

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F507644

MAHDI NAMMARI, EMPLOYEE	CLAIMANT
TYSON FOODS, INC., SELF-INSURED EMPLOYER	RESPONDENT
TYNET CORPORATION, CARRIER/TPA	RESPONDENT

OPINION FILED MAY 2, 2011

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed January 5, 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 October 13, 2010, and contained in a pre-hearing order filed October 14, 2010, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for RSD/CRPS.

3. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits subsequent to July 12, 2010, the stipulated date through which respondent last paid temporary total disability benefits pursuant to the April 17, 2007 opinion.

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 my de novo review of the entire record, I must

respectfully dissent from the majority opinion. I would award the claimant additional medical benefits for his reflex sympathetic disorder (chronic regional pain syndrome) ("RSD/CRSD"), additional temporary total disability benefits and an attorney's fee.

The claimant did not have problems with his right foot prior to his injury on March 2, 2005, when his foot slipped, striking a ladder with the top of his foot. He has been plagued with pain, numbness, and changes in both temperature and color in his right foot since that time. The claimant was diagnosed by his treating physicians with a contusion to a nerve in his foot, a Lisfranc fracture, nerve entrapment and RSD/CRSD. However, Dr. Peoples, who performed a single independent medical evaluation of the claimant, opined that the claimant did not have RSD/CRSD.

Under Arkansas workers' compensation law, 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). 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). Reasonable and necessary medical services may include those 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. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). 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).

The diagnosis of RSD/CRSD is supported not just by the claimant's subjective complaints of continued pain, but also by objective findings, in the temperature and color differences in his feet and, most importantly, the spf-NCS neurodiagnostic exam, which demonstrated sensory radiculopathy at the levels of bilateral L5 and left S1, results which correlated clinically

with a diagnosis of RSD/CRSD. Dr. Peeples either ignored this evidence or he did not have it to review, reason enough to devalue his opinion. Furthermore, Dr. Saleh observed swelling and loss of hair on the right foot as compared to the left, as well as color changes and tenderness on the right compared to the left. Dr. Peeples likewise ignored these records or did not have the benefit of them.

Dr. Pleimann was concerned about RSD/CRSD in mid-2006. Dr. Aquilar was concerned about RSD/CRSD in March 2008, due to symptoms of RSD/CRSD which had been present for more than a year prior to that date. Dr. Odell diagnosed RSD/CRSD in August 2008. Dr. Aquilar then diagnosed nerve entrapment and resulting neuritis and RSD/CRSD three times during the winter of 2009. Dr. Qureshi diagnosed RSD/CRSD in June 2009, while Dr. Saleh made his RSD/CRSD diagnosis in July 2009.

I find that Dr. Peeples' independent medical evaluation of the claimant and his opinion based upon that limited exposure to the claimant and the doctor's less-than-complete review of a less-than-complete record are not sufficient to outweigh the diagnoses of at least four doctors. In particular, Dr. Odell correlated the clinical observations of himself, Dr. Pleimann, Dr. Aquilar, Dr. Qureshi and Dr. Saleh (continued pain, swelling, temperature and color changes) with a positive spf-NCS neurodiagnostic exam. The majority has affirmed and adopted the

Administrative Law Judge's opinion which did not refer to this positive test at all, merely indicating that Dr. Odell based his diagnosis upon the claimant's history and physical exam. This is an inaccurate reading of the record. Dr. Odell stated, in his "spf-NCS neurodiagnostic study" report, that "multiple levels of hypoesthesia in the affected (sic), as seen in this study, in conjunction with the patient's history and physical exam, are consistent with lower extremity neuropathy secondary to chronic regional pain syndrome." Chronic regional pain syndrome is the current nomenclature for RSD.

The majority has also failed to address the observations of swelling, loss of hair and changes in temperature and color of the claimant's right lower leg and foot by Dr. Pleimann, Dr. Aquilar, Dr. Qureshi and Dr. Saleh, and Dr. Odell's notation that the claimant's symptoms were not radicular but, rather, were distal. The majority's credit of Dr. Peeples' comments that the claimant did not have swelling or loss of hair, or other symptoms of RSD/CRSD, based upon his single visit with the claimant and cursory review of part of the claimant's medical record, over the specific notations of these five doctors' observations of such symptoms, is unjustifiable and unreasonable.

The claimant has had consistent complaints of pain, swelling and changes in color and temperature in his right foot since his work-related injury. Despite surgical treatments and

physical and pharmaceutical therapy, the claimant's symptoms remain and have worsened, absent appropriate treatment directed at RSD/CRSD. While the claimant does not have to demonstrate objective findings of a need for treatment, he actually has objective evidence of RSD/CRSD, in the form of testing and observations of swelling and changes in color and temperature. Further, the continuity of his complaints and his physicians' concerns regarding RSD/CRSD is unbroken. The claimant did not have such problems prior to his work injury, but he has had them consistently since that date. His symptoms have been related to the original injury and treatment thereof by most, if not all, of the physicians, without regard for their opinion as to the cause. Thus, there is a causal connection between the need for the treatment and the work injury.

I find that the claimant is entitled for additional medical treatment for his pain and other symptoms, including treatment for RSD/CRSD.

I also find that the claimant is entitled to additional temporary total disability benefits from the date of last payment by the respondents on July 12, 2010. I do not credit Dr. Peoples' opinion that the claimant could work and should not be taking narcotic medicine. His abrupt dismissal of the claimant's symptoms and concerns speaks more to a predisposition on his part than any validity of his opinion, especially in light of the

thorough, careful, and cautious treatment by more than five other doctors and in light of the several diagnoses of RSD/CRSD. No doctor has returned the claimant to work, other than Dr. Peeples, and I do not credit his opinion. The claimant's injury, RSD/CRSD and neuritis caused by nerve entrapment, all relate to the work-related incident in March 2005, for which he still awaits reasonable and necessary medical treatment. There has been no change in his status. I would award the claimant additional temporary total disability benefits from the date of the last payment to a date yet to be determined.

I would also award an attorney's fee because, without his attorney's assistance, the claimant would have not have received the benefits to which he is entitled.

I find that the record supports an award of additional medical treatment for his RSD/CRSD and neuritis, additional temporary total disability benefits from July 12, 2010 to a date yet to be determined, and an attorney's fee.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner