

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F808631

RAFAEL SANTILLAN, EMPLOYEE	CLAIMANT
TYSON SALES AND DISTRIBUTION, SELF-INSURED EMPLOYER	RESPONDENT
TYNET, CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 4, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, 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 September 28, 2010.

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

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on June 30, 2010, and contained in a pre-hearing order filed that same date, 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 in the form of pain management.

3. Claimant has failed to prove by a preponderance of the evidence that he is entitled to benefits pursuant to A.C.A. §11-9-505(a)(1).

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 treatment; specifically, pain management of his failed back syndrome with post-laminectomy syndrome.

The conclusion of the Administrative Law Judge, affirmed and adopted by the majority, that Dr. Blankenship opined that the claimant was not in need of any additional medical treatment for his compensable injury, is not supported by the record.

The claimant sustained a work-related back injury and underwent surgery. The claimant had continued pain which he reported to Dr. Blankenship, up through the time he was released at maximum medical improvement. At the time, the claimant was as good as he was going to get. That does not mean he was pain-free. The claimant testified that he had been given prescriptions for Trazadone, Tramadol and Lyrica in February 2010, on the last visit with Dr. Blankenship. Dr. Blankenship's records only mention medications once or twice. However, it is clear from the record that the claimant was taking several powerful pain medications. The fact that the February 2010 office note does not mention prescriptions does not show that the claimant was not prescribed medications. It is merely consistent with Dr. Blankenship's practice not to record medications in his office notes. In support of this is his note that the claimant's complaints regarding sexual and bowel function could be

medication-related.

Furthermore, Dr. Blankenship stated in his last letter on the subject on March 11, 2010, that the claimant had "failed back syndrome with post-laminectomy syndrome." He stated that "from the standpoint of neurosurgical intervention or evaluation," there was nothing left to offer the claimant. He repeated that "no further surgical evaluation or treatment would be warranted with this patient." Nowhere does Dr. Blankenship state, suggest, or imply that the claimant was pain-free or asymptomatic at that point in time. Nowhere does Dr. Blankenship state that the claimant did not need any medical treatment. He stated that neurosurgery and surgery had nothing left to offer the claimant.

If the man has failed back syndrome with post-laminectomy syndrome, he has pain which needs to be managed. The claimant's failed back syndrome with post-laminectomy syndrome is a result of his work-related injury, and the treatment of that injury, and thus pain management of his current condition, is reasonable and necessary medical treatment of the claimant's compensable injury. Treatment intended to reduce, or enable a claimant to cope with, chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. Sec. 11-9-508. Billy Chronister v. Lavaca Vault, Full Commission Opinion filed June

20, 1991 (D704562).

I would award the claimant medical treatment, in the form of pain management, because pain management for failed back syndrome is entirely reasonable and necessary, and a conclusion that a person with failed back syndrome does not require pain management is nonsensical.

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

PHILIP A. HOOD, Commissioner