

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H207039

BILLY WRIGHT, EMPLOYEE	CLAIMANT
REYNOLDS CONSUMER PRODUCTS, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 28, 2024

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

Claimant represented by the HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, 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 March 15, 2024. 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 over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to establish by medical evidence supported by objective findings that he sustained a compensable injury to

his low back on May 20, 2022, while performing his employment duties for the respondent-employer.

4. The remaining issue pertaining to reasonable and necessary medical treatment has been rendered moot and not addressed herein 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 March 15, 2024 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.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as “ALJ”) found that Claimant failed to establish by medical evidence supported by objective findings that he sustained a compensable injury to his low back on May 20, 2022, while performing his employment duties for the Respondent-Employer, and that the remaining issue pertaining to reasonable and necessary medical treatment was moot as Claimant did not sustain a compensable injury to his low back. After my *de novo* review of the entire record, I disagree with the ALJ’s findings and would find that Claimant proved by a preponderance of the evidence that he sustained a compensable injury to his low back on May 20, 2022, and that he is entitled to reasonable and necessary medical treatment as recommended by Dr. Reza Shahim.

1. The Claimant has established by medical evidence supported by objective findings that he sustained a compensable injury to his low back on May 20, 2022, while performing his employment duties for the Respondent-employer.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The Claimant was an employee of the Respondent for more than eighteen years. On May 20, 2022, he was picking up a 140-pound O-Ring plate when he felt a twinge in his left-low back. As he continued to work, he experienced pain and tingling into his left leg and foot. Claimant was seen by Dr. Mark Larey on June 2, 2022, who provided an initial diagnosis of lumbago with sciatica. Dr. Mark Larey referred the Claimant for an MRI which was completed on June 21, 2022. After identifying a “large bulging disc L4-5,” Dr. Larey referred the Claimant for further evaluation by a neurosurgeon.

On July 28, 2022, the Claimant was seen by Dr. Reza Shahim who noted the following "Impression/Plan:"

Lumbar pain patient had a injury at work where he was lifting 80 pound object resulting in new onset of back hip and leg symptoms the year before this injury he denies any is now having radicular pain in the on the left side and L4-5 and L5-S1 distribution.

Patient with worsening acute on chronic back pain with intermittent hip and leg pain.

Further, Dr. Shahim stated that he reviewed the Claimant's Lumbar MRI in detail which showed "spondylosis with stenosis L4-5 left disc subligamentous disc herniation facet disease annular tear at L5-S1." After recognizing the Claimant's pre-existing degenerative condition, Dr. Shahim clearly identifies "a new facet injury of left L4-5 annular tear at L5-S1" which "is a work-related injury." The Claimant was offered treatment options of "spinal decompression surgery" or a more conservative route which included "injections, medications and physical therapy." Physical therapy was initiated on August 3, 2022, and after six sessions the Claimant returned to Dr. Shahim for diagnostic lumbar facet blocks. The Claimant was seen again by Dr. Shahim approximately two weeks later and the "Impression/Plan" was as follows:

Lumbar pain patient is having chronic radiculopathy on the left side this persisted after physical therapy spinal injection he has work-related injury at L4-5.

Patient with worsening acute on chronic back pain with intermittent hip and leg pain.

After noting that Claimant had no significant improvement from conservative care, Dr. Shahim recommended surgical treatment including a “redo discectomy” and the possibility of a future lumbar fusion. Additional physical therapy was provided, as well as further evaluations by Dr. Shahim. On October 12, 2022, Dr. Shahim noted the “combination of facet and disc herniation causing severe nerve root compression” which was “missed (sic) read by outside radiologist.” Surgical authorization was requested as a result of this evaluation. The Claimant was also seen in January and March of 2023, at which time his symptoms were once again directly attributed to his work accident on May 20, 2022, and Dr. Shahim stated that he was waiting on authorization to perform surgery on Claimant. The final note, dated April 3, 2023, indicates that the request for surgical authorization had been met with multiple denials.

The surgery recommended by Dr. Shahim was primarily to address nerve root compression at the L4-5 level of the Claimant’s lower back. Dr. Shahim related the cause of the injury and symptoms to the Claimant’s work accident. A review of the MRI’s taken before and after the work accident appear to show an objective difference at the L4-5 level of the

Claimant's lower back. Therefore, the credible evidence suggests that Claimant suffered a compensable injury to his low back.

2. The Claimant is entitled to reasonable and necessary medical care for his compensable low back injury recommended by Dr. Reza Shahim in the form of a discectomy in Claimant's L4-L5 level of his spine.

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 reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

In the present case, the Claimant has undergone physical therapy, injections and a diagnostic lumbar facet block at the L3-4, L4-5, and L5-S1 levels of his spine. Each form of treatment provided minimal relief of the Claimant's symptomatic compensable injury to his back. Dr. Shahim notes on September 21, 2022, that Claimant has failed conservative management of his compensable back injury. Further Dr. Shahim recommends surgical

treatment in the form of a discectomy at the L4-5 level of Claimant's spine. Therefore, I would find that the Claimant is entitled to reasonable and necessary medical care for his compensable low back injury in the form of a discectomy in Claimant's L4-L5 level of his spine as recommended by Dr. Shahim.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner