

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711660

MARK E. GATES, EMPLOYEE	CLAIMANT
NABHOLZ CONSTRUCTION, EMPLOYER	RESPONDENT
ACIG INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 14, 2009

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

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed March 17, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. There was an August 16, 2007, compensable injury.
2. Respondents paid for the claimant's office visits to Dr. David Stewart on August 16, 2007 and October 9, 2007, and Dr. Moore's September 23, 2008, visit.

3. The claimant has proven by a preponderance of the evidence that the additional medical treatment he has sought for his hand and the additional testing and treatment recommended by Dr. Moore is reasonable and necessary and related to the claimant's compensable injury. The claimant has also proved by a preponderance of the evidence the medical treatment with Dr. Stewart and Dr. Yocum is also reasonable and necessary.
4. Respondents are responsible for the reasonable and necessary medical awarded.
5. No indemnity benefits have been awarded here. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the March 17, 2009, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and

adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

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 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).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I respectfully dissent from the majority's finding that the claimant was entitled to additional medical treatment. In my opinion, the claimant has failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment.

The claimant was employed by the respondent employer as a welder. On August 16, 2007, the claimant was working and sustained an admittedly compensable injury when he was attempting to lower a personal lift basket. The claimant went to grasp the handle to crank the basket down when a co-worker tripped a cog and released a gear that caused the crank handle to freewheel. The claimant reached out to grasp the handle and it had begun to spin and had built up momentum and struck the claimant on his right wrist and down the back of his right thumb. The claimant was knocked backwards. The claimant knew immediately that his right hand, wrist and the back of his little finger on the left hand were hurt. The claimant's hand had immediate swelling and bruising with pain and some numbness. The claimant was taken to the office and the job superintendent, Derrick Barber, took him to Dr. David Stewart. The claimant had x-rays, a prescription and received an immobilizer for

his thumb and wrist and returned to work light duty for the next month.

The claimant's hand continued to swell, have pain, tingle and have numbness. The claimant left working for the respondent employer and went to work for Union Local 155 with a higher pay. The claimant continued to weld on his new job. According to the claimant, the respondent insurance carrier only paid for the one visit to Dr. Stewart but he continued to seek treatment and pay for it himself. He testified that his problems continue today with mobility, pain, tingling, throbbing and soreness. It never goes away. The claimant testified that he can no longer lift more than 10 or 15 pounds with his right hand and that some days it hurts to even drive and shift gears. The claimant testified that to TIG weld, you have to maintain a constant rocking motion with the hand and he has to stop often. He testified that his production is cut down. The claimant takes Hydrocodone and must take it every four hours like clockwork, whether at home or work. The claimant testified that he has a constant pain level of a 7 on a scale of 1 to 10.

The claimant saw Dr. John Yocum on two occasions and respondents did not pay for those visits. The claimant verified that after seeing Dr. Yocum in

March 2008, he continued to see Dr. David Stewart until he saw Dr. Moore in September 2008. Dr. Stewart continues to prescribe the pain medication he takes.

The claimant requested a change of physician to Dr. Michael Moore. The claimant saw Dr. Moore on September 23, 2008 and he ordered some additional testing after his examination. The respondents paid for this visit but have controverted any further treatment.

Tim Nabholz, manager of the respondent employer, testified that the claimant returned to work for him following the accident and doctor's appointment and continued to work for another month. Mr. Nabholz testified that he only saw the claimant about two times following the accident. Mr. Nabholz testified the claimant's skills were good and that he had worked with him off and on for eight years.

The majority has awarded the claimant the additional testing recommended by Dr. Moore. In my opinion, the claimant has received all the medical treatment to which he is entitled.

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).

The evidence demonstrates that the claimant's hand was hit by the handle of a crank on August 16, 2007. It was a minor injury and the claimant received the appropriate medical treatment with Dr. Stewart. The claimant returned to work and continued working for the respondent employer for a month until he left to go to a

higher paying job on September 21, 2007. The claimant continued to work for this employer until he was laid off in April of 2008.

The medical evidence indicates that Dr. Stewart placed the claimant in a splint at the time of his injury. The claimant did not return to Dr. Stewart until October 9, 2007. Thereafter, the claimant sporadically saw his family physician. In March of 2008, the claimant saw Dr. John Yocum who had the claimant undergo EMG/NCV tests. At a March 17, 2008, visit, Dr. Yocum stated:

Mr. Gates returns today in follow-up of his right hand. He reports continuing episodic involvement in the radial distribution and some pain about the thenar eminence as well. He has not had swelling.

On exam he has no swelling. He has mild tenderness over the radial metaphysis dorsally and radially. He has full motion in the wrist and fingers, negative Phalen, negative Tinel and negative Finklestein. There is intact flexor and extensor function. Good strength. 5/5 median and ulnar intrinsics. He has had EMG/nerve conduction study that was interpreted as normal.

I have given him some Neurostat to try. I have advised a continuing range of motion program. I will have him return p.r.n.

It is clear from this note of March 17, 2008, that Dr. Yocum, an orthopedic specialist, did not see

any reason for the claimant to undergo additional testing or treatment. Additionally, Dr. Moore's examination of the claimant on September 13, 2008, also yielded normal results. It is also of note that the claimant was suffering from problems with his shoulder in March of 2008, which could certainly account for the nerve pain into the claimant's right hand.

Simply put, I cannot find that the claimant is entitled to additional medical treatment. The claimant was treated right after the incident and continued to work for the respondent employer for a month afterward. The claimant has undergone testing which all yielded normal results including a EMG/NCV test. Dr. Yocum has opined that no additional testing is necessary. Therefore, I dissent from the majority's award of additional medical treatment.

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KAREN H. MCKINNEY, Commissioner