

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F209697 & F214297

JENNIFER L. CHANSLOR, EMPLOYEE	CLAIMANT
SONIC DRIVE-IN, EMPLOYER	RESPONDENT
HARTFORD UNDERWRITERS INSURANCE, CARRIER GALLAGHER BASSETT, TPA	RESPONDENT

OPINION FILED APRIL 22, 2009

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

Claimant represented by HONORABLE FREDERICK SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE CYNTHIA ROGERS, 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 June 17, 2008.

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 relationship existed at all relevant times, including February 1, 2001 and August 29, 2002.

3. The claimant sustained compensable injuries to her neck, back, and tail bone.

4. The claimant has been provided some medical for the claimant's compensable injuries through her last visit with Dr. Safman in December of 2002, and for the first visit with Dr. Barrett-Tuck.

5. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment as recommended by Dr. Barrett-Tuck is reasonable and necessary in relation to her compensable injuries of February 2001 and August 29, 2002.

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

CHANSLOR
F209697/F214297

-3-

on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the tests requested by Dr. Barrett-Tuck are reasonably necessary medical treatment for the claimant's injuries, and therefore, I must respectfully dissent.

Recently, the Court of Appeals addressed this issue in Goyne v. Crabtree Contracting Co. Ark. App. __ (March 18, 2008.) In Goyne, the Court stated:

Goyne presents a single point on appeal: when the Commission designates a new treating physician who recommends additional diagnostic testing, it is error for the Commission to refuse to require the respondents to pay for the

testing. Goyne argues that, assuming there exists a logical and reasonable basis for the recommended additional testing and treatment, Ark. Code Ann. §11-9-514(a)(3)(A) contemplates that the respondent must pay for the regimen of diagnostic testing and treatment. We do not disagree with his argument. The controlling factor in this case, however, is not what the statute contemplates but whether the recommended testing was shown to be reasonable.

The Court went on to affirm the Commission's denial of the tests recommended by the Change of Physician doctor, stating:

It is clear that, after granting Goyne the change of physicians to Dr. Chakales, the Commission simply assigned greater weight to the earlier records of Drs. Carle and Ackerman than to his new doctor's recommendation for a diagnostic EMG. The Commission's ruling that Goyne did not show the testing to be reasonably necessary was based on the Commission's finding that appropriate medical treatment, physical therapy and pain management services had been provided. Thus, the Commission's decision displays a substantial basis for the denial of Goyne's claim for payment of the EMG test that his new physician recommended.

Here, the Commission is presented with medical

CHANSLOR
F209697/F214297

-5-

evidence from two doctors. Dr. Safman, the respondent doctor who initially provided treatment, and Dr. Rebecca Barrett-Tuck, the Change of Physician doctor who has recommended additional testing. Dr. Safman saw the claimant twice, first on September 13, 2002, and again on October 9, 2002. Dr. Safman's report from the first visit, September 13, 2002 stated:

Ms. Chanslor is referred for evaluation and treatment of lower lumbar and left hip pain, as well as coccygeal pain. She fell at work on August 29th of this year. The pain occasionally radiates down her left lower extremity. She was seen in the emergency room at the White River Medical Center. X-rays were taken and she was started on Skelaxin and Darvocet. She was later given Vioxx. She saw a chiropractor on a 1-time visit and Dr. Timothy Young on a 1-time visit and then was referred to me. Dr. Young gave her hydrocodone and Vioxx. She does not like the side-effects of the hydrocodone and stopped the Vioxx, as it was not helpful.

She describes her pain as being extremely severe and constant, but the quality of the pain varies. It interferes with sleep. Virtually all physical activity tends to aggravate the pain.

...

Impression:

1) Coccygodynia

CHANSLOR
F209697/F214297

-6-

- 2) Lumbosacral and sacroiliac strain
- 3) Enthesopathy, left hip (bursitis)

Dr. Safman's report from the second visit,
October 9, 2002 states:

Ms. Chanslor had a MRI of her lumbar spine: There is a small, left para-central disc protrusion at L5-S1 which produces no mass effect on the thecal sac or roots. The patient reports that, as long as she takes the Klonopin, her symptoms are under good control. Her review of systems is otherwise unchanged.

On examination, there is no tenderness, guarding, or muscle spasm in the cervical, thoracic, and lumbar spine. There is excellent range of motion of the cervical and lumbar spine. Pulse is 80 and regular.

I will return her to full duty. I gave her a new prescription for the Klonopin and will reassess her in one month. If she is doing well at that time, she will be at maximum medical improvement.

Dr. Safman did not see the claimant again, but did state on December 13, 2002 that the claimant was at maximum medical improvement with a 0% disability rating and released to full duty.

Despite Dr. Safman's opinion that she had reached

maximum medical improvement, the claimant testified that she has had persistent back pain and headaches since August 29, 2002, the date of her second fall:

...I have back pain, I have back pain and headaches every day. Sometimes the pain escalates to where it's, I just can't bear it. And then I go to the doctor. I've been to my doctor a lot, and they won't, my insurance of course won't cover this. So I can't tell them my back hurts because I don't have the money to go to the doctor and say this is a workman's comp injury. I need help. They won't see me. So I just go in and say I have a headache because I can't bear the pain anymore...

The claimant further testified:

...I just try to go like, you know, when it's unbearable. The last, I think the last, the time before the last when they were talking about the two weeks that I had been tingling it had been going on for two weeks straight is what I was telling the doctor. I have the headaches every day, but the tingling, it just wouldn't go away because I had aggravated my back. And so my back pain starts, and then when my back and my neck gets too bad, that's what causes the headaches to get so bad. And then I can't function.

After two unsuccessful attempts at being assigned

a new Change of Physician doctor through the Medical Cost Containment Division, the claimant was finally assigned to Dr. Rebecca Barrett-Tuck. The claimant saw Dr. Barrett-Tuck on July 18, 2007. The medical report from this date states:

Jennifer Chanslor is a pleasant 28-year-old lady referred for re-evaluation on a Workmen's comp injury. Mr. Rick Spencer requested the change of physician. Jennifer apparently was working for Sonic in August of 2002 when she took a significant fall landing on her bottom. She was told that she had suffered rib fractures and a fractured coccyx. At the time of the fall, she suffered back pain, thoracic pain and headache. She has had difficulty since that time. In the interim since the fall, she finished her cosmetology school, and, in fact, worked in cosmetology for about a year. However, this caused increased pain in the low back as well as the thoracic area. She had her 3-year-old child after that and stayed home with the child for a while and then tried opening a day care, however, she was only able to tolerate that activity for about ten months and had to stop because of the back pain, thoracic pain, numbness in the hands and continued headache. Currently, she complains of almost constant pain in the thoracic area and the lumbar area. She is also concerned about the numbness that involves both of her hands, occasionally in the left foot, and sometimes in the right foot as well as the numbness that has begun to

involve her face bilaterally. She did undergo pain management in Batesville. She cannot recall the name of the physician. Apparently, he resided in Little Rock and managed the pain clinic in Batesville. She underwent steroid treatment and injection but did not feel that the treatment was beneficial for her.

...

Physical examination is of a well-developed, well-nourished young lady who is alert, appropriate, pleasant, and cooperative. She is 5'2" and weighs 184 pounds. Examination of the back shows some tenderness in the lumbosacral region. Straight leg raise exam elicits back pain. Reflexes are 1+ at the knees and ankles. Strength is grossly intact in all major muscle groups. She is able to stand on her toes and her heels. Her posture is good. Her gait is normal.

Tests

MRI of the lumbar spine was done in 2003. It does show a narrowed disk space at L5-S1 with degenerative changes involving the L5-S1 disk. I do not see any disk ruptures or spinal canal compromise.

Assessment

1. Multiple areas of numbness. Carpal tunnel syndrome is a possibility for explaining the numbness in her hands. S1 root irritation could explain the numbness in her feet. Certainly with her complaints of numbness involving the face as well, we must consider the possibility of multiple sclerosis.
2. She complains of pain in the thoracic area and the lumbar area that occurred

after the fall. I would like MRI scans of both of these areas. We did see some abnormalities in 2003. Obviously, that is too long ago to make a current recommendation.

Plan

1. MRI of the thoracic spine.
2. MRI of the lumbar spine.
3. MRI of the head with and without Gadolinium.
4. EMGs and nerve conduction studies of the upper and lower extremities.
5. I will see Ms. Chanslor back once these studies have been completed.

On January 29, 2008, Dr. Barrett-Tuck signed a note indicating that she agreed with the following statement:

To Whom it May Concern:

Jennifer Chanslor is a patient of mine. It is my belief within a reasonable degree of medical certainty that the MRI of the thoracic spine, lumbar spine, MRI of the head with and without Gadolinium, and EMG's and nerve conduction studies of the upper and lower extremities you requested in your report dated July 18, 2007, are reasonable and necessary and related due to the injuries that Ms. Chanslor sustained when she fell two different times on a greasy floor while employed at Sonic.

On May 6, 2008, the parties took the deposition of

Dr. Barrett-Tuck. In this deposition, Dr. Barrett-Tuck stated, "I believe it is very, very reasonable to clear this lady's thoracic spine, and to clarify abnormality, or lack of abnormality in the lumbar spine. I believe that is very reasonable."

The medical testimony of Dr. Barrett-Tuck, in my opinion, through her medical report, note and deposition, clearly outweighs that of Dr. Safman. Dr. Barrett-Tuck's testimony clearly shows that the recommended lumbar and thoracic MRIs are reasonable tests. Dr. Safman's medical records, while relevant as to the claimant's medical condition immediately after the injury, simply do not address the issue at hand, which is whether the tests now requested are reasonable and necessary. The respondent has not offered any medical opinion to contradict that of Dr. Barrett-Tuck as to the reasonable nature of the lumbar and thoracic MRI's. As Dr. Barrett-Tuck has so strongly opined as to the reasonable nature of the requested tests, and in light of the Court of Appeals statements in Goyne, I find that the preponderance of the evidence of record

CHANSLOR
F209697/F214297

-12-

dictates a finding in favor of the claimant.

For the aforementioned reasons I must respectfully
dissent.

PHILIP A. HOOD, Commissioner