

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F003545

PAUL J. HENSLEY, EMPLOYEE	CLAIMANT
BRIDGESTONE/FIRESTONE, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, TPA	RESPONDENT

OPINION FILED SEPTEMBER 17, 2008

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

Claimant represented by HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed October 16, 2007.

The Administrative Law Judge entered 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-carrier relationship existed at all relevant times, including February 17, 2000.

3. The claimant sustained a compensable injury to his lumbar spine on February 17, 2000.
4. The prior Opinion of July 24, 2002, by a former Administrative Law Judge, which was affirmed and adopted by the Full Commission on April 23, 2002, is res judicata.
5. That respondent has previously made payments on this claim including, medical, temporary total disability benefits and permanent partial disability benefits for a 9% whole person rating.
6. The treatment the claimant received from Dr. Beavers was based a valid referral/authorized.
7. The treatment the claimant received from Dr. Beavers was not reasonable and necessary in connection with his compensable injury of February of 2000.

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 of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and

conclusions therein, as the decision of the Full Commission on appeal.

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 opinion denying the claimant's entitlement to additional medical benefits in the form of medication and physical therapy being administered by his authorized treating physician for a compensable injury.

The claimant was injured on February 17, 2000, while pulling a 150-pound roller on a conveyor belt. He suffered from problems with his neck and low back. Initially, the respondents contended that the claimant's injury was to his low back only and controverted any

benefits related to his neck. The claimant's entitlement to benefits for a cervical spine injury, including surgery, was the subject of a previous hearing. The neck injury was found to be compensable by an Administrative Law Judge and that decision was affirmed and adopted by the Full Commission on April 22, 2003. Thereafter, the claimant received treatment for his neck and low back, for which the respondents made payment through August 31, 2006.

In reliance on an opinion obtained by the respondents from Dr. Darin K. Wilbourn on May 9, 2006, indicating that the claimant had reached maximum medical improvement, the workers' compensation claims specialist wrote a letter to the claimant on February 9, 2007, informing him that his claim had been closed. Therefore, when the claimant sought treatment from Dr. Beavers on April 2, 2007, these expenses were denied and this litigation ensued.

Prior to the hearing, the respondents contended that the treatment in question was barred by the statute of limitations and that these expenses were the result of unauthorized medical treatment. In the alternative, respondents contended that the medical treatment of Dr. Beavers was not reasonably necessary or related to his

compensable injury. The respondents withdrew the statute of limitations defense at the time of the hearing and the Administrative Law Judge found against the respondents on the unauthorized medical treatment defense. However, the Administrative Law Judge found that the treatment in question was not reasonable and necessary in connection with the claimant's injury. The claimant appealed. Respondents did not appeal. Therefore, the only issue before the Commission is whether the treatment of Dr. Beavers was reasonably necessary for the treatment of the claimant's injury.

The claimant received intermittent treatment for back problems from the date of injury until several months before the hearing. The controverted medical treatment began as a referral from the claimant's neck surgeon on May 24, 2005. On that date, Dr. Ron Williams said that the claimant was experiencing problems with muscle spasms in his back and neck and prescribed a muscle relaxant. Dr. Williams referred the claimant to Dr. Beavers so that he would not have to drive from Russellville to Little Rock to get his prescriptions filled. On December 16, 2005, Dr. Beavers took over the claimant's medical care for difficulties relating to both the residuals from the neck

injury and surgery and problems relating to the back injury. In February of 2006, the claimant moved some equipment at work and began experiencing increased difficulty with his low back, left hip, and left leg. Dr. Beavers arranged for physical therapy, continued the claimant on medication, prescribed a back brace, and ordered an MRI scan.

The claimant testified that he had been back to full duty work with the employer since December of 2003 and that the medications and physical therapy prescribed by Dr. Beavers had allowed him to continue to work.

The respondents sent the claimant to Dr. Wilbourn on May 9, 2006, and asked him to answer seventeen questions concerning various medical/legal issues. It was Dr. Wilbourn's opinion that the claimant suffered from "chronic low back pain" which was "related to the incident of February 17, 2000". He acknowledged that Dr. Beavers was treating the claimant with physical therapy and medications and responded in the affirmative to the question: "Is the claimant's current regime of medical care reasonable and necessary for the injuries sustained on February 17, 2007?". On the other hand, Dr. Wilbourn indicated that the claimant had reached maximum medical improvement and was in need of no further medical treatment.

The Administrative Law Judge denied the claimant's request to continue the treatment of Dr. Beavers at the expense of the respondents. In so doing, she concluded that the claimant's condition resolved as of May 9, 2006, the day he was evaluated by Dr. Wilbourn. It is difficult to understand how the claimant's condition miraculously resolved simply because he was evaluated by a doctor selected by the respondents for an opinion on the issues at hand. This is especially confusing in light of the fact that Dr. Wilbourn confirmed that the claimant suffered from a chronic condition, directly related to his compensable injury, and that the current medical treatment being rendered by Dr. Beavers was reasonable and necessary for the treatment of that injury.

In short, the evidence of record establishes that the claimant continues to suffer from the effects of his compensable back injury and that his authorized treating physician is administering routine low-cost treatment which has enabled the claimant to continue working. All of the defenses raised by the respondents, from the statute of limitations to unauthorized change of physicians, have proved to be groundless. And the last of these, the contention that prescriptions for medication and occasional

physical therapy is not reasonably necessary treatment for the claimant's injury, is baseless, as well. This economical medical treatment has allowed the claimant to continue to work and it was inappropriate for the Administrative Law Judge to deny the claimant access to it.

For the reasons stated above, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner