

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702135

JACOB RAMOS, EMPLOYEE	CLAIMANT
PETRA STONE NWA INC., EMPLOYER	RESPONDENT
UNION INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 2, 2008

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

Claimant represented by HONORABLE ALAN LANE, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, North 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 August 3, 2007.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 2, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to

prove entitlement to additional reasonably necessary medical treatment for the compensable injury he received on July 31, 2006. After a de novo review of the record, I find that the claimant has met his burden of proof by the preponderance of the evidence that additional medical treatment for his back is reasonably necessary and, therefore, I must respectfully dissent.

History

The claimant was injured while lifting some architectural stone at the respondent's storage facility. The claimant was diagnosed with an acute lumbar strain and a probable herniated disc at the St. Mary's Hospital emergency room on July 31, 2006. The claimant was referred to Dr. Cyril Raben, a spine specialist, who diagnosed a disc herniation at the L5-S1 level. Dr. Raben attempted to treat the claimant's condition with the conservative measures of steroid injections and physical therapy. The claimant was then sent by the respondent to Dr. Brent Sprinkle, another spine specialist, for an independent medical examination.

The medical records show that Dr. Raben recommended that the claimant "continue therapy and transfer to a home program" on October 2, 2006. Dr. Raben stated on November 14, 2006, that the claimant "will still have this

injury and may require more aggressive operative intervention secondary to his on-the-job injury." Dr. Sprinkle noted in the December 12, 2006 medical record that "I do not think that this would result in the need for surgery *at this time* [emphasis added]."

The claimant testified that the physical therapy exercises he performed did improve his condition regarding his ability to temporarily cope with the pain from the injury. The claimant stated that he performed the exercises once or twice per week. However, the claimant's pain has persisted since the compensable injury and he is seeking additional medical treatment. The injury to the claimant was admittedly compensable; the only contested issue in this claim is whether the additional medical treatment is reasonably necessary.

Discussion

The Arkansas Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to

accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I find that the majority errs by finding that the claimant was not entitled to additional reasonably necessary medical treatment for his compensable back injury. The claimant has seen two spine specialists, Drs. Raben and Sprinkle. Dr. Raben's medical opinion that the claimant "will still have this injury and may require more aggressive operative intervention secondary to his on-the-job injury". Dr. Raben also stated that the claimant "has reach [sic] Maximum Medical Improvement: he is reaching maximum medical intervention and will do so for conservative care in the near future." While the majority interprets this statement as meaning that the claimant had reached maximum medical improvement outright, I find that the doctor was clearly saying that the claimant had reached the maximum medical

improvement that *conservative treatments* could provide him. The other spine specialist, Dr. Sprinkle, also did not rule out more aggressive treatment, specifically surgery, as an option for the claimant, merely stating that on December 12, 2006 he would not recommend surgery "at this time."

Furthermore, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). More aggressive treatments that may alleviate an individual claimant's pain can be reasonably necessary. White Consolidated Industries v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001). Here, the claimant suffered a compensable injury. As a result of his compensable injury, the claimant suffered physical pain and lost time at work. The claimant's doctors opted for a conservative course and treated him with injections, medications, and physical therapy. As they treated the claimant, the doctors never ruled out more aggressive treatments, merely opting for less invasive techniques. One year after his injury, the claimant still suffers from pain

and receives minimal relief from physical therapy. As the claimant's doctors have been unable to provide relief and have not ruled out aggressive treatments to alleviate his pain, the claimant has shown that he should be allowed to seek relief from pain through such treatments.

In conclusion, I find that the claimant has proved by a preponderance of the evidence his entitlement to additional reasonably necessary medical treatment, and therefore I must respectfully dissent.

PHILIP A. HOOD, Commissioner