

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F709364, F710958, F804781

KENNETH REED, EMPLOYEE	CLAIMANT
DICKEY REFRIGERATED SERVICES, INC., EMPLOYER	RESPONDENT NO. 1
AMERICAN INTERSTATE INSURANCE CO., INSURANCE CARRIER	RESPONDENT NO. 1
NEW HAMPSHIRE INSURANCE COMPANY	RESPONDENT NO. 2
SECOND INJURY FUND	RESPONDENT NO. 3

OPINION FILED OCTOBER 29, 2009

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

Claimant represented by the HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent No. 1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed, in part, Reversed, in part.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on February 24, 2009.

The claimant sustained compensable back injuries on August 23, 2007 and October 5, 2007. On these dates, the risk was carried by Respondent No. 1, American Interstate

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Insurance Company. On February 4, 2008, Respondent No. 2, New Hampshire Insurance Company, took over the risk. The claimant returned to work on April 29, 2008. Upon the claimant's return to work, his condition dramatically worsened and he went to the Emergency Room. Respondent No. 1 claims that the claimant had fully recovered from the effects of his compensable injuries prior to the April 29, 2008 worsening in his symptoms and denied the claimant's request for additional medical treatment. As the claim was denied by Respondent No. 1, the claimant filed an alternative claim with Respondent No. 2. Respondent No. 2 defends with the position that the claimant's actions of April 29, 2008 did not cause a new injury. As a result of not being able to obtain additional medical treatment from either carrier, the claimant filed a request for a hearing, asking for additional medical treatment. In addition, the claimant requested the Administrative Law Judge to determine whether the April 29, 2008 worsening in the claimant's condition was a recurrence, or was the result of a new injury. The claimant also requested benefits pursuant to Ark. Code Ann. §11-9-505(a); however, the claimant has dropped this issue on appeal. The Administrative Law Judge found that the claimant failed to prove by a preponderance

of the evidence that he sustained a new compensable injury to his low back on April 29, 2008; therefore, Respondent No. 2 has no liability in this claim. After a de novo review of the record, the Full Commission affirms the Administrative Law Judge's finding that the claimant did not sustain a new injury on April 29, 2008. Therefore, Respondent No. 2 is not liable for any workers' compensation benefits to the claimant. However, the Administrative Law Judge's finding that the claimant is not entitled to additional reasonably necessary medical treatment for his compensable back injuries sustained on August 23, 2007 and October 5, 2007, denied by Respondent No. 1 on the theory that the claimant had fully recovered from the effects of his compensable injuries prior to the April 29, 2008 worsening in his symptoms, is clearly contradicted by the evidence of record and must be reversed. The evidence of record clearly shows that the claimant still had symptoms and was still actively treating for his compensable back injuries on April 29, 2008, and is entitled to additional reasonably necessary medical treatment. The Full Commission finds that Respondent No. 1 is liable for additional reasonably necessary medical treatment, specifically the Emergency Room treatment provided on April 29, 2008, including medications,

and hereby reverses the Administrative Law Judge on this point.

The 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). The Court of Appeals has noted that, even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v.

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Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. See Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); See also Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission Opinion filed June 20, 1991 (Claim No. 704562). Additionally, a claimant does not have to provide objective medical evidence of his continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus., Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997).

Here, the claimant sustained an admittedly compensable injury to his back when he fell at work on August 23, 2007. He received medical treatment and subsequently returned to work. He sustained another admittedly compensable injury to his back on October 5, 2007. He received medical treatment and temporary total disability benefits for several months. In a March 18, 2008 report, Dr. Brent Sprinkle released the claimant to return to work on restricted duty. Respondent No. 1, based on Dr. Sprinkle's March 18, 2008 report, controverted additional

reasonably necessary medical treatment as of March 18, 2008. However, a review of this report clearly indicates that the claimant is entitled to additional reasonably necessary medical treatment. First, Dr. Sprinkle's March 18, 2008 report indicates that the claimant was still having neck and back pain at the time. Also, Dr. Sprinkle indicated that he did not think six weeks of physical therapy was justifiable, but he did think that a few weeks was reasonable. Based on Dr. Sprinkle's recommendation of physical therapy, the claimant received physical therapy. An April 7, 2008 progress note from the physical therapist indicates that the claimant was still having spasms in his low back at that time. Based on the medical evidence of record, it is clear that the claimant was still having pain, as indicated in Dr. Sprinkle's March 18, 2008 report. Physical therapy was recommended in Dr. Sprinkle's March 18, 2008 report. The claimant received physical therapy and progress notes from the physical therapist clearly show that the claimant was still suffering from muscle spasms. Additionally, on April 29, 2008, the claimant was still using a TENS unit provided to him for his compensable injuries. Based on the evidence of record, the Full Commission finds no justification for Respondent No. 1's determination that the claimant is not

entitled to additional reasonably necessary medical treatment after March 18, 2008. The Full Commission finds that Respondent No. 1 is liable for additional reasonably necessary medical treatment, specifically the Emergency Room treatment provided on April 29, 2008. However, a review of the medical evidence suggests that beyond the Emergency Room visit and prescription medication provided to the claimant during this visit, no other medical treatment has been provided or recommended to the claimant, and a ruling on any future additional reasonably necessary medical treatment would be improper at this time.

In conclusion, the Full Commission finds that the claimant has proved by a preponderance of the evidence that he is entitled to additional reasonably necessary medical treatment for his compensable back injuries sustained on August 23, 2007 and October 5, 2007, specifically, treatment provided to the claimant on April 29, 2008. As Respondent No. 1 was the carrier on the risk at the time of the claimant's compensable injuries, Respondent No. 1 is responsible for reasonably necessary medical treatment that flows from the compensable injuries, and is liable for the treatment provided on April 29, 2008. As the claimant failed to prove that a new injury occurred at work on April

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29, 2008, Respondent No. 2 has no liability regarding this claim.

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

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Commissioner McKinney dissents.

DISSENTING OPINION

For those reasons set forth by the Administrative Law Judge denying additional medical treatment, I must respectfully dissent. The claimant has not explained what, if any, specific medical treatment to which he contends he is entitled. Dr. Sprinkle specifically stated in his handwritten report dated April 28, 2008, that he knows of no other treatment modalities that would benefit the claimant. There is simply no indication that any further medical treatment would be beneficial in relieving the claimant's subjective complaints of pain.

KAREN H. MCKINNEY, Commissioner