

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. F707970**

RICKY A. GASKINS, EMPLOYEE	CLAIMANT
JEFF MINNER TRUCKING, EMPLOYER	RESPONDENT NO. 1
GREAT AMERICAN INS. CO. OF NY, CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 30, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on March 17, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jeremy H. Thomas, Attorney at Law, Osceola, Arkansas.

Respondents No. 1 represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas, excused from participation.

STATEMENT OF THE CASE

On March 17, 2023, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on November 28, 2022. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulation, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulation set forth in Commission Exhibit 1. With an additional one reached at the hearing, they are the following, which I accept:

1. The previous decisions in this matter are binding on this proceeding under the Law of the Case Doctrine.
2. The Form AR-C that Claimant filed in connection with this matter does not reference a back injury.

Issue

At the hearing, the parties discussed the issue set forth in Commission Exhibit 1. The following was litigated:

1. Whether Claimant is entitled to additional treatment in the form of a spinal cord stimulator.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following an amendment at the hearing, read as follows:

Claimant:

1. Claimant contends that he is in need of a spinal cord stimulator for pain management, as prescribed by his physician.

Respondents No. 1:

1. Respondents No. 1 contend that Claimant was evaluated; and it was determined that his condition did not warrant a spinal cord stimulator because it is not reasonable, necessary, and related medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, deposition transcripts, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he is entitled to additional treatment of his compensable injuries¹ in the form of a spinal cord stimulator.

¹Because of the way the litigation of this claim developed (*see infra*), there has never been a definitive finding of what compensable injuries Claimant suffered; nor have the parties reached a stipulation thereon or raised an issue in order to settle this. I can only award treatment of a compensable injury. See Ark Code Ann. § 11-9-508(a) (Repl. 2012). However, since I have found that Claimant has not proven his entitlement to this treatment separate and apart from this element, it need not and will not be addressed. See *Carthan v. School Apparel, Inc.*, 2006 AR Wrk. Comp. LEXIS 451, Claim No. F410921 (Full Comm'n Opinion filed November 28, 2006) (improper for administrative law judge to address issues *sua sponte*); *Singleton v. City of Pine Bluff*, 2006 AR Wrk. Comp. LEXIS 79, Claim No. F302526 (Full Comm'n Opinion filed

ADJUDICATION

Summary of Evidence

Claimant was the sole hearing witness. He also testified *via* deposition.

In addition to the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation² of his medical records, consisting of two index pages and seven pages thereafter; Respondents No. 1 Exhibit 1, another compilation of Claimant's medical records, along with copies of certified mail receipts, consisting of one index page and seven numbered pages thereafter; and Respondents No. 1 Exhibit 2, the transcript³ of Claimant's deposition taken February 14, 2023, consisting of 37 numbered pages.

In addition, and without objection, the transcripts of the previous hearings in this matter before the Commission have been incorporated herein by reference.

History

Claimant was employed by Respondent Jeff Minner Trucking. He suffered compensable injuries⁴ on July 6, 2007, when a tire on a company truck exploded while he was attempting to extinguish a fire in the vehicle. In this proceeding, he is seeking

February 23, 2006), *rev'd on other grounds*, No. CA06-398 (Dec. 6, 2006) (unpublished)(same).

²The index for this exhibit states that pages 4-7 are records of Dr. Donald Wright. This is incorrect. These pages are actually the report of Dr. Wayne Bruffett, discussed more fully *infra*. No records from Wright are in this exhibit.

³Per Commission policy, this transcript, separately bound, has been retained in the Commission's file.

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additional treatment in the form of a spinal cord stimulator that has been recommended by Dr. Ira Chatman, a pain management physician. Respondents No. 1 have disputed his entitlement to this.

An assessment of the issue at bar first requires a recounting of the procedural history of this claim. On December 4, 2008, a hearing was held before then-Administrative Law Judge Andrew Blood. In his February 25, 2009, opinion, Judge Blood made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Only July 6, 2007, the relationship of employee-employer-carrier existed among the parties, when the claimant earned wages sufficient to entitle hi[m] to weekly compensation benefits at the rate of \$504.00/\$378.00, for temporary total/permanent partial disability.
3. On July 6, 2007, the claimant did not sustain[n] injuries arising out of and in the course of his employment with respondents.

Ricky A. Gaskins v. Jeff Minner Trucking, 2009 AR Wrk. Comp. LEXIS 340. Claimant appealed this decision. On September 4, 2009, the Full Commission affirmed and adopted the administrative law judge decision in an unpublished opinion. *Ricky A. Gaskins v. Jeff Minner Trucking*, 2009 AR Wrk. Comp. LEXIS 156 (unpublished). This decision was appealed as well. On June 2, 2010, the Arkansas Court of Appeals reversed and remanded the case. *Gaskins v. Jeff Minner Trucking*, 2010 Ark. App. 471,

⁴See *supra* note 1.

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2010 Ark. App. LEXIS 493. The court denied rehearing on July 28, 2010. *Gaskins v. Jeff Minner Trucking*, 2010 Ark. App. LEXIS 592. Respondents No. 1 filed a petition for review with the Arkansas Supreme Court. But it, too, was denied, on December 16, 2010. *Gaskins v. Jeff Minner Trucking*, 2010 Ark. LEXIS 618. Upon remand, the Full Commission issued an opinion on January 4, 2011, “find[ing] that the claimant has proven by a preponderance of the evidence that he sustained compensable injuries on July 6, 2007.” The injuries were not specified.⁵ *Ricky A. Gaskins v. Jeff Minner Trucking*, 2011 AR Wrk. Comp. LEXIS 8.

Thereafter, Claimant filed a claim for additional benefits. After another hearing before Judge Blood, he issued another opinion on June 22, 2012, that contained the following findings of fact and conclusions of law:

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On July 6, 2007, the employment relationship existed when [t]he claimant sustained compensable injuries, and during [that] time the claimant earned wages sufficient to entitle him to the maximum applicable workers’ compensation benefits of \$504.00/\$378.00, for total/permanent partial disability.
3. The claimant reached the end of his healing period on November 26, 2008, with a residual anatomical impairment of 33% to the body as a whole.

⁵See *supra* note 1.

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4. When the claimant's age, education, work experience, permanent restrictions and physical limitation, and other matters reasonably expected to affect his future earning capacity are considered, the evidence preponderates that the claimant has been rendered permanently and totally disabled within the purview of the Arkansas Workers' Compensation Act, as a result of the July 6, 2007, compensable injury.
5. Respondents No. 1 shall pay all reasonable hospital and medical expenses arising out of the claimant's July 6, 2007, compensable injuries.
6. Respondents No. 1 have controverted this claim in its entirety.

Ricky Gaskins v. Jeff Minner Trucking, Claim No. F707970 (Administrative Law Judge Opinion filed September 20, 2012). Respondents No. 1 appealed this decision. On April 3, 2013, the Full Commission affirmed the administrative law judge opinion. *Ricky A. Gaskins v. Jeff Minner Trucking*, 2013 AR Wrk. Comp. LEXIS 92 (unpublished).

The opinions of Judge Blood, the Full Commission, and the Arkansas Court of Appeals on this claim are binding on this proceeding under the Law of the Case Doctrine. See *Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994). This doctrine provides that the previous decision establishes the law of the case once the lower tribunal takes up the matter again. It is conclusive of every question of law and fact decided previously, and also of those that could have been raised and decided. *Turner v. NW Ark. Neurosurgery*, 91 Ark. App. 290, 210 S.W.3d 126 (2005).

Discussion

To recap, Claimant has now asked that the Commission to find that he is entitled to additional medical treatment—with that treatment consisting of the proposed procedure outlined by Dr. Chatman that is contained in Claimant’s Exhibit 1. His December 17, 2021, letter in that exhibit reads:

To whom it may concern:

This letter is being written on behalf of our patient Rick Gaskins DOB 03/18/1969. Mr. Gaskins came to us for interventional pain management three years ago. He has had multiple chronic pain diagnos[e]s made and has had multiple corrective surgeries in his past. We have tried multiple forms of pain management to intervene with his pain symptoms including pain medication and interventional pain procedures. Although these methods have assisted the patient to some degree as we have documented after evaluation and assessment of the patient[']s current condition[,] we believe that the spinal cord stimulator would be of more benefit to the patient than prior attempted pain management methods. We have determined after assessment of the patient and review of patient[']s radiological studies and according to what methods of treatment have been successful for periods of time during his treatment with us[,] that the spinal cord stimulator would decrease pain and allow him to be more functional and allow him to perform activities of daily living with less pain from his chronic condition.

However, one year prior to this letter, on December 7, 2020, Claimant underwent an independent medical evaluation by Dr. Bruffett. Per his report, “the purpose of [the IME] today was for me to evaluate the necessity of a spinal cord stimulator which is being entertained.” Claimant informed him that the stimulator was being considered because of his “chronic neck and lumbar pain.” The IME report continues:

Physical Exam

Patient is a 51-year-old male.

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He has had extensive reconstructive surgery of his left upper extremity. He has decreased range of motion here and so forth in his hand and chronic changes in his forearm. Otherwise he seems to be neurologically intact with no evidence of upper motor neuron signs.

X-rays of the cervical spine reveal plate fixation C4-5 which looks stable. I reviewed his cervical MRI which was done prior to his surgery I believe in 2016. He has a disc herniation and stenosis at C4-5. That has been appropriately treated. MRI of his lumbar spine dated 12/12/2019 reveals some disc desiccation slight disc bulging L4-5. X-rays of his lumbar spine are essentially normal.

Assessment/Plan

Prior fusion C4-5 with plate fixation which is stable.

Mild lumbar disc degeneration L4-5

I think the cervical and lumbar spines are stable. I would not recommend further interventions. **Certainly in my opinion spinal cord stimulation is not indicated.** I talked to [Claimant] about this extensively. He sure is a nice fella and seems to have taken his injury in stride. My impression is not based on chronic pain of his left arm or where he had extensive upper extremity surgery on the left. This is not my area of expertise. But I do [not]⁶ think he needs any further interventions in the cervical or lumbar area. I think he is at maximum medical improvement for both of those areas.

(Emphasis added) Based on this, the third-party administrator for Respondents, OccuSure Claims Services, notified Dr. Chatman's clinic on April 13, 2022, that it was denying coverage of the stimulator.

The follow-up letter from Chatman's clinic, dated May 25, 2022, reads:

To whom it may concern:

Mr. Rick Gaskins has been a patient of Interventional Pain Management since 2016. The possibility of a spinal cord stimulator (SCS) trial was first

⁶The wording of this sentence, and the balance of Dr. Bruffett's report, make it clear that this word was unintentionally omitted. No other interpretation is possible.

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discussed with him in March 2020 for increased pain/lumbar radiculopathy after review of MRI and failure of physical therapy and injection as well as the fact that nothing else could be surgically done (10/10/2019 – 3/10/2020). The workman's comp advised in April 2020 that SCS was not approved; no reason given. Mr. Gaskins went for a second opinion (per workman's comp) to Dr. Bruffett in Little Rock in November 2020, and Dr. Bruffett allegedly advised workman's comp that the SCS was not necessary. Mr. Gaskins has had 14 appointments at Interventional Pain Management from April 2020 until now, and Dr. Chatman still advises the SCS as the best course of action. Mr. Gaskins did obtain additional private insurance coverage from Blue Cross Blue Shield in August 2021, but they advised on 9/8/21 that even with approval for the spinal cord stimulator, if the patient's workman's comp claim is related to the patient's diagnosis for SCS, BCBS would deny the claim. The workman's comp adjuster sent a letter listing "lumbar" as a compensable injury. Therefore, the patient is unable to make the procedure under his private insurance.

In his hearing testimony, Claimant stated that as a result of the exploding tire on his truck, he was blown across the interstate. While his most serious injury was to his left upper extremity, other areas of his body were hurt as well in the accident. According to Claimant, these include his back and left hip. He acknowledged that for a time long before the explosion, he had been receiving Social Security Disability benefits for his back. Claimant stated that his pre-existing problem was in the middle of "[t]he extreme lower part" of his back. However, he later rejoined the workforce, and was able to work for seven years before the tire incident took place. Claimant's testimony was that during this seven-year period, he did not experience any back problems.

Since the accident at issue occurred, he has had experienced pain "from the shoulder down [his] entire whole back . . . [with the problem being the] left shoulder most of the time and [the] left hip more than the other." He described the pain as originating in his shoulder or hips and radiating into his back. Claimant stated that while

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his back was not bothering him at the time of the hearing, his left shoulder and his hip were very painful. But his back does bother him at other times. He elaborated: “[I]ike with my hip, after awhile through the day I get where I really can’t feel my legs or anything like that.” This causes him to use a walker and canes in order to ambulate.

Dr. Chatman has been treating his shoulder, back, and hip pain for seven years. The doctor has recommended that he get a spinal cord stimulator. In previous efforts to alleviate his pain, Claimant has been prescribed medications that included Oxycodone and Hydrocodone. Only these two helped—and even then, they only “dull[ed] the pain down.” He has undergone physical therapy as well. But “it seemed to do no good.” Claimant is asking that he be allowed to have the stimulator in conjunction with pain medication. While Claimant tried to get coverage of the spinal cord stimulator through his private health insurer, Blue Cross/Blue Shield, the insurer has declined to pay for it.

With respect to his visit with Dr. Bruffett, Claimant related that it lasted only one hour. In contrast with this solitary appointment, he has been to Chatman many times. The only imaging studies that Bruffett took were x-rays.

Claimant acknowledged that he does not know what Bruffett reviewed before he saw him. But he did know that he brought the doctor a disc that contained MRIs that had been performed. The following exchanges took place:

- Q. Now, you’ve not had any specific back surgeries or recommendations for back surgeries, correct? By any physician?
- A. None.
- Q. Okay. In fact, part of your complaint was nobody treated your back; is that right?

A. Yeah.

...

Q. And the surgeons didn't treat your back. I do know that. The surgeons didn't treat your back, but have you had back pain since this accident?

A. I've had quite a bit of back issues.

Q. And that—does that feel the same or different than the back issues you had that you were on SSDI for?

A. With issues when I was on Social Security, SSI, for my back issues was in the extreme low buttocks to my back area and it has not bothered me for a very, very long time.

Q. Okay. Had it bothered you for a very long time before you—this tire exploded—exploded on you?

A. No.

When deposed on February 14, 2023, Claimant was asked what injuries he had suffered as a result of the tire explosion. His response was “[s]hort term memory, paralyzed left hand, this big old knot on my left arm, left hip that’s messed up, still have trouble with third tip [sic]” He is undergoing pain management by Drs. Niger and Chatman. According to Claimant, the work-related incident of July 6, 2007, resulted in pain to his “entire whole left side.” Later, he elaborated that it ranges from the bottom of his neck into his left shoulder and down into his left arm, elbow, and wrist; also, from his lower back and left hip down into his groin and left leg.

Among other treatments, he has undergone a cervical fusion at C3-4.⁷ Asked whether his back was also injured from the exploding tire, Claimant replied, “I believe so.” He added that he has “been complaining about it from day one.” Hydrocodone is the only one of his multiple medications that he takes that is for his work-related injuries. While his deposition testimony initially was that “[a]ll the other treatments [including medication and physical therapy] did not work,” he later stated that the Hydrocodone helps.

The following exchange took place:

Q. Now, what is your understanding as to where they want to put the spinal cord stimulator?

A. Which one, they’re wanting to do two of them.

Q. Okay. Well, I guess that’s what I’m asking, where would they put them?

A. One for the upper back problems and one for the lower back area. And it’s supposed, with the one in the upper is supposed to help me with my left arm and get rid of a lot of pain there. And the one in the lower back is supposed to help get rid of the back pain plus the hip, at least that’s the ultimate goal.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the

⁷As discussed above, Dr. Bruffett described the fusion as being located at C4-5. *See supra*.

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claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). In order to prove his entitlement to the requested treatment, Claimant must also prove that it is causally related to his compensable injuries of July 6, 2007. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601.

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment, even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing 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); *Artex, supra*. A

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claimant is not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Claimant's testimony is that the treatment he is seeking—and which he understands that Dr. Chatman is recommending—consists of two spinal cord stimulators. The upper is purportedly for his neck and upper extremity issues, while the lower one is for problems below that level. But the two letters from Chatman's clinic that are in evidence reference only one proposed stimulator, and do not indicate either the proposed location of the stimulator or the area(s) of pain it would hopefully address.

Dr. Bruffett evaluated the matter based on what Claimant told him: that it is supposedly for his "chronic neck and lumbar pain." Again, Bruffett reviewed Claimant's medical records, including x-rays and MRIs of his cervical and lumbar spines. The doctor noted that the cervical fusion was "stable" and that the lumbar MRI showed only "some disc desiccation [and a] slight bulging [of] L4-5." His physical examination

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reflected than other that Claimant’s left arm condition (due to the extensive surgery he had undergone), he was “neurologically intact.” Dr. Bruffett gave the opinion that implantation of a spinal cord stimulator “[c]ertainly . . . is not indicated.” While he wrote that he was not basing his opinion on the condition of Claimant’s left upper extremity, the doctor was quick to note that he was opining that he did “not think [Claimant] needs any further interventions in the cervical or lumbar area.” Even though this opinion was issued on December 7, 2020, there is nothing in the evidence before me to show that Claimant’s condition has changed since then so as to make the opinion stale.

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based on the foregoing comparisons and analyses, I credit the opinion of Dr. Bruffett over that of Dr. Chatman. Claimant has not proven by a preponderance of the evidence that the spinal cord stimulator is reasonable and necessary.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge