

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712811

TORY GRAY, EMPLOYEE	CLAIMANT
RJO INVESTMENTS, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO. C/O CHARTIS CLAIMS, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 8, 2011

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed April 29, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.

3. The respondents did in fact controvert the claimant's benefits associated with his facial scarring. As such, respondents are directed to pay one-half of the attorney's fees associated with the facial scarring; in this case the facial scarring benefit was \$3,500.00 and therefore respondents are responsible for their one-half portion of the attorney's fees now due and owing in the amount of \$437.50 to be paid to the Honorable Greg Giles.
4. Claimant has proven by a preponderance of the evidence that the additional medical treatment to his right knee now recommended by Dr. Bryant is reasonable, necessary, and related to his compensable right knee injury. Therefore, respondents are hereby directed to provide the claimant with the medical treatment now being recommended by Dr. Bryant to his right knee pursuant to Commission Rule 99.30.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the April 29, 2011, decision of the Administrative Law Judge, including all

findings of fact and conclusions of law therein, and adopt the opinion 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 (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 respectfully dissent from the majority's opinion finding that the claimant was entitled to additional medical treatment in the form of recommendations by Dr. D'Orsay Bryant. In my opinion, the claimant has failed to meet his burden of proof.

The claimant sustained an admittedly compensable injury on December 6, 2007. The claimant was driving an 18-wheeler truck when the brakes malfunctioned. The claimant's tractor-trailer rolled over several times causing the claimant to sustain injuries to his right leg and face. The claimant's facial injuries required the reconstruction of his right eye socket and part of his nose. The respondents paid for medical treatment during this time period.

The claimant continued to have problems with his right knee and the respondents sent him to see Dr. Kenneth Gati. Dr. Gati treated the claimant with injections, medication, physical therapy, a knee sleeve, and a home exercise program. On June 18, 2008, Dr. Gati released the claimant with no permanent anatomical impairment and found the claimant to be at maximum medical improvement. It is of note that during this entire time period, the claimant had been working for the respondent employer full-time.

The claimant testified that he continued to have problems with his right knee and requested a change of physician. The claimant saw Dr. D'Orsay Bryant pursuant to that change of physician in June of 2010. Prior to June of 2010, the claimant had another change of physician order to Dr. Covey, but he failed to appear for that evaluation.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Supp. 2009). 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. Owens Plating Co. v. Graham, 102 Ark. App. 299, 284 S.W.3d 537 (2008). What constitutes reasonable and necessary treatment is a questions of fact for the Commission. Id. Anaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008). 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. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. Foster v. Kann Enterprises, 2009 Ark. App. 746 ___, S.W.3d ___ (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The evidence demonstrates that the claimant missed three appointments with Dr. Gati. He told Dr. Gati in June of 2008 that his knee was feeling better and he did have some soreness. The claimant had full range of motion and Dr. Gati opined that his knee strain with fibular fracture had resolved. He released the claimant with no permanent impairment and no restrictions on June 16, 2008. On February 23, 2009, the claimant went for his commercial drivers license physical exam and indicated at that time that he had not had an injury in the last five years.

The next medical records indicate that the claimant did not seek treatment until July 20, 2010. The claimant waited for over a year to get additional medical treatment.

The claimant had asked for a change of physician initially, and he was changed from Dr. Gati to Dr. Carl Covey on July 23, 2008. The claimant's wife signed the receipt for the change of physician order on July 20, 2008. The claimant acknowledged that his wife signed for the order, but he claims to have not known about the appointment. The claimant did not show up for the appointment.

The evidence demonstrates that the claimant is able to do heavy work 12 to 14 hours a day, seven days a week. He does not take anything for pain and there have been absolutely no modifications for his job.

Therefore, when I consider the fact that the claimant did not seek additional medical treatment for over a year after having been released with no permanent anatomical impairment or restrictions in June of 2008, the fact the claimant does heavy physical work for up to 98 hours a week and admits that he is able to do so without modification or assistance, and the fact he failed to attend a change of physician evaluation in 2008, I cannot find that the claimant is entitled to additional medical treatment. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.