

Cite as 2009 Ark. App. 812

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-432

DAVINE PARKER

APPELLANT

V.

STANT MANUFACTURING;
AIG CLAIM SERVICES;
GALLAGHER BASSETT SERVICES;
and SECOND INJURY FUND

APPELLEES

Opinion Delivered 2 DECEMBER 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F609262]

AFFIRMED

D.P. MARSHALL JR., Judge

In July 2006, Davine Parker was packing auto parts at Stant Manufacturing when a forklift ran into her work table, knocking her to the concrete floor. She sustained a compensable back injury, and Stant paid her temporary total disability benefits for about five months. Eleven months after the injury Parker had major back surgery. She then sought additional benefits from Stant for this procedure. Both the Administrative Law Judge and the Commission (in a 2-1 vote) rejected her claim.

We view the facts in the light most favorable to the Commission's decision. *Searcy Indus. Laundry Inc. v. Ferren*, 82 Ark. App. 69, 71-72, 110 S.W.3d 306, 307 (2003). We

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affirm if its decision is supported by substantial evidence. *Ibid.* If the record contains conflicting evidence raising a fact question, then the Commission must answer that question. *Ibid.* For additional medical treatment to be covered by Workers' Compensation, it must be "reasonably necessary in connection with the [compensable] injury." Ark. Code Ann. § 11-9-508(a) (Supp. 2009). This requires that the preponderance of the evidence demonstrate some causal connection between the injury and the treatment. *E.g.*, *Hanson v. Amfuel*, 54 Ark. App. 370, 373–74, 925 S.W.2d 166, 169 (1996). Because Parker asserts no permanent disability, however, the major-cause analysis required by Ark. Code Ann. § 11-9-102(4)(F)(ii) (Supp. 2009) does not apply. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 145, 923 S.W.2d 883, 885–86 (1996).

Parker strongly presses on appeal that her 2006 injury aggravated a pre-existing back condition, eventually resulting in her later surgery. *E.g.*, *Estridge v. Waste Management*, 343 Ark. 276, 281–82, 33 S.W.3d 167, 171–72 (2000); *Nashville Livestock Comm'n v. Cox*, 302 Ark. 69, 73–74, 787 S.W.2d 664, 666–67 (1990); *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 9–11, 145 S.W.3d 383, 388–89 (2004). She characterizes her medical history as evidence that her leg and hip pain from a 2002 injury subsided between 2004 and 2006, only to be revived by the 2006 injury. While Parker presented lots of proof about her prior back problems, it is not clear that she argued aggravation or the aggravation cases to the Administrative Law Judge or the Commission. Neither the Administrative Law Judge nor the Commission ruled on this issue, though the dissenting Commissioner discusses it. Her

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argument about aggravation may thus be waived. *Goodwin v. Phillips Petroleum Co.*, 72 Ark. App. 302, 305, 37 S.W.3d 644, 646–47 (2001). Parker is, of course, entitled to the benefit of all her proof related to this argument in any event.

Whether her aggravation argument is waived or not, the deep question before us is this: was the surgery reasonably necessary in connection with her 2006 injury? We hold that substantial evidence supports the Commission’s conclusion of no relationship between Parker’s 2006 injury and her 2007 surgery. *Hanson*, 54 Ark. App. at 373–74, 925 S.W.2d at 169. The only medical opinion about the 2007 surgery comes from Parker’s surgeon, who noted the reason for that procedure: a degenerative “failed back syndrome” and “chronic radiculitis,” which is an inflammation of a nerve root. Merriam-Webster’s Medical Dictionary, <http://www.merriam-webster.com/medical/radiculitis>. Before the surgery, Dr. Chakales commented that Parker “suffers the residuals of her most recent back injury,” and that she had “intractable sciatica of the left leg” and “bilateral sciatica.” Sciatica is pain in the sciatic nerve in the back of the thigh caused by compression, inflammation, or reflex. *Ibid.* at <http://www.merriam-webster.com/medical/sciatica>. His initial and final diagnoses, however, never connected her “failed back syndrome,” sciatica, or “chronic radiculitis” to the 2006 injury. His opinions were unequivocal.

Parker tries to forge a link between the 2006 injury and 2007 surgery. She says this case “is” *Estridge*. Her 2002 injury left her with a herniated disk at L5-S1. Dr. Steven Cathey treated that injury. A 2004 MRI also showed herniation, as well as degenerative disk changes,

at L5-S1. In April 2006—three months before the forklift accident—Parker again sought medical treatment for right leg pain and “chronic” back pain. There is evidence that she had left leg pain after the 2002 injury, only to experience right leg pain immediately before the 2006 injury. She again experienced left leg pain going into her 2007 surgery, and Dr. Chakales opined that she was totally disabled after that surgery. In sum, Parker had pre-existing back problems.

But adequate proof justifying compensation for additional treatment requires more. *Estridge*, 343 Ark. at 282, 33 S.W.3d at 171. The record contains much evidence of Parker’s degenerative back condition, but it does not show that the effects of her 2006 injury endured beyond her five-month healing period. Unlike the claimant’s doctor in *Estridge*, Parker’s surgeon never attributed her need for surgery to a compensable injury. 343 Ark. at 279, 33 S.W.3d at 170. In fact, Doctor Cathey—the same physician who treated her in 2002—examined her after the 2006 injury and found its effects to be temporary. And the only medical conclusion about her 2007 surgery names failed back syndrome, sciatica, and chronic radiculitis as the basis of her problems. Substantial evidence therefore supports the Commission’s conclusion that Parker’s surgery was unrelated to her 2006 compensable injury, and therefore not reasonably necessary treatment for that injury pursuant to Ark. Code Ann. § 11-9-508(a).

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.

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Gary Davis, for appellee.