

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001421

LARRY RAINEY, Employee	CLAIMANT
CITY OF FAYETTEVILLE, Employer	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, Carrier/TPA	RESPONDENT

OPINION FILED JANUARY 27, 2021

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

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

On January 13, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 9, 2020 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 employee/employer/carrier relationship existed among the parties on January 29, 2020.
3. The claimant sustained a compensable injury to his back on January 29, 2020.
4. The respondents paid medical through the initial visit with Dr. Knox.

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

1. Claimant's entitlement to additional medical treatment from Dr. Knox.

The claimant contends that he is entitled to additional medical treatment from Dr. Knox.

The respondents contend that additional medical treatment is not reasonable and necessary,

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 November 9, 2020 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.

FACTUAL BACKGROUND

The claimant is a 43-year-old high school graduate who began working for respondent on July 6, 2015. On January 29, 2020, claimant suffered an admittedly compensable injury to his low back. On that date, the claimant was performing his job of

curbside recycling. Claimant testified that he would drive a truck through neighborhoods picking up recycling bins and sorting the items to be recycled into various bins on the truck. He testified that he would sort 325 to 450 bins per day and at the end of his route he would be required to dump the contents of each particular bay.

Claimant testified that on January 29, he was performing his job when he developed sharp pain radiating down his back into his right leg and hip area. Claimant mentioned this issue to his supervisor and reported continued pain the next day. Claimant was sent by respondent for an evaluation at Arkansas Occupational Health on January 30, 2020, when he was evaluated by Dalana Rice, APRN, for complaints of low back pain. Rice diagnosed claimant as suffering from low back pain and ordered a CT scan. She also prescribed claimant Hydrocodone for pain at bedtime and placed work restrictions on him.

Claimant underwent a CT scan on February 5, 2020, which according to Rice's medical report of February 6, 2020 showed degenerative findings only. Rice indicated that the degenerative findings were not work related and most likely not the cause of his current symptoms. Rice did prescribe additional medication and physical therapy for six sessions.

Claimant underwent six sessions of physical therapy and the therapist's note from February 26, 2020 indicates that claimant reported no progress. The report further notes that claimant was limited by pain and further imaging was recommended.

On February 27, 2020 claimant was evaluated by J. Daniel Nicholas, PA-C at Occupational Medicine. Nicholas noted that claimant was not improving with physical therapy and he ordered continued physical therapy as well as an MRI scan. Claimant's

work restrictions were also continued.

On March 12, 2020 claimant again saw Rice who noted that claimant's low back pain had not changed. She indicated that claimant had not returned to physical therapy because he had more pain after each therapy session. Rice ordered an MRI scan and prescribed Hydrocodone at bedtime for pain. Claimant underwent the lumbar MRI scan on March 26, 2020, and it revealed bilateral L5 spondylolysis with Grade 1 spondylolisthesis of L5-S1. It also revealed spondylolysis at the L3-4 level.

Following the MRI scan claimant returned to Nicholas on April 2, 2020 who stated that claimant's MRI scan revealed degenerative changes and there were no objective findings to explain his acute symptoms. He recommended that claimant be seen by pain management for further evaluation and treatment. He also opined that claimant's current symptoms were not likely work related but instead were due to a degenerative condition.

Following this release from Nicholas, claimant received a change of physician order to Dr. Knox on May 21, 2020. Claimant's initial evaluation with Dr. Knox occurred on June 11, 2020. Dr. Knox diagnosed claimant's condition as (1) sciatica of the right side; (2) spondylolisthesis of the lumbar region; and (3) a lumbar herniated disc. Dr. Knox in his medical report of that date stated:

Reviewing his MRI scan, there appears to be a rather prominent central disc protrusion at L4-5 with underlying neuroforaminal encroachment at L5-S1 on the right. I suspect this is the culprit of his continuing difficulties.

Dr. Knox went on to recommend that claimant be referred for a lumbar epidural injection. He also reformatted claimant's physical therapy and prescribed medication.

Respondents paid for claimant's medical treatment through the date of Dr. Knox's initial evaluation, but have not paid for any of the treatment recommended by Dr. Knox or Dr. Knox's subsequent evaluations.

The medical records indicate that claimant returned to Dr. Knox on August 26, 2020. Dr. Knox noted that claimant continued to have back and right buttock pain. He also noted that the compensation carrier had not approved claimant's epidural injections. Dr. Knox ordered a functional capacities evaluation to determine claimant's permanent restrictions and changed claimant's medications.

Claimant underwent a functional capacities evaluation on September 23, 2020. 52 out of 53 consistency measures were within expected limits with claimant giving a consistent effort. The evaluation determined that claimant demonstrated an occasional bi-manual lift/carry of up to 60 pounds and that he had the ability to perform lifting/carrying of up to 25 pounds on a frequent basis. The evaluation further noted that claimant could perform in the medium classification of work, but that he had poor tolerance to repetitive and sustained stooping.

The final report from Dr. Knox is dated October 20, 2020. He indicated that claimant should work within the restrictions imposed by the functional capacities evaluation. He also noted that claimant should return to him for a follow-up visit in six months at which time he would re-evaluate claimant's condition.

Claimant has filed this claim contending that he is entitled to additional medical treatment from Dr. Knox for his compensable injury.

ADJUDICATION

Claimant contends that he is entitled to additional medical treatment from Dr. Knox. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

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. According to the opinion of Dr. Knox, claimant suffers from a lumbar herniated disc which in his opinion is the source of claimant's continuing low back difficulties. As a result, Dr. Knox in his initial evaluation report of June 11, 2020 recommended various medical treatment including additional physical therapy and a referral for a lumbar epidural steroid injection. This additional medical treatment was denied by the respondent.

I find that the opinion of Dr. Knox is credible and entitled to great weight. Dr. Knox is a neurosurgeon and is a specialist whereas neither Rice nor Nicholas are specialists. Therefore, I find that the opinion of Dr. Knox is entitled to greater weight.

Dr. Knox originally recommended additional treatment in the form of the lumbar epidural steroid injection and physical therapy. After this treatment was denied by respondent, Dr. Knox did not address further treatment, but instead ordered a functional capacities evaluation and instructed claimant to return for a reevaluation in six months. I find based upon the opinion of Dr. Knox that claimant is entitled to additional medical treatment at Dr. Knox's direction. This would include additional physical therapy and/or a lumbar epidural steroid injection should Dr. Knox still feel that treatment is necessary. Dr. Knox is hereby recognized as claimant's authorized treating physician for his

compensable low back injury.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment as recommended by Dr. Knox.

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).

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$312.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE