

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G708197

JOSE PEREZ,
EMPLOYEE

CLAIMANT

SOUTHERN TIRE MART, LLC.,
EMPLOYER

RESPONDENT

LIBERTY INSURANCE CORPORATION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 27, 2021

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on January 26, 2021. The Administrative Law Judge found that Claimant failed to prove by a preponderance of the credible evidence that he is entitled to additional medical treatment. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical

treatment in the form of a Superior procedure as recommended by Dr. Olaya.

I. HISTORY

The claimant, now 38 years old, was involved in a work-related accident on October 13, 2017. The claimant gave the following testimony as to how the work accident occurred:

Q Just remind Judge Kennedy real quick about how it is that you got hurt.

A Me and my friend was – I was running a service truck, like doing roadside service calls, and we was in the service call to work on this dirt thing, like moving dirt, a tractor that had big wheels on the back moving dirt, and was working on a big heavy tire with a wheel, me and my friend, lifting to fix it, and it leaned all the way, I guess, because we both the same time, we lift all the weight.

Then we – When I lift and it leaned all the way, I feel like it – I feel my body something pop, like when they broke – like if it pops of your heart [sic], and I had much pain in my back I have to lay down. And I put it down and laid down, and after that, I mean, I hurt so much that I couldn't move.

The claimant was initially treated at the White County Medical Center on October 13, 2017. The claimant presented with complaints of low back pain after lifting a tire. Lumbar spine x-rays were performed and showed no fracture or subluxation. The claimant was diagnosed with back

pain and sciatica; prescribed Valium, Norco, and a Medrol Dosepak; and discharged.

The claimant underwent an MRI on October 31, 2017 which showed the following:

IMPRESSION:

1. Annular tear within a central protrusion involving the L4-L5 disc without mass effect on the nerve roots.
2. Mild [f]acet degenerative changes are seen throughout the lumbar spine. There is no evidence [of] canal or neural foraminal stenosis noted.

A sacrum MRI taken on October 31, 2017 showed no acute sacral abnormality; but, revealed a grade 1 muscle strain involving the gluteus maximus.

The claimant began treating with Dr. Julio Olaya for management of his low back pain on January 4, 2018. The medical records from the claimant's initial visit with Dr. Olaya contained the following history:

Pain Details: The patient complains of pain in the low back pain. He reports onset of pain. The patient describes his pain as intermittent. The pain is aching, pressure like, sharp, stabbing and throbbing. **The pain radiates to the back.** Patient says, at its worse his pain is 10/10, at its least it is 2/10, on an average about 4/10[.] The pain is made worse by movement standing long periods of time , whereas it gets better by taking medications[,] [r]est, lying in recliner[.]

Psychiatric Diagnostic: Reason for referral: Pain management.

Complains of pain in low back centered over L4-5. Meds are helping but are causing burning sensation in stomach. No recent imaging or ER visits. No longer attending PT, states workman's [sic] comp has denied payment.

Dr. Olaya treated the claimant's low back pain with prescription medications, steroid injections, and medial branch blocks.

The claimant underwent an MRI on June 5, 2020 which revealed the following:

L1-2: Normal.

L2-3: Normal.

L3-4: Shallow disc osteophyte in the subarticular to foraminal zones with minimal right neural foraminal stenosis. No disc protrusion or spinal canal stenosis.

L4-5: Minimal concentric disc bulge. Dorsal annular fissure. No spinal canal or neural foraminal stenosis.

L5-S1: No disc protrusion, spinal canal stenosis, or neural foraminal stenosis.

IMPRESSION:

1. Minimal spondylosis without spinal canal stenosis. Minimal right neural foraminal stenosis is demonstrated at L3-4.
2. Left hemisacralization of L5 with pseudoarthrosis and likely congenital, mild L5-S1 disc space narrowing.
3. Mild dextroscoliosis.

In his July 15, 2020 medical record, Dr. Olaya noted a plan to schedule an L3-4 Superior. Dr. Olaya indicated, “I reviewed Lumbar MRI with patient today. Based on his MRI report patient developed an osteophyte at L3-4 and is a candidate for L3-4 Superior. Patient has tried conservative treatment.”

Regarding the Superior procedure’s necessity as it relates to the claimant’s job injury, Dr. Olaya provided the following explanation:

In response to your first question, Mr. Jose Perez (DOB 6/25/82), needs Superior because it is a proven technique that is very effective in the treatment of foraminal stenosis, ligamentum flavum hypertrophy and spinal stenosis. One way to prove that is the fact that Superior is covered by Medicare and Medicaid. These two very respected government institutions have vetted this procedure carefully and concluded that this medical approach works. I can attest that this procedure is effective based on the results that I have had with my patients. I had the privilege of performing the first Superior procedure in the State of Arkansas on April 13, 2018. Since then, I have performed this procedure on 93 separate occasions with positive results correcting the painful neuropathic pain these conditions trigger.

In short, the result of this technique is nothing short of effective and wonderful, dramatically changing my patients’ lives. I can personally attest to the effectiveness of this procedure as I have undergone a Superior procedure myself and have even recommended that my 84-year-old father undergo it. His procedure was without issue and now walks without a cane, going up and down stairs that used to limit his movement throughout the world.

Regarding your second question, Mr. Jose Perez had an accident during his work hours when he and a co-worker were carrying a very heavy truck tire. His co-worker lost the grip of the tire and Mr. Perez had to hold the tire by himself. Shortly after, he felt a “pop” in his lumbar area. This caused the injury that he has been suffering with ever since.

We have been treating him at Arkansas Spine and Pain since November 2017. Mr. Perez has been the subject of multiple different spine intervention treatments including physical therapy and pain medications in an attempt to improve his quality of life, decrease his pain and hopefully bring him back to being a productive member of the society. Unfortunately, nothing has had a definitive positive result. Perez has had the misfortune to present a very difficult case because the radiographic evidence is not clear and definitive and only shows a mild injury which can be very confusing and puzzling, adhering to the old saying used by the radiologists: ‘We can have terrible radiographical imaging (in this case a lumbar MRI), that could make us think that the patient is in excruciating pain and limited to have an appropriate mobility and very surprising the patient has none or minimal pain and symptoms, or we could have a ve[r]y mi[l]d lumbar MRI report with a patient suffering terrible aches and pains that would limit him or her to perform his daily living activities.’

The last lumbar MRI dated 6/05/2020, showed minimal spondylosis, minimal right neural foraminal stenosis and mild degenerative changes at L5-S1.

These changes might require an L5-S1 percutaneous discectomy depending on the outcome of the Superior procedure. Both

procedures that I am suggesting are minimally invasive and could be very helpful in controlling Mr. Jose Perez' pain and allowing him to live a normal, productive, and fulfilling life.

What does Superior do?

Basically, it will play the role of a little 'carjack' that will open the space of the nerves that are pinched that trigger neuropathic pain. It will restore the natural space that those nerves need to efficiently transmit sensation and mobility without pain.

A pre-hearing order was filed on October 19, 2020. The claimant contends that the treatment requested is reasonable and necessary. All other issues were reserved. The respondents contend that the treatment is not reasonable and necessary and is experimental.

The parties agreed to litigate whether the claimant is entitled to additional medical treatment, specifically a Superior procedure.

After a hearing, an Administrative Law Judge filed an opinion on January 26, 2021. The Administrative Law Judge found that "the claimant has failed to prove by a preponderance of the credible evidence that the medical treatment which he requested and that consists of the 'superior procedure' is causally related to and reasonably necessary for the treatment of the compensable work-related back injury." The claimant appeals this finding to the Full Commission.

II. ADJUDICATION

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).

Dr. Olaya, who is the claimant's authorized treating physician, has recommended that the claimant undergo a Superion procedure. In a letter written to the claimant's counsel, Dr. Olaya explained that, based on his experience treating other patients with this procedure, he believes the claimant could see a reduction in pain. Additionally, Dr. Olaya explained that the Superion procedure is recommended because the claimant has tried other conservative treatment that has proven to be unsuccessful and the Superion procedure is a "proven technique that is very effective in the

treatment of foraminal stenosis, ligamentum flavum hypertrophy and spinal stenosis”. Dr. Olaya also attributed the need for this procedure to claimant’s workplace accident. Therefore, we find that the treatment recommended by Dr. Olaya is reasonable and necessary treatment for managing the claimant’s pain.

Therefore, for the foregoing reasons, the Full Commission finds that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a Superior procedure.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a Superior procedure as recommended by Dr. Olaya. For prevailing on appeal to the Full Commission, the claimant’s attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner