

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513253

JOHN McGEE, EMPLOYEE	CLAIMANT
KRAFT FOODS, INC., EMPLOYER	RESPONDENT
ESIS, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 13, 2009

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondents appeal an amended opinion and order of the Administrative Law Judge filed June 1, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 21, 2008, and contained in a pre-hearing order filed August 22, 2009, are hereby accepted as fact.
2. The total left shoulder arthroplasty sought by the claimant for his compensable left shoulder injury is reasonable and necessary.

3. The compensable work related right(sic) (left) shoulder injury is at least a cause for his need for treatment.
4. The respondents shall bear the cost of the claimant's left total shoulder arthroplasty and other reasonable and necessary medical treatment related to that treatment.

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.

We therefore affirm the June 1, 2009, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein. The Full Commission finds that the stipulations agreed to by the parties at the pre-hearing conference conducted on August 21, 2008, and contained in a pre-hearing order filed August 22, 2009, are correct and are hereby accepted as fact. The Full Commission finds that the total left shoulder arthroplasty sought by the claimant for his compensable left shoulder injury is reasonable and necessary. The Full Commission finds that the compensable work related left shoulder injury is at least a cause for his need for treatment. The Full

Commission finds that the respondents shall bear the cost of the claimant's left total shoulder arthroplasty and other reasonable and necessary medical treatment related to the arthroplasty.

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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment in the form of a total left shoulder arthroplasty. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

I note that the record contains numerous highlighted passages in the medical records and the exhibits. The parties are cautioned to refrain from putting highlighted exhibits into any record in the future.

The claimant was employed by the respondent employer as a part-time employee. On August 28, 2005, the claimant was putting together some pipes when he felt something in his left shoulder. After a finding by an Administrative Law Judge in an opinion on July 13, 2006 that the claimant sustained a compensable injury to his left shoulder, the respondents paid for treatment. The claimant now needs a left shoulder total arthroplasty and he is requesting this procedure. The respondents contend that the claimant's shoulder

problems are the result of pre-existing degenerative arthritis and, therefore, they are not responsible for the claimant's medical treatment. I agree with the respondents.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). 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. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

It is undisputed that the claimant suffered from degenerative condition in his left shoulder. In December of 2003, the claimant hurt his left shoulder when he was digging cheese out of a barrel. The

claimant sought treatment from Dr. Gary Moffett who took X-rays in January of 2004. These X-rays showed definitive glenoid cysts. After the claimant hurt his shoulder in August of 2005, these same cysts were present in X-rays taken on September 25, 2005. An MRI performed on December 12, 2005 confirmed "significant glenoid cystic changes and abnormalities of his glenoid consistent with degenerative arthritis." Dr. Moffett was the claimant's treating physician for complaints of pain in the claimant's left shoulder in August of 2006. Dr. Moffett concluded that these studies "revealed significant changes and potentially osteoarthritic changes of the glenoid."

The claimant was referred by Dr. Moffett to Dr. John Park, an orthopedic surgeon. Dr. Park examined the claimant on September 21, 2006 and treated him conservatively with injections and physical therapy. Dr. Park ordered an MRI to rule out osteonecrosis in March of 2007. The MRI was done on May 1, 2007, and showed degenerative changes in the AC joint of the shoulder and, again, confirmed that the claimant has degenerative joint disease. There was no mention of that osteonecrosis.

The respondents submitted an independent medical examination by Dr. Charles Pierce, an orthopedic

surgeon, dated October 9, 2008. Dr. Pierce gave an extensive history of the claimant's considerable history of shoulder injuries and problems which began as early as 2002. Dr. Pierce also gave a detailed review of the claimant's medical records as well as his previous X-rays, and MRI's. Dr. Pierce stated that the changes in the claimant's shoulder were "more typical of degenerative arthritis", which led Dr. Pierce to conclude that the claimant's "left shoulder pain was secondary to degenerative joint disease." Dr. Pierce concluded that although the incidents at work may have flared the claimant's underlying, pre-existing condition, it was his "opinion that this man's need for total shoulder arthroplasty is secondary to pre-existing degenerative arthritis."

The claimant has offered the opinion of Dr. Park that the claimant's need for shoulder replacement was due to the claimant's initial work injury. The basis for Dr. Park's opinion is that the claimant was asymptomatic prior to August 28, 2005. However, there is evidence in the record that shows that the claimant had problems with his shoulder prior to that time.

A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a

substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion January 22, 1996 (Claim No. E417617). Moreover, the Commission is not bound by a doctor's opinion which is based largely on facts related to him by the claimant where there is not sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

The evidence demonstrates that the claimant has a long history of shoulder problems. The claimant hurt his shoulder in 2002 when a barrel fell on his left shoulder. In December of 2003, the claimant was digging out cheese from a barrel and hurt his shoulder. Both of the X-rays taken contemporaneously showed the cysts, previously mentioned, which are consistent with degenerative arthritis. This is contrary to Dr. Park's assertion that the claimant was not asymptomatic prior to the August 2005 injury.

There is also other evidence which can demonstrate that the claimant's degenerative conditions in his shoulder were due to accidents which were not related to the claimant's work for the respondent employer. The claimant was employed by the Pea Ridge School District full-time. The chiropractic notes reflect that the claimant had various incidents

including jerking a handle on a school bus in 2006 and hurt his neck, moved furniture in 2006, fell on ice in February of 2007, and fell on slick concrete in June of 2007. The claimant also was getting up from the floor of his home in March of 2007 when he felt something pop in his shoulder.

Simply put, I cannot find that the claimant's need for left shoulder arthroplasty is related to his August of 2005 injury. The medical evidence in the record demonstrates that the claimant had a long-standing history of osteoarthritis in his shoulder. Dr. Pierce concluded that the claimant's shoulder replacement was caused by degenerative arthritis in the claimant's shoulder. The claimant has failed to show by preponderance of the evidence that the shoulder replacement was caused by the August 2005 injury. Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner