

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G702804

MICHAEL BRANNIGAN, EMPLOYEE CLAIMANT

UNIVERSITY OF ARKANSAS FABETTEVILLE/
GARVIN GARDENS, EMPLOYER, EMPLOYER RESPONDENT NO. 1

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND RESPONDENT NO. 2

OPINION FILED JULY 14, 2021

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney
at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H.
McLEMORE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative
Law Judge filed April 21, 2021. In said order, the Administrative Law Judge
made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction of this claim.

2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that additional medical treatment (in the form of steroid injections), as recommended by Dr. Mark Miedema, is reasonably necessary in connection with to his compensable back injury of February 1, 2017.

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.

Therefore, we affirm and adopt the April 21, 2021 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that the claimant failed to prove by a preponderance of the evidence that additional medical treatment (in the form of steroid injections), as recommended by Dr. Mark Miedema, is reasonably necessary in connection with his compensable back injury of February 1, 2017.

The claimant, now 36 years old, worked for the respondent-employer as an arborist. The claimant sustained a compensable low back injury on February 1, 2017. The claimant testified that the workplace accident happened in the following manner:

Q And did you have an incident at work back on February 1st of 2017?

A Yes.

Q Just briefly tell us what happened.

A I think the one on '17 is I was doing – blowing in the morning, like trails and stuff. We had to blow every morning. And I already injured my back previously when I fell on the blower, so when I was blowing, I twisted or something and it hurt it again.

The claimant first received treatment for this back injury on February 1, 2017 at CHI St. Vincent's Medical Group Convenient Care.

The History given during this visit was as follows:

The problem began on 2/1/2017. 1st visit; initial low back injury 2/15 when he fell on back while wearing backpack blower. Had PT w/o improvement, MRI and neurosurg referral to Dr. Bruffet[t]. Released to reg. duty in May '16. Back pain began recurring around 11/16, has been getting progressively worse then today put on a backpack blower and pain significantly increased. [N]o radiation.

The lumbar spine exam revealed:

No swelling, bruising or wound present. TTP lower lumbar[.] Palpable spasm noted[.] Limited ROM[.]

Medical causation is noted as, "The cause of this problem is work activities." The claimant was prescribed medication, placed on restricted work duty, and referred to Dr. Wayne Bruffett.

An MRI taken on February 16, 2017 revealed the following:

FINDINGS: There is moderate disc degeneration at T12-L1 and L5-S1.

Mild disc bulges are seen at T12-L1 and L5-S1.

The remaining disc levels reveal no disc bulge or protrusion.

No spinal stenosis or foraminal stenosis is seen.

A normal alignment is present.

The marrow signal is unremarkable and no vertebral fracture is seen.

The condus medullaris is normal in location and configuration.

IMPRESSION: Disc degeneration with mild disc bulge at T12-L1 and L5-S1

The claimant was first seen by Dr. Mark Miedema on August 17, 2017. After examining the patient, Dr. Miedema devised the following treatment plan:

Given the severity of the patient's pain and functional limitation, I will proceed with bilateral S1 transforaminal epidural injection for therapeutic purposes. I discussed the risks of this procedure at length with the patient, including bleeding, infection, new pain, worsened pain, numbness/tingling, weakness, paralysis, stroke, and death. Benefits and alternatives were also discussed, all questions were answered, and the patient wishes to proceed.

[E]ducated him he may continue to take over-the-counter NSAIDs as needed. I do not think he will have any permanent impairment as a result of this work-related injury. I educated him he can return to work without restrictions at this time. I do not think he has reached MMI but I'm hopeful after the epidural injection he will have obtained maximal [sic] medical improvement. I

reviewed Dr. Bruffett's office visit note dated 3/10/17 and agree with his assessment.

In a letter dated August 23, 2017, Dr. Miedema clarified his

statement regarding his agreement with Dr. Bruffett's assessment, to wit:

I think Michael has ongoing right and left S1 chemical radiculitis secondary to disc degeneration at L5-S1 causing his lower extremity radicular symptoms.

While I do agree with most of Dr. Bruffett's assessment I should clarify that I think he could benefit from an epidural injection. I do not think he has yet reached maximal [sic] medical improvement because I think his symptoms could improve with the epidural injection. I'm hopeful after the epidural injection he will have obtained maximal [sic] medical improvement.

I still think that he can return to work without restrictions at this time and will not have any permanent impairment.

Dr. Wayne Bruffett performed an Independent Medical

Evaluation on March 10, 2017, in which he noted:

I reviewed the imaging with Michael. I think he would best be treated with just anti-inflammatory medication. I will give him a prescription for ibuprofen 6 mg 3 times a day with food. I cautioned him about gastric upset and renal insufficiency. If he develops these he can discontinue the medication. Also [if] the medication is not effective obviously he can discontinue it. Otherwise, there is no specific

injection or therapy or surgery that is going to cure his complaints.

He just does not have much objective evidence of injury. I do not have restrictions to place upon him. He has not sustained any type of injury that would result in any permanent impairment. If the ibuprofen 600 mg that I prescribed is helpful [t]hen he can continue it as needed on over-the-counter basis.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant bears the burden of proving that he is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). 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).

The claimant had a pre-existing degenerative condition that was aggravated by his work accident. The respondents accepted this injury as compensable. Prior to his accident, the claimant had mild to moderate pain. Following the accident the claimant suffered with muscle spasms and increased pain that has not resolved. Dr. Miedema opined that the claimant's symptoms should improve with an epidural injection. Based on Dr. Miedema's assessment and recommendation, I find that an epidural steroid injection is reasonable and necessary in this claim.

I am not unmindful of Dr. Bruffett's opinion that the claimant would be best treated with anti-inflammatory medication. However, because Dr. Bruffett was not the claimant's treating physician and only saw the claimant on one occasion early in his treatment, I assess greater weight to Dr. Miedema's opinion.

Therefore, for the foregoing reasons, I find that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment in the form of an epidural injection.

For the foregoing reason, I dissent from the majority opinion.

M. Scott Willhite, Commissioner