

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H006753**

JACOB M. SHOTZMAN, EMPLOYEE	CLAIMANT
WILBERT FUNERAL SERVICES INC., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES INC., CARRIER	RESPONDENT

OPINION FILED **JULY 11, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 5, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 4, 2024, 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 this claim.
2. All prior Opinions are *res judicata*.
3. The employee/employer/carrier relationship existed on August 29, 2020.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing

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were limited to the following:

1. Whether claimant is entitled to additional medical treatment as recommended by Dr. Blankenship.

All other issues are reserved by the parties.

The claimant contends that “The surgery recommended by Dr. Blankenship represents reasonably necessary medical treatment for his compensable injury and the expense of such treatment is the liability of the respondents under Ark. Code Ann. § 11-9-508.”

The respondents contend that “All appropriate benefits are being paid with regard to this matter. The recommended surgery did not pass precertification and is not reasonable and necessary associated with claimant’s injury.”

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their 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 April 4, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proof by a preponderance of evidence that he is entitled to additional medical treatment from Dr. James Blankenship for his back injury.

#### FACTUAL BACKGROUND

This matter was previously before this court for a hearing on June 1, 2021. An opinion was rendered on July 1, 2021, in which I found, among other things, that claimant had met his burden of

proof that he was entitled to additional medical benefits from Dr. Blankenship for his lower back injury. That opinion was appealed to the Full Commission, where it was affirmed. The parties have stipulated that the prior opinions in this case are *res judicata* for this hearing.

#### HEARING TESTIMONY

Claimant was the only witness called to testify. He explained that after the Full Commission awarded him additional medical benefits, Dr. Blankenship operated on his back. He then had injections and physical therapy while remaining on medication for his back. A second surgery was performed and claimant underwent a similar course of post-surgery care. That surgery was not as successful as the first one, as claimant has more pain now than he did before the first surgery, and reports numbness in his right thigh. Claimant requested a third surgery so he could get some relief.

On cross-examination, claimant answered “yes and no,” when asked if the second surgery helped him in any way. He explained that his issues were in a different location now, but still in his lower back and down into his legs. Claimant did not recall Dr. Blankenship relating to him what was in the medical notes from the September 21, 2023, visit that expressed uncertainty about the benefits of another surgery. He understood the scar tissue on the right side of his back presented a potential problem in how the surgery would be performed. Claimant was willing to see another physician at the Texas Back Institute in Plano, Texas, so long as all his expenses were paid before the trip.<sup>1</sup>

During questioning from the court, claimant clarified that the first surgery was done on the L5-S1 area of his back and helped him, but the second was a fusion at L4-L5 in which a BridgePoint clamp was inserted. His understanding is that the recommended third surgery is to “revamp the second surgery where the artificial disc is sticking into my psoas muscle.”

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<sup>1</sup> There was no pending motion for an independent medical evaluation; the parties are free to cooperate in such an examination.

REVIEW OF THE EXHIBITS

A chronological review of the records submitted by the parties yields the best understanding of what information is provided therein.

Claimant submitted records from February 14, 2023, through February 4, 2024, from Dr. Blankenship and other facilities that treated him as part of Dr. Blankenship's care. Claimant's testimony relating the difficulties he has had after the second surgery is supported by those records; he was given physical therapy and a facet injection to try to address the back pain. Dr. Blankenship initially expressed some uncertainty as how to best address claimant's post-surgical issues (CL.X.58), but his February 4, 2024, record said that surgery was needed to fix the implant that had extruded into the paraspinous muscles on the right side. Dr. Blankenship outlined the options he was considering to correct the implant, and conceded that if one did not work, he would have to change his approach intraoperatively.

Respondent had a Utilization Review performed by Dr. Sumeet Vadera on February 28, 2024; that review by Dr. Vadera constituted the entire exhibit submitted by respondent. Dr. Vadera determined that the corrective surgery would not be certified because he did not feel it met the criterion as set forth in the Official Disability Guidelines:

The request is not supported based on the submitted documentation. Although the request is indicated and the claimant presented with low back pain, radiated to bilateral posterior leg down to their knees, and significant pain around the attachment of the gluteus Medius, the request is still not medically necessary as the guideline states there should be presence of conformed radiculopathy with consistent straight leg raise test (SLR), crossed straight leg raise and reflex exam which correlates with symptoms and imaging. The climate has negative SLR and normal range of motion. Moreover, the guideline states that a confirmed nerve root compression must be consistently present both in the imaging findings and physical examination. The claimant has no lumbar spine imaging results submitted and the specific level of the lumbar spine was not indicated to where the procedure will take place. Furthermore, the guidelines also state that previous attempt to conservative treatment must be documented with all of the following: work

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with low back conditions after education for low back conditions; drug therapy with NSAID or other analgesic therapy, or muscle relaxant; a support provider referral was documented with physical therapy or manipulation therapy. There was no indication the claimant underwent treatment with work on low back conditions after education for low back conditions. Hence, it is strongly not supported. Therefore, the prospective request for 1 bilateral redo decompressions and bilateral extreme lateral discectomies is non-certified.

On April 4, 2024, Dr. Blankenship wrote a response to Dr. Vadera's finding of non-certification, which said in pertinent part:

First of all, Mr. Shotzman's surgery was denied. One of the problems is it said our note did not show weakness, and I think you can see in my note it says right quad and hip flexor weakness. It is all capitalized, so that it should be easy to see with 4/5 strength. So that denial was basically just that you did not read the clinic note. I have offered the patient L4-5 lateral arthrodesis. The patient's implant has extruded out approximately 1 centimeter into the psoas muscle. I do feel like his weakness, especially his hip flexor weakness, this coming from this. We have been trying to avoid revising this, but we tried everything short of that and it is not working. The gentleman has had extensive physical therapy which is documented in his records...

As far as there is no need for the third surgery, I have just outlined that for the second time in this note. The patient has marked hip flexor and quad weakness. He has an extruded implant. It says there's no documentation to back this up; That is ridiculous, there is. I'm not going to reiterate it; Just look at my notes and X-rays. It also stated he had no therapy. Once again, you just have to look at the records. I have it dictated in there that the patient has failed routine usual conservative measures and has done therapy, and then it also showed he did not have any weakness, which is well documented in my most recent notes that he does have quad and hip flexor weakness, both related probably to the extruded implant.

#### ADJUDICATION

Claimant's request for additional medical treatment was denied based on a Utilization Review requested by respondent Gallagher Bassett after Dr. Blankenship recommended a third back surgery to treat claimant's compensable injury. The question before me is whether the testimony of the claimant and the opinion of his treating physician is more persuasive than the report of a doctor who

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reviewed records provided to him but did not conduct a physical examination of claimant. It is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). Claimant was a credible witness; I believe he sincerely wants to get better and return to the workforce.

Regarding the disagreement between the medical reports and the Utilization Review, Dr. Blankenship pointed out in rather scathing terms in his letter of April 4, 2024, that the review of the records by Dr. Vadera overlooked some important points in rendering a denial of the recommended surgery. Dr. Blankenship plainly explained that the current problem claimant is having is due to an extrusion of the implant at the L4-5 level, that conservative care had been exhausted and that this difficult surgery was the most likely means of getting claimant some relief. The information Dr. Vadera recited as missing from the records he reviewed was contained in the reports submitted as exhibits in this hearing; Dr. Vadera was not provided with an entire record from Dr. Blankenship.<sup>2</sup> Regardless of why it was inadequate, this Utilization Review has little credibility. Dr. Blankenship's records are more credible, and therefore claimant's proof is sufficient to support his request for additional medical treatment for his compensable injury.

#### ORDER

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. Blankenship for his compensable injury, including an L4-5 lateral arthrodesis.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript the sum of \$291.25.

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<sup>2</sup> Utilization Reviews frequently list the records reviewed, but this one did not.

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**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE