

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G102781/G102783

JAMES BASSHAM, Employee	CLAIMANT
CITY OF SPRINGDALE, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED NOVEMBER 10, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Springdale, Arkansas.

Respondents represented by MARY K. EDWARDS, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 20, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 4, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The prior opinion in this matter is final and res judicata.
3. Respondent has paid permanent partial disability benefits based on a 9% rating assigned by Dr. Knox.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Additional medical treatment from Dr. Knox.
2. Wage loss disability.

At the time of the hearing claimant chose to reserve the issue of wage loss, leaving as the only issue his entitlement to additional medical treatment from Dr. Knox.

The claimant contends that he is entitled to additional medical treatment in the form of a return visit to Dr. Knox.

The respondents contend that to date the claimant has received all benefits to which he is entitled.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on August 4, 2021 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 from Dr. Knox in the form of an evaluation.

FACTUAL BACKGROUND

Claimant began working for respondent in 2006 in its Parks and Recreation Department. He began as a laborer and worked up to a supervisor position. Claimant

was responsible for all outdoor activity events, irrigation systems, buildings, mowers, equipment, and supervising several employees.

Claimant suffered two compensable injuries while working for respondent. The first injury was to claimant's lumbar spine on February 23, 2010 when he injured his back while helping move a tree which had a 250-pound root ball. Claimant suffered a second compensable injury to his left knee as well as his thoracic and lumbar spine on May 17, 2010 when he fell, causing him to twist his left knee and injure his back. After some initial medical treatment, claimant filed for and received a change of physician from Dr. Moffitt to Dr. Knox on April 29, 2011. In a report dated June 29, 2011, Dr. Knox indicated:

His MRI scan was reviewed demonstrating the significant disc changes at 3-4, 4-5 and 5-1. From that standpoint, I would not recommend surgical avenues. He is still able to tolerate his work requirements. Neurologically, he is stable. He still has significant low dorsal spine pain.

Dr. Knox went on to order an MRI scan of claimant's thoracic spine which was read as normal by Dr. Moon on July 6, 2011.

After the MRI scan, claimant returned to Dr. Knox on August 10, 2011. Dr. Knox noted that claimant's MRI scan was read as normal by Dr. Moon but also noted that claimant's lumbar MRI scan demonstrated significant disc protrusions at L3-4 and L4-5. Dr. Knox recommended that claimant close out his workers' compensation claim since he had reached maximum medical improvement. He also assigned the claimant an 8% rating to the body as a whole and indicated that he did not believe surgical options would be in claimant's best interest. He stated that claimant was to receive follow up care from Carolyn Nutter, PA-C for continued medical care. Claimant was evaluated by Dr. Nutter on August 31, 2011, and she referred claimant to Dr. Luo for pain management.

This claim was the subject of a prior hearing conducted on August 29, 2012. In an opinion filed September 19, 2012, this administrative law judge found that claimant had met his burden of proving by a preponderance of the evidence that claimant was entitled to permanent partial disability benefits based upon a 9% impairment rating to the body as a whole assigned by Dr. Knox. Also, as part of that hearing, the respondent agreed to allow claimant to receive medical treatment from Dr. Luo.

According to claimant's deposition taken on August 13, 2021, he did not see Dr. Luo for medical treatment because it was going to be three and a half months before he could actually get in to see Dr. Luo. Claimant did not want to wait so he sought medical treatment from Dr. Johnston at an Indian Clinic in Jay, Oklahoma. Medical reports indicate that for a period of time claimant continued to see Dr. Johnson who prescribed medication including Gabapentin as well as Tramadol and other medications for treatment of claimant's back pain.

Claimant testified that at some point in time he changed his medical treatment from Dr. Johnston to Dr. Schemel in Springdale. Claimant testified that to see Dr. Johnston he would have to take off work and travel to Oklahoma for treatment whereas Dr. Schemel is his family physician and is located in Springdale. Claimant acknowledges that the treatment he received from both Drs. Johnston and Schemel was unauthorized.

Medical records indicate that Dr. Schemel continued to treat claimant's back complaints with medication including Tramadol until July 2020. Thereafter, claimant sought and received a certificate for medical marijuana from Dr. Larry Mabry on July 8, 2020.

Claimant has filed this claim requesting medical treatment in the form of a return visit to Dr. Knox.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 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 Company v. Randall*, Ark. App. 358, 676 S.W. 2d 750 (1984). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proof.

This case presents the somewhat unusual situation wherein claimant is requesting additional medical treatment in the form of a return visit to Dr. Knox, his authorized treating physician who he last saw 10 years ago. While it has been 10 years since claimant last saw Dr. Knox, the medical evidence does indicate that when Dr. Knox last evaluated the claimant he recommended that claimant receive additional medical treatment from Carolyn Nutter. Nutter in turn referred claimant to Dr. Luo for pain management. Respondent agreed to have claimant evaluated by Dr. Luo, but claimant chose on his own to seek medical treatment from Dr. Johnston at the Indian Clinic in Jay, Oklahoma, and subsequently from Dr. Schemel in Springdale. The medical records from both Drs. Johnston and Schemel indicate that they provided medication for treatment of claimant's compensable back pain.

Dr. Schemel continued to treat claimant until his last visit on July 8, 2020. Claimant attributes his termination of medical treatment with Dr. Schemel to a misunderstanding regarding medication given to him by a dentist for an abscessed tooth.

Q What happened with your tooth?

A It was abscessed, and I couldn't get in to the dentist and I pulled the rest of the piece out and it broke in half, and I pulled the rest of the piece out and it was abscessed.

Q Was that painful?

A Yeah, it was painful.

Q What did the dentist provide you for that pain?

A Hydrocodone.

Q And was Dr. Schemel aware that the dentist gave you the Hydrocodone?

A No.

Q And then at some point did Dr. Schemel do a drug test and that Hydrocodone showed up?

A That's correct. Yes.

Q And did that make him unhappy?

A Yeah, he wasn't happy.

However, Dr. Schemel's report of June 22, 2020 indicates that he was informed that claimant had been given Hydrocodone for pain due to a broken and abscessed tooth.

Notably, Dr. Schemel's report also contains the following statement:

He will need tramadol refill in July. Drug screen today. He has had hydrocodone in the last few days and marijuana as already mentioned. He says that he won't do a drug test today and suggest he might

be using meth. I told him that I won't be able to order his tramadol until he can do the drug screen.

Claimant's next visit with Dr. Schemel occurred on July 8, 2020. A drug screen on that date was positive not for Hydrocodone, but Oxycodone. Dr. Schemel's medical report of that date states:

Drug screen positive for oxycodone. This has not been prescribed for James. I will send in a 1 month's supply of the tramadol and he will need to repeat the drug screen in a month. If he continues to show drugs other than what is prescribed, I will not be able to provide future controlled medications for him.

An additional note in Dr. Schemel's report of that date indicates that claimant was notified about his lab results and "Pt. want to let Dr. Schemel know that his aunt gave him oxycodone for his pain. Because Dr. Schemel refused."

Notably, the same day that claimant's drug screen was positive for Oxycodone, he also sought medical treatment from Dr. Larry Mabry for a medical marijuana certification.

In summary, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to an additional evaluation by Dr. Knox. While claimant has not been evaluated by Dr. Knox in ten years, claimant has continued to receive unauthorized medical care for his low back injury in the form of medication from Drs. Johnston and Schemel. I find based upon the evidence presented that claimant is entitled to additional medical treatment in the form of an evaluation from Dr. Knox. However, prior to claimant's evaluation by Dr. Knox, respondent is to provide Dr. Knox with copies of claimant's medical records and treatment received subsequent to claimant's last visit with

Dr. Knox on August 10, 2011. This would include medical records from Dr. Johnston, Dr. Schemel, and Dr. Mabry.

AWARD

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 an evaluation by Dr. Knox for his compensable injury. Prior to that evaluation respondent is to furnish Dr. Knox with copies of claimant's medical records subsequent to Dr. Knox's last evaluation on August 10, 2011.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE