

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303461

PERRY M. PECTOL,
EMPLOYEE

CLAIMANT

KALLSNICK, INC.,
EMPLOYER

RESPONDENT

STATE FARM FIRE & CASUALTY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 14, 2008

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

Claimant represented by the HONORABLE KRISTOFER
RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals and respondent cross-appeal an
opinion and order of the Administrative Law Judge filed
July 12, 2007. In said order, the Administrative Law
Judge made the following findings of fact and
conclusions of law:

1. The employee-employer-carrier relationship
existed on December 14, 2002, and at all other
relevant times.
2. The claimant sustained compensable injuries to
his leg and low back on December 14, 2002.

3. The claimant's average weekly wage at the time of his injury was \$575.00. His temporary total disability rate is \$383.00; and his permanent partial disability rate is \$287.00.

4. The claim for additional medical benefits and an anatomical impairment rating is not barred by the statute of limitations, nor is the claim for additional medical benefits for his compensable back injury barred by the doctrine of res judicata.

5. The claimant failed to prove his entitlement to additional medical treatment of his compensable back injury from Drs. Frankum and Taylor. He also failed to prove entitlement to any future treatment for the same.

6. The claimant did not present evidence of objective and measurable physical findings to support an impairment rating, so as to sustain his burden of proving that he is entitled to benefits for a permanent impairment rating.

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.

The claimant alleges that he sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The

claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

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 in part 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).

Therefore we affirm and adopt the July 12, 2007, 2006 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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

The majority has affirmed and adopted an Administrative Law Judge's decision which held that the statute of limitations was not a bar to the present claim, but that the claimant failed to establish his entitlement to either additional medical treatment or permanent partial disability benefits. I agree that the statute of limitation is not a bar to this claim, but I disagree that the claimant did not meet his burden of proof in regard to his entitlement to additional benefits. Therefore, I concur, in part, and dissent, in part, from the majority's Opinion.

The additional medical treatment in question was provided by Dr. Jerry Frankum, a general practitioner in Newport, Arkansas, and Dr. Thomas Taylor, a chiropractic physician in Batesville, Arkansas. The majority has adopted an Administrative Law Judge's reasoning that the respondent is not liable for this medical treatment because these physicians also treated the claimant for other ailments. For example, Dr. Frankum also provided the claimant medication and treatment for an ongoing intestinal problem and other

maladies. Likewise, Dr. Taylor provided chiropractic adjustments to the claimant based upon an unrelated neck injury the claimant sustained in an automobile accident.

A review of the medical reports from both of these physicians clearly establishes that the claimant's lower back pain was the central focus of their treatment. Most particularly, Dr. Frankum always prominently mentions the claimant's back pain in his medical reports. Further, Dr. Frankum prescribed the claimant numerous pain medications which were clearly directed to the treatment of his back injury. The same is true for the treatment the claimant received from Dr. Taylor. While Dr. Taylor did provide some adjustment to the claimant's neck, his treatment notes indicate that most of the treatment he was giving the claimant was for pain associated with his lower back ailment.

The basis given for finding that the respondent is not liable for the treatments from Dr. Frankum is that, "the majority of this treatment and/or the primary focus of said treatment, was for treatment unrelated to his compensable back injury." However, as has been held by the Appellate Courts on several occasions, major cause does not enter into the question of liability for medical treatment. Williams v. L & W

Janitorial, Inc., 85 Ark. App. 1, 145 S. W. 3d 383 (2004). Therefore, the finding that at least some of the medical treatment was occasioned by the claimant's compensable back injury, means that respondent is liable for providing for treatment the claimant received from Dr. Frankum. While the respondent would obviously not be liable for treatment the claimant received for non-job related injuries, it does not change the fact that they are liable for treatment for his job related injury. If they are entitled to an adjustment as to the amount owed to Dr. Frankum, then the respondent should take that up with the claimant's health insurance carrier. It should not be the responsibility of the claimant to attempt to separate these bills to force the respondent to pay their proportionate share. The Workers' Compensation Act places the burden on the respondent to make such a determination, and it is up to them to act accordingly.

I also find that the majority erred in deciding that the treatment the claimant received from Dr. Taylor is not the respondent's liability. The majority's reasoning in disallowing the claim for these medical benefits is that it "would require conjecture and speculation to causally link the treatment received

from Dr. Taylor to the December 14, 2002 specific incident." The basis for that conclusion is that the claimant was involved in an automobile accident, unrelated to his employment, on December 15, 2003, a year following his job-related accident. However, according to Dr. Taylor's treatment notes, he began seeing the claimant on January 5, 2003, less than three weeks following his job-related accident, and almost a year before the car wreck. The treatment notes that Dr. Taylor generated after he initially saw the claimant indicate that he was treating him for muscular back pain radiating into his right leg and knee.

Beginning in January 2004, Dr. Taylor also mentioned that he was providing the claimant some adjustment to his neck area because of "neck soreness." However, his notes state that the claimant is suffering from lower back pain which is radiating into his right leg and knee. Clearly, it does not require conjecture or speculation to deduce that Dr. Taylor was continuing to provide the claimant medical treatment for his job related back injury.

I find that the respondent is liable for this medical treatment for the same reason that I find that they are liable for Dr. Frankum's medical treatment as

outlined above. The respondent must provide any treatment the claimant was receiving for his job related injury. That principle is clearly delineated as one of the primary purposes of the Workers' Compensation Act. Once again, even if the respondent is entitled to some type of offset for medical treatment provided the claimant for a non-job related condition, the burden should be on the respondent to apportion the cost with the claimant's health insurance carrier or otherwise determine through the medical provider what their liability is. Simply because the claimant received treatment from his doctor for more than one ailment, does not disqualify him from receiving medical benefits under the Workers' Compensation Act, nor should it allow the respondent to avoid liability for what is clearly treatment of a job related injury.

I also strongly disagree with the majority's affirmance of the Administrative Law Judge's finding that the claimant is not entitled to any future medical treatment for his compensable back injury. The rationale for that finding is that the medical record did not contain a specific recommendation from a treating physician for any future treatment. While that is true, the majority's holding in this regard is overly

broad. Merely because the claimant is not requesting specific medical treatment at this time, does not mean that his condition would not warrant some in the foreseeable future. To find that a claimant is not entitled to future medical treatment for a compensable injury is tantamount to deciding an issue before it has been presented. It is possible that some time in the immediate future, the claimant might change, worsen, or otherwise require him to seek further medical treatment. To find, at this time, that he is not entitled to such treatment means that he is now foreclosed from seeking future treatment. Since it is not possible for us to determine what he may need in the future for treatment of his compensable injury, it is improper to deny him such treatment before any facts regarding it have been presented.

The other issue presented for determination was the claimant's entitlement to permanent partial disability benefits. In the support of his argument that he was entitled to those types of benefits, the claimant offered the report from Dr. Taylor finding that he had sustained a 7% impairment to his lumbar spine as a result of his job related injury. Dr. Taylor set out his conclusions in a letter dated April 5, 2007 wherein

he found, pursuant to the AMA Guides to the Evaluation of Permanent Impairment, (4th ed. 1993), that the claimant had sustained impairment to his lumbar spine corresponding to 7% to the whole body. I find that this impairment rating is valid. The impairment rating has been derived by a physician who has extensive experience with treating the claimant for his compensable injury using the appropriate rating guide. Therefore, I find that Dr. Taylor's report is sufficient for the claimant to meet his burden of establishing that he is entitled to permanent partial disability benefits in an amount equal to 7% to the body as a whole.

For the aforementioned reasons, I must respectfully concur in part and dissent in part.

PHILIP A. HOOD, Commissioner