

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G805579

KENY SOSA, EMPLOYEE	CLAIMANT
KAWNEER COMPANY, INC., EMPLOYER	RESPONDENT
HELMSMAN MANAGEMENT SERVICES, LLC., INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 13, 2021

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE RICK BEHRING, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed January 28, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the claim.

2. The employee-employer-carrier relationship existed at all relevant times, including July 23, 2018.
3. The remaining stipulations set forth above are hereby accepted.
4. Claimant failed to prove by a preponderance of the evidence that medical treatment, including surgery by Dr. Blankenship, is reasonable and necessary in connection to his work-related incident of July 23, 2018.
5. Claimant failed to prove his entitlement to any additional temporary total disability compensation for his back injury of July 23, 2018.
6. Because indemnity benefits were not awarded, the issue of attorney's fees is rendered moot and not addressed in this Opinion.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's January 28, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that the claimant failed to prove by a preponderance of the evidence that medical treatment, including surgery by Dr. Blankenship, is reasonable and necessary in connection to his work-related incident of July 23, 2018.

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).

The parties stipulated that the claimant suffered a compensable back injury on July 23, 2018. The claimant had no problems with his back prior to the workplace incident. The claimant gave a history of his work accident as the cause of his injury when he initially sought treatment for his back. Additionally, there are no intervening incidents that can be pointed to as the cause for the claimant's need for surgery.

Dr. Blankenship, who was initially hired by the respondents to perform an Independent Medical Evaluation, opined the following regarding causation:

The patient ran, worked out, and had zero back pain and never saw a physician for back pain prior to this injury. The pain started immediately with the accident. The accident mechanism would be consistent with causation of the problem as he describes.

Additionally, Dr. Blankenship gave the following explanation regarding the claimant's need for surgery:

Looking at his plain radiographs today comparing them to nearly a year ago the segmental instability at flexion is significantly worse now with marked anterior collapse of the disc space and anterolisthesis. Given his age and activity prior to his injury, this is an indication that now after two years of pain and the inability to work on his core strengthening, there has developed ligamentous laxity but the original onset of the problem in my opinion was work-related.

I told him that now I think we are dealing with more of a segmental instability problem than just a simple facet pain problem. I told him that a discussion of surgical intervention would certainly not be unwarranted and if he elected surgical intervention, my recommendation would be an anterior lumbar interbody arthrodesis at L4-L5 and L5-S1 with posterior stabilization unilaterally with unilateral pedicular fixation on the left-hand side. As to whether we did bilateral facet disruption would depend on further discussion but it really would not change the overall treatment plan.

I am aware that Drs. Daniel Shepherd, Wayne Bruffett, and Kenneth Kopacz opined that the claimant was not a surgical candidate. However, Dr. Blankenship explained that the claimant's condition worsened to a point that surgical intervention became necessary. Because Dr. Blankenship provided treatment to the claimant most recently and had the opportunity to observe the deterioration of the claimant's condition, I assess greater weight to his opinion regarding the necessity for surgery. Based on Dr. Blankenship's opinion, I find that the recommended surgery is reasonable and necessary.

Therefore, for the foregoing reasons, I find that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment in the form of surgery as recommended by Dr. Blankenship.

For the foregoing reason, I dissent from the majority opinion.

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M. SCOTT WILLHITE, Commissioner