

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F104631

SCOTT W. JONES, EMPLOYEE	CLAIMANT
SHERWOOD PONTIAC, BUICK, GMC, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED JULY 30, 2008

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

Claimant represented by HONORABLE ROBERT R. CORTINEZ II,
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE CAROL L. WORLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment. Specifically, the Administrative Law Judge found that the claimant's current medical finding of an annular tear was a compensable consequence of his admittedly compensable injury on April 13, 2001. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of

proof. Accordingly, we hereby reverse the decision of the Administrative Law Judge.

The claimant worked for the respondent employer as a mechanic. The claimant first sought medical treatment from Dr. Charles Schultz, a neurologist, for an injury that occurred on March 1, 2001. The claimant stated that he did this at work but he did not report it to the respondent employer as a work-related injury. Dr. Schultz found that the claimant had muscle spasms and ordered the claimant to undergo an MRI. On March 22, 2001, the claimant underwent the MRI which was interpreted as showing degenerative disc disease with minimal disc bulges at L1-2 and L4-5. The claimant underwent an EMG/NCV study on March 27, 2001, and it was interpreted as normal to the claimant's lower left extremity.

The claimant sustained an admittedly compensable injury on April 13, 2001. The claimant ultimately came under the care of Dr. Earl Peeples. Dr. Peeples diagnosed the claimant with a right sacroiliac strain. He prescribed medication, a TENS unit, and restricted the claimant's work

duties. The claimant underwent a bone scan on June 29, 2001, which was interpreted as normal. The claimant continued to complain of pain so Dr. Peeples recommended an MMPI for the claimant. This evaluation was interpreted as normal. Dr. Peeples was unable to determine the etiology of the claimant's complaints and stated that he had no treatment to offer the claimant and the claimant had zero permanent anatomical impairment.

The claimant requested to be seen by a neurologist and came under the care of Dr. Lon Burba. Dr. Burba diagnosed the claimant with meralgia paresthetica. Dr. Burba excused the claimant from work beginning September 26, 2001, and requested the claimant undergo another MRI. The MRI performed in October of 2001 showed that the claimant had degenerative disc disease at L5-S1, mild annular disc bulge and small superimposed central disc protrusion on the right indenting the epidural fat but did not appear to impinge upon the thecal sac or nerve roots. Eventually, Dr. Burba released the claimant to return to work for four hours a day. In a letter dated July 16, 2004, Dr. Burba opined that

the claimant suffered from degenerative disc disease, meralgia paresthetica, and peroneal axonal polyneuropathy. Dr. Burba recommended exercise and epidural steroid injections.

The claimant asked for a change of physician from the Commission and was granted one. The claimant was seen by Dr. Wayne L. Bruffett on November 15, 2006, who recommended another MRI scan. The scan was performed on March 30, 2007, and was interpreted as the claimant having multilevel degenerative disc disease, desiccation and spurring with bulges at L2-3 to L5-S1 without stenosis and a posterior annular tear at L5-S1.

The claimant contends that this annular tear is related to the original injury from April 13, 2001. The respondents contend that the claimant cannot prove that this annular tear is a compensable consequence of the claimant's April 13, 2001, compensable injury.

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 medical evidence demonstrates that the claimant's original injury was well over six years ago on April 13, 2001. At that time, the claimant underwent extensive testing and was released with no impairment or restrictions in June of 2002. The claimant underwent an MRI on October 22, 2001, which noted that the claimant had degenerative changes and showed no evidence of any nerve

root compression. Dr. Peebles released the claimant to return to full duty with no permanent anatomical impairment on June 24, 2002. The claimant continued to complain of pain so an MRI of his pelvis was performed on September 2, 2002, revealing a probable benign lesion in the left femur but was otherwise normal.

It is curious that the claimant went from 2002 with no appreciable medical treatment, until the change of physician request was made in October of 2004. A period of almost four years elapsed. Dr. Bruffett ordered another MRI which showed the claimant had annular tear at L5-S1. However, that annular tear was not present in the MRIs that were taken previously, in March of 2001 and October of 2001. It is conjecture and speculation to conclude that the annular tear seen on the MRI from March of 2007 was in anyway connected to or caused by the minor injury that the claimant sustained in April of 2001. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Constr. Co., et al v. Herndon,

264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hosp. v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Therefore, when we consider the evidence in the record that the claimant had two MRIs, virtually contemporaneous with April 13, 2001, injury, we cannot find that that annular tear found in March 2007 was related to the claimant's relatively minor, April 2001 injury. Accordingly, we hereby reverse the decision of the Administrative Law Judge. We find that the claimant has failed to prove by a preponderance of the evidence that any additional medical treatment for the claimant's April 13, 2001, compensable injury is reasonable and necessary.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion reversing the Administrative Law Judge's award of additional medical treatment.

The sole issue in this case is whether the claimant's current medical condition is causally related to an acknowledged compensable injury of April 13, 2001. Immediately following the compensable injury, the claimant was found, by MRI, to be suffering from damage to the L5-S1 disk in his low back. Later MRI studies showed that the claimant continued to show abnormalities in the L5-S1 disk in his low back. The Administrative Law Judge reviewed the MRI studies and accurately concluded that the later studies reflected a natural progression of the original injury and awarded additional medical treatment for that condition. The majority opinion reverses the Administrative Law Judge's decision saying that "we cannot find that the annular tear found in March 2007 was related to the claimant's relatively minor, April 2001 injury".

An impartial review of the medical evidence of record confirms that the claimant's current condition is, in fact, related to his compensable injury. This case is unusual in the sense that the claimant had an MRI performed three weeks before the compensable injury in question because of a previous insignificant injury with the same employer. The MRI performed before the injury in question showed absolutely no problems with the L5-S1 disk. The MRI performed after the injury showed the following:

At L5-S1, the disc is mildly desiccated, with a mild diffuse annular disc bulge and small superimposed central disc protrusion, which indents the ventral epidural fat . . .(emphasis added)

The latest MRI showed the following:

There is disc desiccation with loss of disc signal at the L2-3 and L5-S1 levels. There is also a small posterior annular tear on the left at L5-S1.(emphasis added)

Dr. Bruffett did X-rays and formed the following impression:

Transitional anatomy with probable disk herniation at the lowest motion segment, previously stated as L5-S1.(emphasis added)

When the results of the diagnostic studies are compared, it is quite obvious that the claimant had no injury to his L5-S1 disk before the April 13, 2001 injury and has suffered from damage at that level since the date of his injury. After the compensable injury, three different descriptions of the radiographic findings at L5-S1 have been offered; protrusion, tear, and herniation. It is possible that the injury at L5-S1 progressed from a protrusion to a tear or herniation, as the Administrative Law Judge concluded. It is also possible that the findings described by the different radiologists were essentially the same, but being depicted with variant nomenclature. At any rate, the claimant has proved, by a preponderance of the evidence, that he suffered a compensable injury to the disk in his low back at L5-S1 and that, as a result, he should be allowed additional medical treatment for that injury.

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

PHILIP A. HOOD, Commissioner