

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F809451

CHRISTINE PARKS, EMPLOYEE	CLAIMANT
ARNOLD FARMS, EMPLOYER	RESPONDENT
UNION INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 26, 2011

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK, 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 July 7, 2011.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant time [sic], including August 22, 2008.
3. The underlying claim was accepted as a temporary

aggravation of a pre-existing back injury.

4. The respondents furnished medical treatment inclusive of a change of physician to Dr. Raben.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
6. During the hearing, the parties agreed that if called to testify, the claimant's husband, Ken Parks, and her son, Ryan Bright, would corroborate her testimony.
7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment (in the form of a discogram and prescription medications) for her compensable work-incident of August 22, 2008. Specifically, the claimant has failed to prove that her need for said treatment is causally related to her August 22, 2008, work-related injury.

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 would award the claimant the discogram recommended by Dr. Raben and additional pain medication.

The claimant requested a change of physician to Dr. Cyril Raben. The claimant had her first visit with Dr. Raben on March 16, 2009. Dr. Raben stated:

This 46 yr. old female presents for low back pain. She states she had a fusion L5-S1 in 1984 but has been living her life fine until this accident...she states she had an on the job injury August 22, 2009 in which she was throwing live turkeys into a trailer. She states she couldn't sleep that night. She states she went back to work on the following Monday and was hurting so bad that they sent her home and she saw a Dr. that day. She states that the pain goes into both hips and into legs, primarily on the left. She states she also has a

burning sensation between her
shoulder blades...

Following a thorough physical examination and recording of the claimant's medical history, Dr. Raben diagnosed degenerative disc disease of the lumbar spine with a disc herniation and lumbar spine radiculitis and sciatica. The claimant was prescribed Motrin, Vicoprofen, Ultram, and Soma.

Given the claimant's problems with radiculitis, Dr. Raben referred the claimant for an EMG/nerve conduction study which took place on April 14, 2009. After recording the claimant's medical history and work accident details, Dr. Miles Johnson recorded the following under the heading "History of Present Illness":

...Since this time, she has had back pain, which radiates into the left lower extremity towards the ankle. It is a hot and sharp pain. There is no weakness, numbness, or tingling. Symptoms can be present when sitting and standing and are typically moderate to severe in nature. She has recently been seen by Dr. Raben and is referred for consultation of the above and electrodiagnostic testing of the left lower extremity.

Despite these symptoms, Dr. Johnson's impression was of a "normal electrodiagnostic study of the left lower extremity and corresponding lumbosacral paraspinal musculature."

On May 31, 2009, Dr. Raben, following an appointment with the claimant three days prior, was becoming dissatisfied with the failure of physicians up to that time to definitively identify the source of the claimant's pain and symptoms. Dr. Raben stated:

History and Significant Physical Findings:

Longstanding history of back and leg refractory to conservative care. However, she had an unusual presentation of her radiculitis that did not match other radiographic studies. She is here for definitive determination of the source of this pain with neural foraminal epidural at L4-5 and L5-S1 on the left.

Dr. Raben proceeded to perform a neural foraminal epidural at those levels of the lumbar spine, making a post-operative diagnosis of lumbar radiculopathy with abnormal presentation of radiculitis.

Following a visit with Dr. Raben on June 25, 2009, the claimant returned to Dr. Raben on July 9, 2009, for another transforaminal epidural steroid injection at L4-5 and L5-S1.

It was on July 21, 2009, that Dr. Raben made the treatment recommendation at controversy in this case. On that date, the claimant returned and Dr. Raben noted her complaint that the last injection had not helped at all and that an aching

and burning sensation was extending from her back into her tailbone and down from there into the left leg. He also noted that the claimant had not yet been allowed to begin physical therapy at that time. Dr. Raben stated the following plan of treatment, to wit:

I think what we need to do is go ahead with further work up to determine where the pain generator is. We're going to set her up for a CT discography of her lumbar spine. She may need medication refills. We'll see her back with us after we have the results of those studies.

But, before Dr. Raben could proceed with an authorized discogram to identify the precise source of her lumbar spine pain, the claimant received a second opinion from Dr. James Blankenship. On August 4, 2009, Dr. Blankenship stated:

The major reason for this IME was to see if I agreed that discography was the next appropriate step. I do not...I would recommend an aggressive active physical therapy program initiated with a round of oral steroid medication...My preference would be to have her work on the things we know are causing her problems, which are more myofascial at present with a good aggressive physical therapy and then see if she is not doing better and a good quality MRI to see if delineation of compressive etiology of her leg pain can be worked out. I do not feel like she is most likely solidly fused at L5-

S1, but this has been the situation for over 20 years and is certainly not causing her problem. It would indicate, however, that the L5-S1 disc space could be causative for her current pain complaints. Concerning causation, it is my opinion based on a reasonable degree of medical certainty that 100% need for treatment for her current problem is directly related to her work injury, based on the information I have been provided.

Dr. Blankenship reviewed lateral neutral flexion and extension lumbar radiographs and noted evidence of a previous left-sided hemilaminotomy and "attempted posterolateral arthrodesis", as well as "mild Angulation at L4-5." He stated that, on these plain films, it was difficult to determine if the fusion was solid.

Not long following the examination of Dr. Blankenship, Dr. Raben left this area to practice elsewhere and Dr. Blankenship then resumed the claimant's treatment as her treating physician. As of a follow-up visit of September 15, 2009, the claimant had completed four weeks of physical therapy and her leg pain had significantly improved, while the back pain remained unchanged. Dr. Blankenship's impression was of "persistent mechanical back pain that is likely discogenic in etiology." The claimant was prescribed Lyrica.

The claimant's condition was essentially unchanged by

her visit of October 13, 2009, with Dr. Blankenship. Her leg pain was again noted as almost completely gone, while the back pain remained unchanged. Dr. Blankenship stated that this was confirmatory in his mind that the claimant's leg pain was pyriformis in nature. His findings on physical exam did not differ from those previously on record. He made arrangements for the claimant to see Dr. David Cannon for bilateral L5-S1 Z-joint injections. Dr. Blankenship's opinion at this time seems to be the same as Dr. Raben's, the source of the claimant's pain has yet to be identified. Dr. Blankenship stated:

Whether her underlying disk tear is the primary cause of her pain is still yet to be determined. She does have an annular tear with asymmetrical disk bulging without significant neural impingement on her new MRI. She certainly has a significant facet component for her current pain.

The next day, October 14, 2009, Dr. Blankenship set forth a more complete review of the findings obtained from the new MRI. His impression of the lumbar MRI found the following:

Status post L5-S1 resection and decompression on the right-hand side without residual retained disc fragments. There are mild disc space changes noted at L5-S1 consistent with previous surgery, no other adjacent segment disease is noted.

The record reflects that, from October 26, 2009 through

November 9, 2009, the claimant attended four physical therapy sessions directed by Jessica Leger, PT. She continued to receive epidural steroid injections at this time and complained of back pain continuing at six to seven on a ten-point scale. Ms. Leger notes that, as of November 23, 2009, the claimant had not returned since November 9, had not returned phone calls, and had not met her physical therapy goals.

However, Dr. Blankenship noted on December 10, 2009 that the claimant was improving as she continued with home exercises and physical therapy. He further stated that, as it was his belief that "the majority of Chris's joint pain was Z-joint in nature," she did not qualify for an impairment rating under Arkansas workers' compensation guidelines. The claimant was referred for a Functional Capacity Evaluation by Rick Byrd in Harrison.

On December 29, 2009, Dr. Blankenship reviewed the FCE findings and agreed with them entirely. The FCE found that the claimant had put forth a reliable and consistent effort, which showed her capable of performing light work with a 20-pound weight-lifting restriction. She was found unfit to return to her previous work.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code

Ann. §11-9-508(a) (Repl. 2002). 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). The Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing 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).

Although Dr. Blankenship identified a Z-joint problem which he successfully treated, the source of the claimant's back pain has never been identified. She has consistently complained of pain. She is still complaining of pain. Dr. Raben's rationale for the discogram procedure still stands. I would award the claimant the discogram procedure and additional pain medication. The respondent simply cannot ignore the fact that the claimant's pain has never resolved. She is entitled to additional reasonably necessary medical treatment.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner