

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705975

WILLIAM CHAMNESS, EMPLOYEE	CLAIMANT
J. B. HUNT TRANSPORT, EMPLOYER	RESPONDENT
NEW HAMPSHIRE INS. CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 16, 2010

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

Claimant represented by the HONORABLE STEVEN McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WILLIAM BIRD, III, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and adopted as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 9, 2009. The administrative law judge entered the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 4, 2007, the relationship of employee-employer-carrier existed between the parties.
3. On June 4, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$504.00 for total

disability and \$378.00 for permanent partial disability.

4. On June 4, 2007, the claimant sustained a compensable injury to his low back or lumbar spine.

5. There is no dispute over the claimant's entitlement to medical services through November 12, 2008.

6. The claimant has proven by the greater weight of the credible evidence that the medical services provided him for his low back and radicular complaints by and at the direction of Dr. John Zanol of St. Mary's Health Center emergency room, on February 23, 2009 by and at the direction of nurse practitioner Diane Mueller, by and at the direction of Dr. Theodore Choma, and by and at the direction of Dr. Joel Jeffries, and by and at the direction of Dr. Donald Mueller (all associated with the University of Missouri Health Care Center), represent reasonably necessary medical services for the claimant's compensable injury, under Ark. Code Ann. §11-9-508. Specifically the claimant has proven that the medical services provided by these physicians were necessitated by or connected with his compensable low back or lumbar injury and had a reasonable expectation of accomplishing their intended beneficial purpose or goal in regard to his compensable injury.

7. The claimant has further proven by the greater weight of the credible evidence that the discography or discogram of his lumbar spine and appropriate medical monitoring and maintenance of his continuing low back and radicular complaints by and at the direction of appropriate physicians at the University of Missouri Health Care Center also constitute reasonable and necessary medical services for his compensable low back or lumbar injury. Specifically, he had proven that his medical services are

necessitated by or connected with this compensable low back or lumbar injury and have a expectation of accomplishing their intended beneficial purpose or goal. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these medical services, subject to the medical fee schedule established by this Commission.

8. There is no dispute over the claimant's entitlement to temporary total disability benefits through February 17, 2008.

9. The claimant has proven by the greater weight of the credible evidence that he is entitled to additional temporary total disability benefits from February 18, 2008 through a date yet to be determined, with the exception of the period he was actually "employed" as the apartment manager for the apartment complex in which he lived. Specifically, the claimant has proven that during this period he continued within his healing period from the effects of his compensable low back or lumbar injury and was also rendered totally disabled as a result of the effects of this compensable injury.

10. The respondents have controverted the claimant's entitlement to any medical services accruing after February 12, 2008 and any temporary total disability benefits accruing after February 17, 2008.

11. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on the additional controverted temporary total disability benefits herein awarded.

After reviewing the entire record *de novo*, 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, except with regard to the administrative law judge's finding of fact No. 7. The Full Commission modifies finding of fact No. 7 in the following manner:

7. While we find that a discogram in the present claim is reasonable and necessary medical treatment in connection with the claimant's compensable injury, it is unclear from the medical records whether such procedure is presently recommended by the claimant's treating physicians. On December 3, 2007, Dr. Cox recommended a discogram prior to the claimant's request for a change of physician which was granted to Dr. Crabtree. Dr. Crabtree began treating the claimant in September of 2008 and he never recommended a discogram. The claimant was examined by Dr. Lange for an Independent Evaluation on September 4, 2008. Dr. Lange ordered a myelogram followed by CT scanning, then added in his report that if this testing did not reveal a compression lesion then a discogram may be offered. The claimant came under the care of Dr. Mace on November 11, 2008. Dr. Mace agreed with all of Dr. Lange's recommendations. On April 13, 2009, the claimant came under the care of Dr. Donald Mueller. At the time of the hearing, the claimant had recently completed a series of epidural steroid injections by Dr. Mueller. Dr. Mueller has not recommended any additional diagnostic testing. Accordingly, we hereby modify finding of fact No. 7 to the extent that such finding implies that a discogram is the current recommendation of the claimant's physicians at the University of Missouri Health Care Center. We make no such finding as to what the current diagnostic and treatment recommendations are. However, we find that the claimant has proven by a preponderance of the evidence that additional medical treatment from the University of Missouri Health Care Center for medical diagnosis, monitoring, and maintenance of his continuing low back and

radicular complaints is reasonable and necessary medical treatment in connection with his compensable injury, for which the respondents are liable. Said treatment would include a discogram if once again recommended.

We find from a preponderance of the evidence that the administrative law judge's findings of fact, except for finding No. 7, are correct and are, therefore, adopted by the Full Commission. We therefore affirm the October 9, 2009, decision of the administrative law judge, including all findings of fact and conclusions of law therein, except for finding of fact No. 7, 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.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on the respondents' appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner