

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609262

DAVINE PARKER, EMPLOYEE	CLAIMANT
STANT MANUFACTURING, EMPLOYER	RESPONDENT NO. 1
AIG CLAIM SERVICES, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MARCH 2, 2009

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, 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 May 2, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on July 20, 2006 at which time the claimant sustained a compensable injury.

2. Dr. Chakales treated the claimant for a degenerative condition, not a traumatic injury from 2006. Therefore, his treatment is unrelated to the compensable injury, unreasonable and unnecessary pursuant to Ark. Code Ann. §11-9-508. This claim for additional medical treatment and temporary total disability benefits is respectfully denied.

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 on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After a de novo review of the record, I must respectfully dissent from the majority opinion. I find that Dr. Chakales' treatment was reasonable and necessary medical treatment of her compensable 2006 injury, that the claimant is entitled to additional temporary total disability benefits from April 17, 2007 to a date yet to be determined, that the respondents controverted the claim for additional medical treatment and additional temporary total disability benefits, and that the claimant's attorney is entitled to an attorney's fee on the temporary total disability benefits.

Under Arkansas workers' compensation law, the employer takes the employee as she is found, and circumstances which aggravate pre-existing conditions are compensable. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990). Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark Code Ann. Sec. 11-9-508(a) (Supp. 2005). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17,

1989 (D612291). 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). 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. A causal connection is established when the compensable injury is found to be "a factor" in the resulting need for medical treatment, even though the compensable injury is not the major cause of the disability or need for treatment. Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). Treatment intended to reduce, or enable a claimant to cope with, chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. Sec. 11-9-508. Billy Chronister v. Lavaca Vault, Full Commission Opinion filed June 20, 1991 (D704562). Postsurgical improvement is a proper consideration in determining whether surgery was reasonable and necessary. Hill v. Baptist Medical Center, 74 Ark. App. 250, 48 S.W.3d 544 (2001), citing Winslow v. D & B Mechanical Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

The compensable injury in this claim occurred on July 20, 2006, when a forklift ran into the table at which the claimant was seated in an elevated chair, which caused the table to strike the claimant, throwing her to the concrete floor onto her left hip.

The majority, by affirming and adopting the Administrative Law Judge, relied upon the 2004 and 2006 MRI scans to conclude that the claimant did not suffer a disc injury in 2006. The majority further found that the claimant did not enjoy benefit from the surgery. The majority specifically concluded that "Dr. Chakales treated the claimant for a degenerative condition, not a traumatic injury from 2006. Therefore his treatment is unrelated to the compensable injury, unreasonable and unnecessary pursuant to Ark. Code Ann. Sec. 11-9-508." However, the issue is not whether she suffered a disc injury in 2006, but whether Dr. Chakales' treatment was reasonable and necessary treatment of her July 20, 2006 compensable injury. The treatment was reasonable and necessary for several reasons.

First, the claimant's need for Dr. Chakales' treatment was the compensable injury, which is the aggravation on July 20, 2006 of her lower back pain which originated in a June 2002 injury to her L5-S1 lumbar spine. This claim is similar to the claim in Estridge v. Waste

Management, 343 Ark. 276, 33 S.W.3d 167(2000), in that the claimant undisputedly suffered a compensable injury and in that there is a dispute as to whether there is a causal connection between the injury and the medical treatment. As the Court in Estridge explained, the claimant does not have to prove that the injury is the major cause of the need for treatment in the case of an accidental injury. Ark. Code Ann. § 11-9-102(4)(A)(i). While the claimant does have degenerative problems and a history of lower back pain, the medical records and the claimant's testimony show that the accidental injury at work on July 20, 2006, when she was thrown to the floor when her worktable was struck by a forklift, either caused or precipitated the need for medication and surgery. As in Estridge, "that is clear." 343 Ark. at 282.

The medical records and the claimant's testimony show that the claimant had problems with her lumbar spine, specifically her L5-S1 level, since 2002, but that the claimant experienced improvement in her symptoms of lower back and left leg pain such that she did not seek treatment for her lower back from April 2004 until the date of the forklift accident on July 20, 2006. The problems she developed after the July 20, 2006 forklift accident were different, with radiating pain into both legs. The claimant

explained that the nature, severity and location of the pain after the July 20, 2006 accident were different from the pain between 2002 and 2004. She testified that the pain after the 2006 accident increased to a point that her ability to walk was limited, which had not happened previously. Her condition changed and worsened after the 2006 accident. A claimant does not have to support a continued need for medical treatment with objective findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997). It is undisputed that the claimant had a pre-existing condition. However, the 2006 accident aggravated the pre-existing condition and is a compensable injury.¹ The 2006 compensable injury is a factor in the need for treatment and under Williams, supra, the claimant is entitled to the treatment provided by Dr. Chakales.

Lastly, the claimant's testimony and Dr. Chakales' records show that she experienced relief of her sciatic pain, initially, and that she has experienced improvement in her symptoms, although not complete relief. Dr. Chakales' treatment and surgery was successful in reducing the

¹ The only other conclusion would be that this is a recurrence, which it cannot be due to the independent intervening cause of being knocked to the floor by the forklift. In fact, the parties stipulated that the claimant suffered a compensable injury.

claimant's pain and improving the quality of her life. The finding, affirmed and adopted by the majority, that the claimant "did not benefit" from Dr. Chakales' treatment is unsupported by either the medical records or the claimant's testimony.

The period of relatively good back health, the significant change and aggravation in symptoms, and the post-surgical improvement in her pain and quality of life support the conclusion that a causal connection did exist between the July 20, 2006 accident injury at work and the treatment of Dr. Chakales. I find that the claimant proved that Dr. Chakales' treatment was reasonable and necessary treatment of her compensable injury of July 20, 2006.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The claimant seeks temporary total disability benefits from April 17, 2007 to a date yet to be determined.

The claimant testified that Dr. Chakales took her off work in April 2007. The medical records show that she has not been released to work, and in fact, Dr. Chakales has stated that she is unable to return to work at all. The claimant has been totally disabled from working since at April 17, 2007 or at the latest, the date of her surgery by Dr. Chakales, June 28, 2007. There is no record that she attained maximum medical improvement, and she remains under Dr. Chakales' active care. The claimant has proven that she is entitled to temporary total disability benefits from April 17, 2007 to a date yet to be determined.

The claimant has proven that Dr. Chakales' treatment was reasonable and necessary medical treatment of her compensable injury. Her need for treatment was caused by the accident of July 20, 2006, and the treatment resulted in improvement in her condition. The claimant is entitled to temporary total disability benefits from April 17, 2007 until a date yet to be determined, because she remains within her healing period and Dr. Chakales stated that she was unable to work. This claim was controverted, and the claimant's attorney is entitled to fees on the indemnity benefits awarded, as well as for his work on appeal. For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner