

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510224

PAMELA SHIREMAN,
EMPLOYEE

CLAIMANT

AEROSPACE EDUCATION CENTER,
EMPLOYER

RESPONDENT

CINCINNATI INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 2, 2008

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

Claimant represented by the HONORABLE J. MARK WHITE,
Attorney at Law, Bryant, Arkansas.

Respondent represented by the HONORABLE CYNTHIA ESTES
ROGERS, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's order and opinion filed April 1, 2008. The administrative law judge found that the claimant failed to prove additional medical benefits, specifically an MRI, was reasonably necessary. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved

she was entitled to an MRI as recommended by Dr. Rosenzweig.

I. HISTORY

Pamela Shireman, age 51, testified that she became employed with Aerospace Education Center in October 2004. The claimant testified that she operated a planetarium program, and that her work duties required frequent back-and-forth, up-and-down, head movements. The parties have stipulated that the claimant sustained a compensable injury on August 25, 2005. The claimant testified, "as I was working back and forth, I was watching the dome, and, when I looked down, my neck popped."

The claimant saw Dr. Kenneth R. Johnston on September 7, 2005 for complaints of left shoulder pain. Dr. Johnston planned conservative treatment. Dr. Johnston noted on September 14, 2005 that shoulder films were unremarkable and "c spine signif degen mid-cerv."

Dr. C. Michael DuPriest, D.C. informed then-counsel for the claimant on October 31, 2005, "Pamela was initially seen on 9/21/05 at the request of Dr. Kenneth R. Johnston. Her complaint consisted of left shoulder/upper extremity pain that had been present for a number of weeks. She attributes the onset of pain to a repetitive movement she is required

to do at the Aerospace Education Center's planetarium....She was examined had x-rays made of the cervical spine, started on medication, and referred to our office for evaluation and treatment....She was treated with cervical traction, soft tissue mobilization and exercise for 9 visits. She was discharged on 10/14/05 with a pain score of 3.3/100. The patient's complaint appears to be temporally related to a specific activity associated with her area of work."

The parties deposed Dr. Johnston on March 8, 2006. Dr. Johnston testified regarding x-rays taken September 14, 2005, "I said that there was significant degenerative changes in the mid-cervical spine, and that her shoulder x-rays were unremarkable." Dr. Johnston testified that the claimant benefitted from physical therapy provided by Dr. DuPriest. The claimant testified, "After the first visit with Dr. DuPriest, the pain level was cut by about 75 percent - after that first traction."

A hearing was held on March 22, 2006. The claimant testified that her physical condition and ability to work was "Much better. I still have numbness in my left finger, which sometimes is kind of strange because I can't feel the keyboard. But, other than that, since then they've gotten

me a nice chair; built the floor up about 4 ½ or 5 inches under the console....Usually by Saturday night and Sunday morning I have a little tightness in my neck, but that's just because of the two long days back to back. But, other than that, I have very few problems."

The administrative law judge filed an opinion on April 25, 2006 and found, in pertinent part, "3. The claimant has proven by a preponderance of the evidence that she sustained a temporary aggravation of her degenerative disk condition and further find this was gradual onset supported by objective findings. 4. Respondents are responsible for the reasonable and necessary conservative medical care the claimant pursued from September 7, 2005 through October 31, 2005."

A pre-hearing order was filed on December 12, 2006. The claimant's contentions were listed as follows: "1. Entitlement to additional medical benefits from February 2006 through August 2006; specifically, prescription medications, totaling \$360.44. 2. The claimant further contends she would like to continue seeing Dr. Johnston periodically." The respondents contended that additional medical treatment was not reasonably necessary. The parties

agreed to litigate the issue, "1. Additional medical benefits."

A hearing was held on January 23, 2007. The claimant testified, "I am continuing to have problems with my neck. The spasms are continuing. I've developed occipital headaches caused from the spasms - the muscle spasms."

The administrative law judge filed an opinion on March 8, 2007 and found, "4. The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment she has received since October 31, 2005, was reasonable and necessary and related to her compensable temporary aggravation of her degenerative disk disease that culminated on August 28, 2005."

The claimant sought emergency medical treatment for headache on March 29, 2007. A CT of the claimant's brain on March 29, 2007 gave the impression, "1. No acute intracranial process is identified."

Dr. Johnston noted on June 1, 2007, "Pamela comes in today for f/u on neck pain and headaches. Her headaches are getting worse almost to the point of being debilitating." Dr. Johnston's assessment was, "1. Now, chronic daily headache. Adding Topamax therapy. 2. Consider this to be

exacerbated by her chronic neck problems, though probably not directly caused by her neck problems."

Dr. Johnston noted on July 30, 2007, "Patient has palpable spasm in the posterior cervical musculature, extending down into the shoulder girdle and up to the occiput....Patient has decreased range of motion of the C-spine secondary to the spasm. She also has some pain with range of motion of the upper extremities. Neurologic examination is intact today....I believe that her back and neck problems do serve as a likely trigger for her headaches."

Dr. Kenneth M. Rosenzweig evaluated the claimant on October 2, 2007:

Ms. Shireman is a 50-year-old Worker's Comp claimant seen at request to Worker's Comp. Dr. Kenneth Johnston is her primary physician. She had a date of injury in August 2005, when she was opening a planetarium. She had repetitive motion and felt a pop in her neck. She has some loss of sensation radiating through her thumb and index and long finger of the left hand. She developed mild spasms in her neck and shoulders. She developed headaches. Her migraine medications did not help....To date, she has not had any nerve blocks or injections. She has not had a diagnostic MRI. She continues to have intermittent numbness to her left hand. She continues to have a stroke and it feels like one side is weak. She has had an evaluation at UAMS where she was advised she had a negative CT scan....

X-ray of the cervical spine on the lateral view reveals kyphotic deformity at the apex of the C4-5 level with significant degenerative disease at 5-6 and 6-7 with calcification and probably ankylosis.

Dr. Rosenzweig's impression was "1. Neck pain due to spondylosis. 2. Degenerative disc disease. 3. There are no findings of radiculitis. 4. Concern for thoracic outlet syndrome." Dr. Rosenzweig planned the following: "1. MRI of the cervical spine for further information. 2. I would like to re-examine Ms. Shireman to see if the findings are persistent with thoracic outlet syndrome. 3. She may respond to anti-inflammatories and a good physical therapy program for core strengthening and spinal stabilization, particularly at the cervicothoracic levels."

Another pre-hearing order was filed on January 8, 2008. The claimant contended that she was entitled to an MRI as recommended by Dr. Rosenzweig. The respondents contended that the claimant was not entitled to any additional medical treatment. The respondents contended that an October 31, 2005 opinion was *res judicata*. The parties agreed to litigate the following issue: "1. Entitlement to an MRI."

A hearing was held on February 21, 2008. The parties discussed that the claimant had been granted a Change of Physician to Dr. Rosenzweig, and that the respondents paid

for the claimant's initial visit with Dr. Rosenzweig. The respondents contended that the MRI recommended by Dr. Rosenzweig was not reasonably necessary. The claimant attempted to introduce 25 pages of additional documentary evidence, but the respondents objected. The respondents argued that the claimant should have introduced the evidence at a previous hearing. The claimant asserted that the contested evidence was relevant to the question of whether an MRI was reasonably necessary. The administrative law judge allowed the claimant to proffer the evidentiary exhibit.

The claimant testified, "I'm still having trouble with muscle spasms that are caused from the ergonomic design of my work space....I had one last year that was so severe that it was imitating the symptoms of stroke. One whole side of my body went numb." The claimant testified that she had never experienced full relief from her symptoms.

The administrative law judge found, in pertinent part, "3. The claimant has failed to prove by a preponderance of the evidence that additional medical benefits, specifically an MRI, is reasonable and necessary and related to the temporary aggravation of the neck in August 2005." The ALJ

denied and dismissed the claim, and the claimant appeals to the Full Commission.

II. ADJUDICATION

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

An administrative law judge found in the present matter, "3. The claimant has failed to prove by a preponderance of the evidence that additional medical benefits, specifically an MRI, is reasonable and necessary and related to the temporary aggravation of the neck in August 2005." The Full Commission reverses this finding. The parties have stipulated that the claimant sustained a compensable injury on August 25, 2005. The claimant treated conservatively with Dr. Johnston. The claimant reported

significant relief of her symptoms after treating with Dr. DuPriest. Dr. DuPriest discharged the claimant on October 14, 2005. Despite the significant relief of her symptoms, the claimant testified that she still suffered from post-injury numbness in her left upper extremity. The claimant also began developing chronic and severe headaches.

The record indicates that the claimant was granted a change of physician to Dr. Rosenzweig. Dr. Rosenzweig examined the claimant on October 2, 2007 and noted that an x-ray showed a kyphotic deformity in the claimant's cervical spine. Dr. Rosenzweig's treatment plan included arranging an MRI of the claimant's cervical spine for further information. The Full Commission finds that a diagnostic MRI, as recommended by Dr. Rosenzweig, would be reasonably necessary in connection with the August 25, 2005 compensable injury. Both the record and the claimant's testimony demonstrate that the claimant has suffered from chronic and acute symptoms since the compensable injury. We also note Dr. Johnston's notation on July 30, 2007 that the pain in the claimant's neck was a likely trigger for the claimant's headaches.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she was entitled to a diagnostic cervical MRI as recommended by Dr. Rosenzweig. We reverse the administrative law judge's decision. The Full Commission does not allow into evidence the claimant's proffered exhibit. The record does not indicate that the claimant's proffered exhibit was furnished to the opposing party at least seven (7) days prior to the date of the hearing, in accordance with Ark. Code Ann. §11-9-705(c)(2)(A) (Repl. 2002). More importantly, we can find no documents in the proffered exhibit which assist the claimant in proving that an MRI is reasonably necessary. The October 2, 2007 evaluation and correspondence from Dr. Rosenzweig recommending an MRI is an undisputed part of the record. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant's proffered exhibit should not be admitted into the record. However, I must respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment in the form of an MRI. In my opinion, the claimant has failed to meet her burden of proof.

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).

The medical evidence in this case demonstrates that the claimant has degenerative disc disease. She has a past history at least to 2000 of occipital headaches. The claimant has also had symptoms of cervical muscle spasms dating back to 2000 as well. While the claimant may continue to experience the headaches and muscle spasms, clearly these are very similar symptoms to what she experienced prior to her compensable temporary aggravation in August of 2005. In fact, Dr. Rosenzweig has noted that the claimant had significant degeneration and migraine headaches.

Furthermore, the testimony of the claimant is also indicative that the MRI is not reasonable and necessary medical treatment. The claimant testified that if she would work within the restrictions of her treating physician and work a 40 hour work week that it was workable.

Therefore, after conducting a de novo review of the record, I find that the claimant cannot prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an MRI. Accordingly, I must dissent from the majority's award of the MRI.