

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G001392

JESUS LOPEZ, EMPLOYEE	CLAIMANT
MJ LEE CONSTRUCTION, EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 2, 2011

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

Claimant represented by the HONORABLE JASON WORLEY, Attorney at Law, Springdale, Arkansas.

Respondents represented by the HONORABLE GUY WADE, 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 February 15, 2011.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 10, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant suffered a compensable injury to his left thumb and hand on November 21, 2008 is also hereby accepted as fact.
3. Claimant has failed to prove by a preponderance of

the evidence that he is entitled to additional medical treatment as recommended by Dr. Kelly.

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 is

entitled to the additional medical treatment recommended by Dr. Kelly.

Arkansas workers' compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). This includes ongoing medical treatment, even after the healing period has ended. The Arkansas Court of Appeals held that "it is well settled that a claimant may be entitled to ongoing medical treatment after the healing period had ended, if the medical treatment is geared toward management of the claimant's injury" See Patchell v. Wal-Mart Stores, Inc., 184 S.W.3d 31 (Ark. App. 2004) citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). In the Patchell case, the claimant suffered from chronic pain after healing due to a compensable injury she sustained. The Court of Appeals reversed the Full Commission's denial of additional medical benefits and directed that it award additional medical benefits for the chronic pain condition that she suffered.

In the instant case, all three doctors that reported on the claimant's condition noted one common theme, ongoing pain in his thumb. Dr. Sitzes noted that the claimant had severe pain, Dr. Benafield noted chronic, unrelenting pain, and Dr. Kelly noted that the thumb still had hypersensitivity nearly a year

after Dr. Benafield's diagnosis. In reaching his decision, the Administrative Law Judge, affirmed and adopted by the majority, stated essentially that he picks the opinion of Dr. Benafield over that of Dr. Kelly. The Administrative Law Judge found that Dr. Kelly's diagnosis did not find pain, but only numbness. However, this finding misrepresents the facts. Dr. Kelly's diagnosis found numbness distal to the laceration site, but the ulnar side of the thumb was "very sensitive due to no tissue covering the bone." Dr. Kelly went on to say in a June follow-up letter that there was hypersensitivity at the base of the thumb.

The claimant testified at the hearing that he still suffers from pain, described as throbbing and being poked with a needle. His testimony is consistent with all three doctors' diagnosis. This type of unrelenting chronic pain is entitled to additional medical benefits. The fact that the claimant is still experiencing pain cannot be ignored. 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). 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).

The Administrative Law Judge, affirmed and adopted by the majority, ultimately found that, because the claimant did not inform Dr. Benafield that Lyrica made him sick, nor did he inform the doctor that he only took one dose of the medication, the problem was "basically gone" as reported by Dr. Benafield. However, this defies logic and common sense. First, Dr. Benafield's final report is based on misinformation. The mere fact that the doctor was unaware of the claimant's issues with Lyrica does not mean that the claimant was no longer in pain and Lyrica cured the problem. The claimant's silence as to his issues with Lyrica could have just as easily meant that he was

not happy with Dr. Benafield and wanted to see a doctor that didn't prescribe him things that made him sick. Second, Dr. Benafield, although stating that the problem was basically gone, still directed the claimant to continue to take the medication. Surely, the claimant's only treatment option is not one that will make him sick ?

I find, based on the medical evidence of record, that the claimant is entitled to the reasonably necessary surgery recommended by Dr. Kelly. Dr. Benafield's treatment, accepted by the majority, simply doesn't work.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner