

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512518

JUAN RUBIO,
EMPLOYEE

CLAIMANT

D.J. WEBER CONCRETE CONSTRUCTION,
EMPLOYER

RESPONDENT

GUARANTEE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 19, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS,
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 27, 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 August 25, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment in the form of pain management.

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 27, 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 finding that the claimant is entitled to additional medical treatment in the form of pain management. In my opinion, the claimant has failed to meet his burden of proof.

The evidence demonstrates that a referral to pain management was not mentioned in Dr. Routsong's medical records until the claimant's attorney mentioned it to Dr. Routsong. Dr. Routsong's medical records indicate that for a period of at least two years he did

not prescribe pain medication for the claimant. In fact, he prescribed nothing stronger than the over-the-counter medication Alleve and to continue his home physical therapy. These reports also fail to mention even the possibility of a referral to a pain management specialist. The claimant was examined by Dr. Routsong on May 17, 2010, and he did not recommend referral to a pain management specialist. The claimant saw Dr. Routsong again in February of 2011, five months after receiving the letter from the claimant's attorney. At the conclusion of this visit, Dr. Routsong did not recommend any prescription medication and did not refer the claimant to a pain management specialist. The report indicates that Dr. Routsong asked the claimant to continue to use over-the-counter anti-inflammatory medicines and to continue his home physical therapy.

Clearly, there has been no change in the claimant condition and additional medical treatment in the form of pain management is not reasonable and necessary medical treatment. Accordingly, I must dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER