

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603255

JOHN POMORANSKY, EMPLOYEE	CLAIMANT
OZARKS ELECTRIC COOP CORP., EMPLOYER	RESPONDENT
REGIONS CLAIMS MANAGEMENT, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 11, 2011

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

Claimant represented by the HONORABLE JASON HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE BETTY HARDY, 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 18, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 1, 2010, and contained in a pre-hearing order filed December 3, 2010, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that he is entitled to the physical therapy ordered

by Dr. Standefer for the treatment of his compensable low back 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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the April 18, 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 proved by a preponderance of the evidence that he was entitled to additional medical treatment in the form of physical therapy. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant sustained an admittedly compensable injury on December 26, 2005. The claimant was driving a vehicle for the respondent employer when

he was rear-ended. The claimant ultimately underwent back surgery on his low back on November 14, 2007. The claimant was provided physical therapy after surgery. Dr. Standefer, his treating physician, stated that the claimant had a nice recovery. The claimant returned to work for the respondent employer.

The claimant had follow-up visits with Dr. Standefer periodically. On February 3, 2010, the claimant complained to Dr. Standefer about muscle cramps in his legs. Dr. Standefer recommended an EMG/NCV which was provided. The claimant underwent the EMG/NCV of his lower extremities to see if there was any evidence of active denervation in the gastronemius soleus muscle. The claimant's testing revealed normal results. Dr. Standefer noted on May 4, 2010, that the claimant's leg cramps were being treated by another physician with Vitamin B.

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).

In my opinion, a review of the evidence demonstrates that the claimant is not entitled to additional medical treatment in the form of physical

therapy. The claimant underwent and EMG/NCV test on February 3, 2010, which yielded normal results. The claimant's primary care physician, Dr. Morse, has been providing the claimant with a prescription for Vitamin B6 to treat the claimant's leg cramps. The claimant has been released from Dr. Morse's care to return p.r.n.

There is nothing in the medical records that indicate the claimant's leg cramps are due to the work-related injury. The EMG/NCV test did not show a problem with the claimant's lower back that was affecting his lower extremities. Further, the claimant underwent an MRI, which did not show any new findings or evidence of a recurrent disc protrusion. Moreover, the claimant's cramps are in his calf and hamstring muscles and no pain radiates from his back into the lower extremities. These cramps also tend to be present at night.

Simply put, I cannot find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of physical therapy. Therefore, I must respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner