BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H305634

STEVEN KEELING, Employee	CLAIMANT
FOUST FABRICATION, CO., Employer	RESPONDENT
APPLIED UNDERWRITERS, Carrier	RESPONDENT

OPINION FILED OCTOBER 28, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 30, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 13, 2024, and a Pre-hearing Order was filed on May 14, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.

2. The relationship of employee-employer-carrier existed between the parties on August 23, 2023.

3. The claimant sustained a compensable injury to his back on or about August 23, 2023

By agreement of the parties the issue to be litigated is limited to the following:

1. Whether claimant is entitled to additional medical treatment for his compensable back injury, in the form of a lumbar fusion as recommended by Dr. James Blankenship.

The claimant's contentions are as follows:

> "Claimant sustained a compensable injury while working for Respondent on or about 8/23/23. At that time, Claimant was in the course and scope of his employment with Respondent when the scissor lift he was operating malfunctioned, causing it to fall while Claimant was still inside the machine. Claimant fell approximately 20 feet to the ground below. Claimant was rushed to Mercy Hospital by ambulance.
>
> Imaging revealed multiple fractures along Claimant's lumbar spine, ribs and sternum. A CT scan of his abdomen showed a compression fracture of the L1 vertebrae with approximately 20% height loss in that joint. He was instructed to follow up with a neurosurgeon and return to the hospital in 2 weeks for repeat imaging.
>
> At a follow up visit on 10/9/23, Dr. Castellvi at Mercy recommended that Claimant participate in physical therapy. Claimant attended the recommended physical therapy and was referred to Dr. Cannon for continued pain. Dr. Cannon scheduled a lumbar epidural steroid injection for the back pain. The injection did not provide any relief. At that time, Claimant began treating with Dr. Blankenship.
>
> Dr. Blankenship reviewed the imaging and determined that Claimant suffered from severe foraminal stenosis with retrolisthesis, significant facet arthropathy, and an annular fissure on the midline. Since conservative measures have failed, Dr. Blankenship has recommended a Lumbar Arthrodesis surgery on the L4-L5 and L5-S1. Respondents have denied the requested surgery and the recommendation for a post op lumbar brace and post op bone stimulator.
>
> Additionally, the Respondents have failed to pay medical bills from Mercy Hospital, Bentonville Ambulance, Delta Medical Supplies, Neurosurgery Spine Center and Siloam Springs Hospital. These bills have been provided to the Respondents."

The respondents' contentions are as follows:

> "Respondents contend that appropriate benefits have been paid as a result of the compensable injury. Respondents contend that the proposed surgery by Dr. Blankenship is not related to the compensable injury."

The claimant in this matter is a 34-year-old male who sustained a compensable injury to his low back on or about August 23, 2023, when a scissor-lift he was on tipped over and fell to the ground. The claimant was at a height of about 20-feet when the scissor-lift fell over and he fell hitting the concrete beneath him, tail end first. The claimant testified that his pain was so great that he laid on the ground until an ambulance arrived to take him to Mercy Hospital in Rogers, Arkansas.

The claimant was admitted to the hospital that day and spent the night before being released the following day. Following is a portion of the claimant's hospital records from that time:

> Follow-up & Outstanding Issues/Tests: Follow-up with Dr. Gammer's (orthopedics) office in 2 weeks for repeat imaging. Follow-up with Dr. Castellvi's (neurosurgery) in 4 weeks.
>
> Hospital Course: Steven Keeling is a 32 y.o. male who was admitted to Mercy Hospital NWA on 8/23/2023 and found to have a principle diagnosis of a compression fracture of the L1 vertebra, closed nondisplaced zone III fracture of the sacrum, contusion of the left arm and rhabdomyolysis after a fall from a scissor lift. His creatinine improved with IV hydration.
>
> He was seen by orthopedics regarding closed nondisplaced zone III fracture of the sacrum. They recommended WBAT with walker and to follow-up in 2 weeks for repeat imaging.
>
> Neurosurgery was consulted regarding L1 compression fracture and recommended TLSO brace when out of bed and okay to remove when laying down and bathing. He is to follow-up in 4 weeks for repeat imaging.
>
> Patient was seen by PT and fitted for TLSO and he was discharged home in stable condition.

The claimant was seen by Dr. Alex Castellvi on October 9, 2023. Following is a portion of that medical report:

> ASSESSMENT AND PLAN:
> Is a 32-year-old gentleman who had an L1 compression fracture. X-rays of the lumbar spine shows a compression fracture with approximately 10 to 20% loss of height. At this time the patient is complaining of radicular complaints down the right lower extremity with numbness in the S1 distribution on the right side. I would like to obtain an MRI of the lumbar spine without contrast. I would also like the patient to attempt physical therapy and consider having a right-sided epidural steroid injection at L5-S1. Also obtain flexion-extension films of the lumbar spine to assess for any lumbar instability at L5-S1. I would the patient like the patient to follow-up in the neurosurgery clinic in approximately 3 months for further evaluation. Please feel free to contact me with any questions or concerns.

On October 25, 2023, the claimant underwent an MRI of his lumbar spine without contrast at Siloam Springs Regional Hospital. The report from that diagnostic testing is found at Claimant's Exhibit 2, pages 1- 2, and is signed by Dr. Micah Fritsche. Following is a portion of that diagnostic report:

> IMPRESSION:
> 1. No acute abnormality in the lumbar spine.
> 2. Mild-to-moderate multilevel degenerative disc disease. No significant central canal or neuroforaminal stenoses.
> 3. Posterior central annular fissuring at L4-L5.

The claimant was seen by Dr. Robert Cannon of The Neurosurgery Spine and Pain Management Center on December 21, 2023. Following is a portion of that medical record:

> HPI:
> Mr. Keeling sustained a 20 foot fall at work when he fell of a scissorlift onto concrete on August 23, 2023. He had a closed pelvis fracture and since that time has had some significant low back pain. He now describes pain in his lower back going down the right leg down to the level of the calf and occasionally into the foot and toes. He has some numbness as well as tingling. He

> describes a pain typically as burning in nature and rates it 8 out of 10 at the most severe and a 3 out of 10 at the least severe. He did not have any pain prior to his fall and it started after the fall. The pain is worsened by walking, standing, sitting, and changes in weather. Excessive bending or twisting also increases his pain.
>
> He has currently been to physical therapy with some improvement. He has done a home exercise program as well as stretching with some mild improvement. He has tried a TENS unit which helps occasionally and has tried topical agents such as anti-inflammatory creams and heat and ice. He has not had any type of injections previously.
>
> ***
>
> Diagnosis:
> M51.16 Intervertebral disc disorders with radiculopathy, lumbar region
> M54.15 Radiculopathy, lumbar region
> M47.897 Other spondylosis, lumbosacral region
> M46.1 Sacroiliitis, not elsewhere classified
>
> Recommendations:
> 1. Lumbar epidural steroid injection to be done under fluoroscopy. We will get his MRI scans that were not available at today's visit. He goes a history of some disc herniations/bulging at the L4-L5 disc and he has symptoms to match an L4-L5, L5-S1 radiculopathy. We will get those scans for review and then proceed forward with the injection as soon as possible. I did not address any work status as I will defer to his primary treatment physicians who have him on or off work at this time. I also discussed the possibility of a right S1 joint injection but his pain seems to be more radicular in nature and then we will review the MRI for further options.
>
> 2. Lastly if interventional options do not help, then consideration of surgical alternatives would be the next step.

A follow-up note is found at Claimant's Exhibit 1, page 89, regarding the claimant's lumbar epidural injections with Dr. Cannon dated January 31, 2024. In that note it indicates the claimant had no complications but received only 30% relief on a scale of 0% being no relief and

100% being total relief. It was also noted that the claimant did not experience "a long duration of pain relief."

The respondent sent the claimant to see Dr. James Blankenship at The Neurosurgery Spine and Pain Management Center. The claimant did so on February 12, 2024. Following is a portion of that medical record:

> HPI:
> The patient is in today for evaluation. The patient was seen by Dr. Cannon and referred in to see us. He did have an LESI with Dr. Cannon that gave him very minimal, very temporary relief. He tells us that on August 23, 2023, he fell 20 feet and landed on his tailbone. Prior to that he had no history of back and leg pain. His greatest pain complaint is right-sided low back pain to the right hip and right buttock and goes down the posterior aspect of his right lower extremity to his foot. He has numbness and tingling in the right lateral foot and third and fourth digits. He denies any weakness. Sitting aggravates his pain. He did 20 visits of physical therapy with no relief. He has not worked since his injury.
>
> ***
>
> Impression:
> Dr. Cannon saw this gentleman in late December. The patient did not have any significant prior history of back pain or leg pain until he fell about 20 feet and landed on his tailbone on August 23 of last year. Dr. Cannon performed an LESI with very minimal and transient relief. The patient has done a significant amount of physical therapy with no significant relief. The patient's chief complaint is right buttock and posterolateral leg pain to his foot. He has paresthesias in the third and fourth digits of his right foot with no weakness. The patient 4/5 strength in his right EHL indicative of an L5 radiculopathy on the right-hand side. He does have significant malalignment. His MRI demonstrates severe facet arthropathy. At the L4-L5 level he has a gross annular fissure in the midline. At L3-L4 he has significant facet arthropathy. His piriformis examination today is markedly positive. His MRI does not show any significant foraminal stenosis but his plain radiographs have severe foraminal stenosis with retrolisthesis at the L5-S1 level. Steve visited with him about his previous therapy and it does appear that he had good treatment for his piriformis but it just did not afford him any relief. His S1 joint examination is only positive for Faber's. I think we have a combination of an L5

> radiculopathy from foraminal stenosis. Once again his MRI demonstrates some posterior disc bulging at this level. Interestingly when he lies down on the MRI table he does not have anywhere near the significant retrolisthesis. I think when he is standing he has retrolisthesis because of the instability at the L5-S1 disc space and that creates the neural foraminal narrowing. If he had not had appropriate significant conservative treatment on his piriformis, I would say we need to do that but he has. He also has a gross annular fissure at L4-L5. The pain he is having may very well also be referred from that level from the annular fibers and where the L5 nerve root goes back in the spinal cord.
>
> Recommendations:
> I told him he has failed all routine and usual conservative measures. I have told him that surgical intervention would need to include an L4-L5 and L5-S1 arthrodesis. The L4-L5 level would be done via a lateral approach on L4-L5. He would then undergo a posterior decompression and foraminal decompression on the right-hand side with a TLIF implantation and right side unilateral cortical screws L4 to S1.
>
> I have offered him a lumbar arthrodesis at L4-L5 and L5-S1. The rationale for the L4-L5 level has to do with the fact that he has a gross annular fissure at this level which could give him referred pain down the right leg and also contribute to his piriformis syndrome. The gentleman also has anterior splaying at this level that markedly reduces in flexion but at his age would be indicative of annular dysfunction and instability. The rationale for the L5-S1 level is that he has severe foraminal stenosis on his plain radiographs with marked retrolisthesis. This is not present when he is recumbent on the MRI table which is just an indication that he has gross segmental instability. He would then undergo posterior decompression with facetectomy decompressing the L5 nerve root all the way out into the neural exit foramen at L5-S1 with TLIF implantation. He would then undergo unilateral cortical screw placement on the right-hand side. The gentleman understands the risks and benefits of surgery. He is going to go home at my suggestion and talk to his family and then get back with us about what he wants to do.

The claimant has asked the Commission to determine if he is entitled to additional medical treatment for his compensable back injury in the form of surgical intervention as recommended by Dr. Blankenship.

Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

The respondent in this matter requested a peer review be performed by Care Review out of Arlington, Texas. That review was done on April 16, 2024, at the expense and request of the respondent. It was performed by Dr. E. Thomas Chappell, a board-certified neurological surgeon. Records and evidence regarding that peer review can be found at Claimant's Exhibit 1, pages 96-103. It is clear from those records that Dr. Chappell agreed with the surgical intervention recommended by Dr. Blankenship. Following is a portion of those records:

> Recommendation and Clinical Rationale:
>
> 1. (Appeal) Lumbar arthrodesis L4-L5 & L5-S1. CPT codes 22558, 22224, 22633, 63056, 63047, 22840, 22845, 22853 X2.
> ODG by MCG, Evidence-Based Medical Treatment Guidelines, Lumbar Fusion (Updated Mar 29, 2024) states, "Lumbar fusion may be indicated for 1 or more of the following: Lumbar spondylolisthesis (and presence of 1 or more of the following: Symptoms requiring treatment, as indicated by the presence of ALL of the following: Patient has persistent disabling symptoms, including 1 or more of the following: Low back pain: Neurogenic claudication: Radicular pain)."
>
> Within the medical information available for review, there is documentation of low back pain radiating to the right lower extremity to the foot with positive SLR on the right, decreased sensation in the right L5 dermatome, diminished ankle jerk on the right, and marked right EHL weakness that persists despite medication, ESI, physical therapy, home exercise, and TENS. MRI

> revealed mild to moderate multilevel degenerative disc disease, no significant central canal or neuroforaminal stenoses, posterior central annular fissuring at L4-L5. Radiographs revealed severe disc space settling at the lumbosacral with retrolisthesis that exacerbated the extension and slightly reduces in flexion and marked disc space settling and anterior splaying at L45 that does exacerbate in extension and significantly reduces in flexion. Therefore, I recommend certification of the requested lumbar arthrodesis L4-L5 & L5-S1, CPT codes 22558, 22224, 22633, 63056, 63047, 22840, 22845, 22853 X2.

The respondent requested another review of the claimant's condition from Dr. Owen Kelly, a board-certified orthopedic surgeon. On March 22, 2024, Dr. Kelly issued that report. Following is the summary found at the end of that report:

> SUMMARY:
> Mr. Keeling sustained and L1 Burst fracture with a fall from a height of around 20 feet. The imaging and exam revealed a loss of vertebral height of 20-25%, an intact posterior ligament complex and an initial intact neurological status. He also sustained a questionable sacral injury. Treatment consisted of bracing, physical therapy and an injection. He continues to heal and has some sensation loss documented at L5. Progression to full healing may take up a full year. The initial treating neurosurgeon has indicated that surgical intervention was not necessary and this assessment is correct. The pathology noted at the lower lumbar levels appears to be non-traumatic.

I note that both Dr. Kelly and Dr. Chappell only performed medical record reviews and never saw the claimant or provided medical treatment to the claimant.

Dr. Cannon in his December 21, 2023, medical report regarding the claimant stated, "Lastly if interventional options do not help, then consideration of surgical alternatives would be the next step." The medical records and the claimant's testimony are in agreement that conservative care received by the claimant has not improved his condition including physical therapy and epidural steroid injections. Both Dr. Blankenship and the respondent-hired peer review doctor, Dr. Chappell, agree that the surgical recommendations of Dr. Blankenship are

appropriate. Only Dr. Kelly, a board-certified orthopedic surgeon, finds Dr. Blankenship's surgical recommendations inappropriate care. In Dr. Kelly's report, he states, "The initial treating neurosurgeon has indicated that surgical intervention was not necessary, and this assessment is correct." After thorough review of the medical records submitted into evidence in this matter, I find no doctor or medical provider who "indicated that surgical intervention was not necessary." While Dr. Castellvi provided conservative treatment for the claimant, he never opined on surgical intervention. The greater weight of the evidence in this matter supports that by a preponderance of the evidence the additional medical treatment recommended by Dr. Blankenship in the form of surgical intervention is reasonable and necessary medical treatment for the claimant's compensable back injury.

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 the pre-hearing conference conducted on May 13, 2024, and contained in a Pre-hearing Order filed May 14, 2024, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable back injury in the form of lumbar fusion surgery as recommended by Dr. James Blankenship and its aftercare.

ORDER

The respondents shall be responsible for payment of the additional medical treatment recommended by Dr. Blankenship in the form of surgical intervention and its aftercare.

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).

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE