitlement to additional diagnostic studies and medical treatment.

A pre-hearing order was filed on September 5, 2007. The claimant contended that he had obtained a change of physicians to Dr. Chakales. The claimant contended that "based upon objective findings, Dr. Chakales has recommended additional diagnostic testing in the form of an EMG; that the recommended testing is reasonably necessary, as well as related to claimant's compensable injury and should be paid by respondents." The respondents contended that they had paid all appropriate benefits and that additional studies and treatment were not reasonably necessary.

After a hearing, an administrative law judge found that the claimant proved he was entitled to an EMG diagnostic study recommended by Dr. Chakales. The administrative law judge reserved the issue of the claimant's entitlement to additional medical treatment. The respondents appeal to the Full Commission.

## II. ADJUDICATION

The employer shall 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. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

An administrative law judge found in the present matter that the claimant proved he was entitled to an EMG diagnostic study recommended by Dr. Chakales. The Full Commission reverses this finding. The parties agreed that the claimant sustained a compensable back injury on June 4, 2004. An x-ray of the claimant's lumbar spine was normal although another note indicated, "L5-S1 narrowing." The record does not demonstrate that the notation of L5-S1 narrowing was causally related to the compensable injury. The claimant was diagnosed as having acute back strain. The claimant participated in physical therapy and was also examined by Dr. Ackerman. Dr. Ackerman opined on January 27, 2005 that the claimant had "exceeded the normal healing

time for this type of injury." Dr. Ackerman found that the claimant had reached maximum medical improvement.

Dr. Carle examined the claimant on February 3, 2005 and opined that the claimant was "not likely to benefit from additional medicalization (sic)." Dr. Carle assigned the claimant a 5% permanent impairment rating, accepted and paid by the respondents. The claimant subsequently received a change of physician from Dr. Carle to Dr. Chakales." Dr. Chakales examined the claimant on May 9, 2007 and the respondents paid for Dr. Chakales' initial evaluation. The respondents thus fulfilled their initial statutory obligation to provide adequate medical services. See, *Brown, supra*.

However, the respondents controvert the claimant's entitlement to the EMG study recommended by Dr. Chakales. The claimant did not prove that an EMG study would be reasonably necessary in connection with the compensable injury. The claimant sustained an acute lumbar strain on June 4, 2004. No physician of record has found that surgery would be reasonably necessary. The claimant received physical therapy and pain management. Dr. Ackerman pronounced maximum medical improvement on January 27, 2005,

and Dr. Carle assigned a 5% anatomical impairment rating on February 3, 2005 based on "involuntary muscle spasm." The respondents did not controvert the impairment rating.

The Full Commission finds that the claimant reached the end of his healing period for the compensable injury no later than January 27, 2005. We recognize that a claimant may be entitled to ongoing medical treatment after a healing period has ended. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In the present matter, however, the claimant did not show that an EMG diagnostic study would be reasonably necessary in connection with the acute strain he suffered on June 4, 2004. The respondents have provided appropriate medical treatment, physical therapy, and pain management services. No physician has opined that surgery will be required. The decision of the administrative law judge is reversed.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant proved he was entitled to an EMG diagnostic study recommended by Dr. Chakales. The claimant did not prove by a preponderance of the evidence that such a

diagnostic study would be reasonably necessary in connection with the compensable injury.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. Based upon a de novo review of the record in its entirety, I find that the claimant has proved by a preponderance of the evidence, that he is entitled to an EMG diagnostic study recommended by Dr. Harold Chakales, following a change of physician, authorized by the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission pursuant to an Order filed April 6, 2007. As the majority has reversed the Administrative Law Judge and I would affirm the Administrative Law Judge, I must respectfully dissent.

The sole issue presented for determination was whether the claimant was entitled to additional testing and treatment, specifically, an EMG diagnostic study recommended by Dr. Harold Chakales. The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. §11-9-508; American Greeting Corp. v. Garey, 61 Ark. App. 18, 963 S.W. 2d 613 (1998). What constitutes reasonably necessary medical treatment under Ark. Code Ann. §11-9-508 is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W. 2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W. 3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W. 2d 845 (1983).

In the instant case, respondents have not been asked to provide additional medical treatment. Rather, respondents have refused to provide an additional diagnostic study recommended by an authorized treating

physician specifically for the purpose of determining the nature and extent of the claimant's injury. The Workers' Compensation Commission ordered a change of physicians from Dr. Carle to Dr. Chakales. Dr. Chakales' recommendation cannot be considered unreasonable or outrageous. Authorizing a one-time only examination and refusing to follow through with the recommendations of the authorized physician frustrates the purpose of the Workers' Compensation Act. The claimant has an absolute right to a change of physicians one time and respondents must pay for at least one visit to the new doctor. See, Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3d 204 (2002).

As noted by the Administrative Law Judge, there is an alarming trend in workers' compensation cases, where respondents permit the claimant's one-time visit to the change of physician doctor and then dispute any further treatment, regardless of the change of physician doctor's findings and recommendations. This trend must be stopped. Respondents must be held responsible for reasonable testing and treatment recommendations made by the claimant's authorized

treating physician. Otherwise, the change of physicians procedure has been rendered meaningless.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner