

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F806803

ERIC DILL, EMPLOYEE	CLAIMANT
GREEN DENTAL LABORATORIES, INC., EMPLOYER	RESPONDENT
HARTFORD FIRE INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED JULY 19, 2011

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

Claimant represented by the HONORABLE PHILIP WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GENE WILLIAMS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed April 11, 2011.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he is entitled to additional

treatment in the form of surgery recommended by Dr. Zachary Mason.

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

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that he is entitled

to the reasonably necessary medical treatment recommended by Dr. Mason.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. § 11-9-508(a) (Repl. 2002); American Greeting Corp. v. Garey, 61 Ark. App.18, 963 S.W. 2d 613 (1998). 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); and See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Here, the claimant had a compensable injury. The claimant saw Dr. Mason initially and, as a result of that initial visit, Dr. Mason indicated that the claimant may, in fact, require surgery if the symptoms persisted and conservative treatment did not resolve the problem. The claimant, as suggested by the doctor, took prescriptions and avoided bending, stooping, and lifting anything over 50 lbs. He advised the

claimant to return if, after a period of time, his symptoms were not relieved or worsened. That is exactly what he did. The claimant returned to Dr. Mason, who recommended following through with the previously suggested surgery because of the stenosis and because of the claimant's symptoms.

While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, ___ Ark. App. ___, ___ S.W.2d ___, (2007). Here, Dr. Mason's is the only medical opinion addressing the claimant's need for additional reasonably necessary medical treatment. Dr. Mason has recommended surgery for the claimant's compensable injury. Here, the Administrative Law Judge, affirmed and adopted by the majority, has concluded that Dr. Mason's surgical recommendation is solely for stenosis. This conclusion is simply not supported by the medical record. Dr. Mason's surgical recommendation is for the claimant's compensable back injury as a whole, not simply for stenosis. The Administrative Law Judge has incorrectly parsed the medical records, reaching an incorrect conclusion. The Administrative Law Judge cannot disregard Dr. Mason's opinion and substitute his own opinion as to the cause of the claimant's symptoms and need for treatment. Conjecture and speculation,

even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

I find the majority has erred by affirming and adopting the incorrect conclusion of the Administrative Law Judge, and I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner