

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807139

SALVADOR E. ESTRADA, EMPLOYEE CLAIMANT

GERDAU MACSTEEL, INC., EMPLOYER RESPONDENT

GALLAGHER BASSETT SERVICES,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED JULY 19, 2022

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

Claimant represented by the HONORABLE ADRIENNE K. MURPHY,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE LAURA J. PIERCE,
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed February 25, 2022. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on September 15, 2021, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

3. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits for wage loss as a result of his compensable injury.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's 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 February 25, 2022 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.

SCOTTY DALE DOUTHIT, Chairman

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 Claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment and that Claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits for wage loss as a result of his compensable injury.

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).

The claimant suffered an admittedly compensable low back injury on May 1, 2018. The claimant underwent a lumbar spine MRI on August 29, 2018 that revealed to following:

FINDINGS: The lumbar vertebral bodies are normal in alignment and signal.

T12-L1: Negative

L1-2: Negative

L2-3: Disc desiccation with a mild chronic superior endplate compression of L3. Small disc bulge.

L3-4: Negative.

L4-5: Small disc bulge with a small central annular tear.

L5-S1: Mild endplate degenerative change with a broad-based disc protrusion eccentric to the right with caudal extrusion. This measures 15 mm craniocaudad x9 mm transverse x5.5 mm AP. This is near the proximal right S1 nerve root.

IMPRESSION: There is a broad-based disc protrusion with caudal extrusion to the right parasagittal plane at L5-S1. Other mild chronic degenerative changes as above.

Under the care of Dr. Terry Clark, the claimant was initially prescribed conservative treatment in the form of anti-inflammatories, muscle relaxants, physical therapy and epidural injections. Unfortunately, these treatments did not afford the claimant relief, so Dr. Clark referred the claimant to a neurosurgeon, Dr. Kyle Mangels.

During the claimant's July 17, 2019, visit, Dr. Mangels reviewed the MRI scan with the claimant and discussed the risks and nature of a lumbar laminectomy surgery with him. Dr. Mangels noted:

The MRI scan was done about a year ago and shows some end plate changes at L5-S1 and a broad-based disk protrusion eccentric to the right at L5-S1 with caudal extrusion. I think a laminectomy on the right at L5-S1 could help him. This would not be a fusion surgery.

When first recommended, the claimant considered the potential risks and decided not to undergo surgery. However, the claimant has since determined that he wants to have the recommended surgery because he “cannot do activities of any kind”.

Although the claimant was released at MMI, this decision was made because surgery was the claimant’s only remaining treatment option. Since there has been no doctor who has indicated that the recommended surgery is not reasonably necessary and since the claimant is now interested in receiving the surgery, I believe he should be allowed to do so.

For the aforementioned reasons, I find that the claimant is entitled to additional medical treatment as recommended by Dr. Mangels, including lumbar surgery. All other issues should be reserved until after the claimant undergoes surgery.

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

M. Scott Willhite, Commissioner