

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H400203**

JUAN C. RAMIREZ-CERRATO, EMPLOYEE	CLAIMANT
DALE CRAMPTON CO. INC., EMPLOYER	RESPONDENT
SUMMIT CONSULTING LLC, CARRIER	RESPONDENT

OPINION FILED **SEPTEMBER 5, 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 ZACHARY F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 30, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 20, 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. The employee/employer/carrier relationship existed on or about June 5, 2023.

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

1. Whether claimant is entitled to additional medical benefits.

All other issues are reserved by the parties.

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The claimant contends that “Such services are reasonably necessary for his compensable back injury of June 5, 2023.”

The respondents contend that “All appropriate benefits have been paid. The suggested treatment is not reasonable, necessary, or related.”

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 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 June 20, 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

At the hearing, the parties announced that the issue as recited in the prehearing order should be amended to limit this claim solely to a lumbar back injury. I wrote that on the prehearing order. The opening discussion before the testimony began clarified that claimant reserved any claim for other possible physical injuries.

The prehearing order did not specifically recite that the parties stipulated that claimant suffered a compensable injury. However, because the respondents contended that all appropriate benefits had been paid, this matter was tried to determine if the recommended treatment was reasonable and necessary, not whether claimant had suffered a compensable back injury on June 20, 2024. Therefore,

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I did not believe it necessary for me to determine that claimant suffered a compensable injury on that date.

HEARING TESTIMONY

Claimant was the only witness at the hearing. He testified that on June 5, 2023, he was working for Dale Crampton doing roofing work. Part of the job involved moving rolls of roofing material that weighed about ninety pounds each. Claimant said he had been doing that work for approximately one year and three months and had no previous problems with his low back, hip, or leg before that date. On June 5, 2023 claimant testified that the accident occurred as “we were installing rolls that were approximately ninety pounds. I had to pick it up and then straighten it out towards the back to be able to lay it out. And at the moment when we were doing that, that is when the pain on my back started.” Immediately after that, claimant had difficulty crouching and walking upright. If he bent over, he could not straighten himself, and his back felt like he had a sting in it. The pain went down his left side into his left leg. As claimant was not paid on his days off, he tried to work through the pain until his foot was falling asleep.

At that point, respondent sent him to a doctor, and it was discovered that claimant had two discs bulging in his back. Claimant was put on a course of physical therapy, having to work in the morning and then go to therapy in the afternoon so he would not lose any pay. Claimant said the treatment from Dr. Cheyne did not help. He now works at a job where he lifts less weight but is still having problems with his back and his hip and his leg. Claimant testified that Dr. Cheyne released him and advised him to find different types of work because his back was not fine. Claimant then saw Dr. Blankenship in Fayetteville, who recommended an MRI.

On cross-examination, claimant agreed that Dr. Cheyne sent him to physical therapy and gave him some prescriptions. He said he refused the injection that Dr. Cheyne suggested because at that

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time, the pain had diminished a bit. Dr. Cheyne then referred claimant for a functional capacity evaluation.

Claimant said he gave a good effort at the evaluation and received a 7% impairment rating based on the existence of his L4-5 disc bulge. Claimant said he was in moderate pain while performing the FCE. Claimant said he continues to have problems with his back. He disagreed with Dr. Cheyne's last report that said he was improving. Claimant insisted that he told him everything was still the same; the leg was still painful and felt like little ants were crawling all over it. He also denied that he told the person conducting the functional capacity evaluation this pain has subsided, because he still had pain.

Claimant was surprised that he had been fired from his employment with respondent Dale Crampton. He called his doctor and found that he had been discharged from Dr. Cheyne's treatment. He asked to see a different doctor and had his initial visit with Dr. Blankenship. While Dr. Blankenship has not yet recommended surgery, claimant understood there could be a bad result but if he does not receive treatment, his back is still in bad shape.

On re-direct examination, claimant said he is still having a lot of difficulties with his back. When he sits, such as traveling in a car and gets up, it feels very numb. He conceded that his back is better some days than others, but he always has a significant level of difficulties. Claimant understood the difference between Dr. Blankenship, an experienced neurosurgeon and Dr. Cheyne, who practices at an Occupational Medicine Clinic that specializes in conservative care. He has more faith in Dr. Blankenship's opinion. Claimant wants something done about his continuing difficulties be it surgery or not.

On re-cross examination, claimant said he didn't feel Dr. Cheyne helped him much. He always told Dr. Cheyne he had pain and what worried him most was the numbing and tingling in his leg. He felt they just wanted to discharge him from care.

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On re-direct examination, claimant clarified that he did not go to see Dr. Cheyne after he was discharged because he did not know that he would be able to see him again since he had been fired from his job.

Having the opportunity to observe the claimant's testimony and compare what he said with the medical records, I found him to be a credible witness.

REVIEW OF THE MEDICAL RECORDS

The records revealed little that was not brought out in testimony. On September 27, 2023, claimant began conservative care which included a steroid pack, Tylenol, hot showers, and physical therapy. During that examination, Dr. Cheyne recorded: "SLR positive on the left. 4/5 strength b/l, LLES, DTRs, one plus b/l le again, ROM is slightly limited with flexion. Pain is noted with movement." In his "Visit Summary for Employer," Dr. Cheyne diagnosed the claimant with "1. Low back pain, 2. Strain of muscle, fascia, and tendon of lower back, 3. Radiculopathy, lumbar region. Claimant was put on restrictive duty of lifting no more than twenty pounds, with a ten-pound limit for repetitive lifting.

Claimant had an X-ray on September 27, 2023. The findings were:

"There is a normal alignment positioning of the lumbar spine. Vertebral body heights well maintained. No definite fractures are noted. Disc heights overall maintained. Mild anterior end plates spurring at L2-3 L3-4 and L4-5. Facet joints grossly unremarkable. SI joints symmetric."

The impression was, "mild multilevel discogenic degeneration. No radiographic fractures or traumatic malalignment."

After a month, claimant had an MRI to his lumbar spine on October 31, 2023. The impression was recorded as:

1. L4-L5 moderate to large left paracentral disc protrusion with probable separate sequestered/extruded fragment and narrowing of subarachnoid space to 5.8mm.

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2. L3-4 broad based moderate disc bulge with central small protrusion, mild narrowing subarachnoid space facet arthropathy.

Claimant continued with office visits with Dr. Cheyne throughout the rest of 2023. On December 6, 2023, Dr. Cheyne recorded the following:

“Juan’s primary problem is pain located in the left side of the posterior neck, lower lumbar region. He describes it as sharp. The problem began on June 27, 2023. Juan says it seems to be variable-- depending on the activity level. He has noticed that it is made worse by lifting. He also notes that it is accompanied by stiffness. He feels he is improving slightly. His pain level is 0. Patient continues to have pain with lifting rolls that are 90 lbs.”

On January 3, 2024, claimant was given a functional capacity evaluation (FCE) in which he put forth a reliable effort. The evaluator recorded claimant demonstrated the ability to perform an occasional bimanual lift carry of up to eighty pounds and could lift and carry up to forty pounds on a frequent basis. The examiner concluded that the claimant had a 7% whole person impairment as a result of his work-related injury. I will return to this in more detail in the adjudication section of this opinion.

On January 11, 2024, Dr. Cheyne saw claimant for the last time. His diagnosis was:

1. Low back pain
2. Strain of muscle, fascia and tendon of lower back, subsequent encounter
3. Radiculopathy, lumbar region.
4. Other intervertebral disc displacement.

Dr. Cheyne then accepted the findings of the FCE and discharged claimant, saying “treatment completed.”

On May 6, 2024, claimant saw Dr. James Blankenship. Dr. Blankenship noted that “five visits to physical therapy is certainly not consistent with an adequate routine and usual conservative treatment.” After his examination, Dr. Blankenship had this impression:

“His general neurological examination revealed the patient has an S1 radiculopathy on examination. Again, I do not have a hard copy of his MRI, which does not really matter because it was done over six months ago. The

report does show a very large disc herniation of the left-hand side at L4-5, which would certainly correspond with his pain. He is having this significant amount of left sided lower back pain.”

Dr. Blankenship stated that he needed an MRI to determine, “what is going on now and what it looked like seven months ago.” The records conclude with the request for the MRI and a denial from respondent Summit two days later.

ADJUDICATION

It is the employer's responsibility to 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). A claimant bears the burden of proving entitlement to additional medical treatment for a compensable injury. *LVL, Inc. v. Ragsdale*, 2011 Ark. App. 144, 381 S.W.3d 869. What constitutes reasonably necessary treatment is a question of fact for the Commission. *Id.* The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Id.* Respondents relied on the results of the FCE and the subsequent discharge from care by Dr. Cheyne as their basis for denying Dr. Blankenship’s request for an MRI. After reviewing those reports, I find this reliance to be misplaced.

The FCE in this case is virtually useless. On each of the lifting tests, claimant failed to complete the test, complaining of back pain caused by the lifting. Since the examiner found claimant gave a reliable effort, there was no indication that claimant was exaggerating his discomfort in performing part of the tasks he was asked to do. Further, those lifting exercises were only a small portion of the entire evaluation, which took less than four hours; I would not expect the results over an 8-hour day to improve as the workday continued.¹ The test also does not account for what type of problems—

¹ Claimant testified that he was only examined for three hours. While I question the accuracy of the results of this FCE, I accept that claimant was there from 7:58 until 11:49 AM.

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if any—claimant would have later that day or the next after putting forth the reliable effort on the requested tasks.

I cannot say with certainty that Dr. Cheyne did not read the entire FCE, as he quoted only from the summary. My reading of his report is that on December 6, 2023, claimant was reluctant to have a steroid injection, which caused Dr. Cheyne to order the FCE. There were no reports from physical therapy introduced into the records, but Dr. Blankenship's report of May 6, 2024, mentions that claimant did "5 visits with very transient relief... Five visits to physical therapy is certainly not consistent with an adequate care routine and usual conservative treatment." I agree with that assessment of the lack of care provided.

Further, I quoted Dr. Cheyne's December 6, 2023, report above. To illustrate how inconsistent it was, here it is again, with emphasis added:

"Juan's primary problem is **pain located in the left side of the posterior neck, lower lumbar region**. He describes it as **sharp**. The problem began on June 27, 2023. Juan says it seems to be **variable-- depending on the activity level**. He has noticed that it is **made worse by lifting**. He also notes that **it is accompanied by stiffness**. He feels he is improving slightly. **His pain level is 0**. Patient continues to **have pain with lifting rolls that are 90 lbs.**"

There is either a typographical error or a failure to communicate, as Dr. Cheyne repeatedly documented claimant's complaints of pain, and then said the "pain level is 0." I cannot square the contradictions in this paragraph. Dr. Cheyne had the results of the MRI on December 6, 2023, and heard claimant reporting symptoms that are entirely consistent with bulging discs. Nonetheless, he ordered an FCE and then discharged claimant on January 11, 2024, under restricted duty, but in the heavy classification of work, closing with the advice that claimant might want to find employment that doesn't require such heavy lifting.

Frankly, even without Dr. Blankenship's notes from May 6, 2024, I would have found claimant had a reason to seek additional medical treatment for his back injury. With that report, this is not even

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a close call. The MRI Dr. Blankenship requested is reasonable and appears to be necessary to afford this claimant the medical care to which he is entitled for this 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, beginning with but not limited to the recommended MRI on his lumbar spine.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript the sum of \$352.95.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE