

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702283

MAE H. HARRIS, EMPLOYEE

CLAIMANT

IC CORPORATION,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED APRIL 4, 2008

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

Claimant represented by the HONORABLE ADRIENNE J.
MURPHY, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS,
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 November 2, 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 the
within claim.
2. The employee-employer relationship
existed at all relevant times, including
January 23, 2004.
3. The claimant sustained a compensable
back injury on January 23, 2004.

4. The claimant has been provided some medical care through March of 2006, and additional medical treatment thereafter by way of the respondent's company doctor. (The latter part of this stipulation was modified by the parties at the time of the hearing).

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 November 2, 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 proved by a preponderance of the evidence that she is entitled to additional medical treatment. Based upon my de novo

review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant was employed by the respondent employer as a puller. The claimant sustained an admittedly compensable injury to her back on January 23, 2004, while she was lifting school bus seats. The respondents sent the claimant to the company doctor for treatment. Dr. Stephen Long's notes from that date indicate that the claimant complained of right side pain. He prescribed medication and directed the claimant to return for a follow-up visit. The claimant saw Dr. Long again on January 26, 2004. She again complained of right side pain. Dr. Long prescribed medication and physical therapy two times per week for four weeks.

The claimant returned to Dr. Long on February 17, 2004. The claimant continued to complain of pain and Dr. Long assessed the claimant with "acute lumbar strain, persistent." He ordered a chiropractic consultation with Dr. Clay Lamey. The claimant received treatment from Dr. Lamey seven times between February 18, 2004 through February 27, 2004.

On March 2, 2004, the claimant underwent an MRI. The impression from the MRI was: "Diffuse degenerative disk disease, worse at L4-L5, with a mild

broad-based disk protrusion. There was no significant neural foraminal narrowing at any level."

The claimant continued to treat with Dr. Long. On March 4, 2004, noting that the claimant's back was improving, Dr. Long assessed the claimant with "degenerative disc disease with facet arthritis."

On April 22, 2004, the claimant was seen by Dr. Sunder Krishnan pursuant to referral from Dr. Long. Dr. Krishnan assessed the claimant with "L4/L5 HNP," for which a series of lumbar epidural steroid injections were performed. Dr. Krishnan noted on June 23, 2004 that the claimant had not responded well to the epidurals. Dr. Krishnan's assessment was "L4/5 disk bulging and lumbosacral spondylosis." Dr. Krishnan reported that the only other alternative at this point and time would be some diagnostic facet medial branch nerve injections, and if good benefit was gained from that then continue with rhizotomies.

On June 29, 2004, Dr. Long reported that the claimant had refused this treatment, as she wanted to wait to see if her back would improve with time. On July 13, 2004, Dr. Long directed the claimant to resume therapy. The therapist issued the claimant a portable TENS unit.

The claimant, on August 17, 2004, and September 21, 2004, underwent fluoroscopically guided diagnostic right L2, L3, L4 and L5 facet medial branch nerve injections, which she had previously refused. These were performed by Dr. Krishnan. He reported on November 10, 2004, that the facet rhizotomies targeting the right L2, L3, L4, and L5 facet medial branch nerves provided the claimant with 50% improvement in her condition. Dr. Krishnan essentially recommended that since the claimant was doing better now, she was better off being managed conservatively with trunk stabilization exercises. The claimant continued to treat with Drs. Krishnan and Long. On February 16, 2005, Dr. Krishnan reported that the claimant continued to be happy with the rhizotomy treatments, as she had 50-60 percent pain reduction. Dr. Krishnan's assessment was, "lumbosacral spondylosis, disk bulging, currently doing well."

On March 1, 2005, the claimant reported to Dr. Long continued complaints of low back pain, for which he ordered occupational therapy. The claimant underwent an MRI of the lumbar spine on November 3, 2005, which demonstrated the following:

IMPRESSION:

1. DEGENERATIVE DISC DISEASE AT T12/L1 AS WELL AS FROM L2/3 THROUGH L4/5.
2. MILD CENTRAL CANAL STENOSIS AT L3/4 AND L4/5.
MODERATE BILATERAL FORAMINAL NARROWING FROM L2/3 THROUGH L4/5.

On November 10, 2005, the claimant saw Dr. Long for a followup visit. He noted that the claimant's MRI was essentially unchanged from the previous one, and that it showed degenerative disc disease as well as arthritic changes. Dr. Long reported on December 13, 2005 that the claimant continued to have chronic low back pain, without any improvement with physical therapy.

The claimant underwent evaluation with Dr. David Arnold on December 14, 2005 due to complaints of neck pain, low back pain, left lower extremity pain, and right lower extremity neurological symptoms. He reported the following, "Based on the patient's history and clinical evaluation, the current problem is a work related injury that is consistent with the work injury described by the patient." In a letter to Dr. Long on this same date, Dr. Arnold reported that he had scheduled the claimant for electrodiagnostic testing of her lower extremities. He wrote, "I will see her back thereafter for final diagnosis and treatment

recommendations but do not believe surgery would be of any benefit at this time." Dr. Arnold also reported he would consider an aggressive functional restoration program for the claimant, but did not believe any other injections were indicated at this time. He also recommended that Dr. Long continue with his medical management.

The claimant underwent an EMG on January 5, 2006, which revealed the following, impression:

The above electrodiagnostic study reveals evidence of mild to moderate acute more than chronic L5 and S1 radiculopathies on the right and left. She did not tolerate the needle examination well which limited the quality of the data. She might also have involvement of the T4 root at least on the right. Despite the limited nature of the study, there is definite evidence of denervation in multiple myotomes bilaterally.

On January 10, 2006, Dr. Arnold noted that the lower extremity electrodiagnostic testing yielded "positive right L5, positive right S1, positive left L5, positive left S1, consistent with radiculopathy, acute changes were observed and chronic changes were observed." He recommended the claimant continue her medications and undergo the MedX program at the next

available date. Dr. Arnold also noted that the claimant's present problem was not surgical in nature.

On March 22, 2006, Dr. Arnold stated:

"Overall, somewhat worse. Maximally medical improved."

On March 28, 2006, Dr. Long reported that the claimant's back was at MMI according to Dr. Arnold.

The claimant continued to complain of back problems. On May 10, 2006, Dr. Long ordered additional physical therapy treatment. On November 29, 2006, the claimant returned to see Dr. Long. He noted that the claimant had some improvement with her low back pain with physical therapy. Therefore, he continued the claimant on physical therapy for two more weeks.

Dr. Long reported on January 3, 2007, that the claimant had chronic low back pain, which was worsening and not improving with physical therapy treatment. He wrote, "I think she needs reevaluation by Dr. Arnold and may need pain management."

On March 12, 2007, Dr. Steven Cathey, reported in pertinent part, to Dr. Stephen Long:

I am writing to bring you up to date on Mrs. Harris. As you recall, she has been plagued with chronic lower backpain since a lifting injury sustained while at work in January, 2004. Her pain has been refractory to trials of physical therapy, medication, lumbar epidural steroids, etc. She occasionally

notes some pain radiating to her right hip and upper leg in a non-segmental pattern. Her neurological exam is negative. She specifically has no sign of lumbar radiculopathy, and straight leg raising is negative bilaterally. The patient demonstrates full range of motion of the lumbar spine without paraspinous muscle spasm.

The patient and I reviewed two MRI scans of her lower back, the first obtained in 2004, with a followup study from November, 2005. Both studies reveal multilevel degenerative disc disease, but without any resulting canal stenosis or nerve root entrapment.

Steve, I feel certain Mrs. Harris' chronic lower back pain is secondary to long standing degenerative disc disease and associated osteoarthritis. Unfortunately, this is not a problem that will respond favorably to lumbar disc surgery, spinal fusion, or other neurosurgical intervention. This was apparently the same conclusion reached by Dr. David Arnold at the time of his evaluation a year or so ago. Although I was going to refer her for pain management, the patient really has not noted much benefit from this type of treatment in the past. I have, however, started her on therapeutic trial of Celebrex 200 mg per day. As always, I stand ready to reevaluate Mrs. Harris, particularly should her pain change in character of location.

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).

In my opinion, a review of the evidence demonstrates that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment. The claimant underwent an MRI in March of 2004 which showed degenerative disc disease and a mild broad based disc protrusion. On November 3, 2005, she underwent a second MRI which showed degenerative disc disease, mild central canal stenosis and foraminal narrowing. While both MRI's indicate that the claimant had degenerative disc disease, the second MRI does not mention anything about a disc bulge at L4-5.

The claimant had an EMG performed on January 5, 2006. The test showed "positive right L5, positive right S1, positive left L5, positive left S1, consistent with radiculopathy, acute changes were observed and chronic changes were observed." However, the findings

from this EMG, which was performed almost two years after the claimant's work related incident, do not correlate with the findings on either of the two MRI's.

On March 12, 2007, Dr. Cathey examined the claimant. Following his examination and review of the claimant's medical records, he opined that the claimant's chronic lower back pain was "secondary to long-standing degenerative disc disease and associated osteoarthritis."

After reviewing the evidence in the record, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment. The medical evidence shows that the claimant received treatment for the disc bulge at L4-5 noted on the March 2004 MRI after her work incident. However, the MRI performed in November of 2005, did not detect any problem at that level. In fact, her own treating physician noted after the EMG that there were not any problems at the L4-5 level. The claimant's current problems are at the L5-S1 level and these problems were detected a year and a half after the compensable incident. In my opinion, they are completely unrelated to the claimant's problems at the L4-5 level that were the result of the injury. Dr. Cathey opined that the claimant's current problems were related to

degenerative disc disease and osteoarthritis. The claimant did not present any evidence that the defect noted at the L5-S1 level was related to the work incident in 2004. The burden of proof rests upon the claimant to prove the compensability of his claim.

Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner