Cite as 2011 Ark. App. 520

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1151

ALLEN ENGINEERING CORP. and CINCINNATI INSURANCE CO. APPELLANTS V. ROY E. GREEN, ARKANSAS GUARANTEE FUND, and SECOND INJURY FUND APPELLEES	**Opinion Delivered** September 14, 2011 APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [NO. F610626] AFFIRMED

JOSEPHINE LINKER HART, Judge

Allen Engineering Corporation and its insurance carrier, Cincinnati Insurance Company, appeal from the Arkansas Workers' Compensation Commission's award of benefits to appellee Roy E. Green. Appellants contend that the Commission's decision is not supported by the substantial evidence required for affirmance. *St. Edward Mercy Med. Ctr. v. Gilstrap*, 2011 Ark. App. 323. Appellants assert that the medical services awarded to Green are for treatment of long-standing back problems and thus not reasonably necessary for treatment of his injury. Appellants further argue that substantial evidence does not support the Commission's finding that Green remained temporarily and totally disabled. We affirm the Commission's decision.

In the previous appeal of this case, this court affirmed the Commission's finding that on September 1, 2006, Green sustained either a new injury or an aggravation of a preexisting condition, rather than a recurrence of an August 10, 2000, compensable injury. *Allen Eng'g*

Corp. v. Green, 2009 Ark. App. 380. As we noted in that opinion, appellants argued that Green suffered from long-standing back problems, that he complained about his legs prior to 2006, and that he was taking increased amounts of pain medication prior to the 2006 injury. In the affirming opinion, this court recounted testimony the Commission considered, noting particularly that prior to the 2006 injury, Green had almost returned to his pre-2000 functionality and that after the 2006 injury, Green experienced a substantial increase in his pain level and a substantially decreased level of functionality.

In the previously appealed Commission decision, the Commission ordered appellants to pay all reasonable hospital and medical expenses arising out of the September 1, 2006 injury. Further litigation ensued, and appellants now appeal from the Commission's subsequent decision awarding Green particular medical services. In arguing for reversal of the award, appellants assert that the medical services were not reasonably necessary in connection with the injury Green suffered in 2006. To support their assertion, appellants make arguments similar to those they made in the prior appeal. Particularly, appellants note Green's long-standing back problems, including scoliosis and a prior injury, and then discount any need for back surgery or pain management, asserting that the treatment is for prior problems. Appellants also assert that Green's complaints about his legs and his need for treatment associated with his legs predated his 2006 injury.[1]

As evidenced by our earlier opinion, following his 2006 injury, Green suffered increased pain and a decreased level of functionality. Further, the administrative law judge,

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[1]Appellants also note that they were forwarded bills relating to the removal of a lesion from Green's colon. The brief of opposing counsel notes that Green never alleged that these bills were related to the 2006 injury, so the point is moot.

in the opinion adopted by the Commission and now on appeal, noted the deposition testimony of one physician, Dr. Gregory Ricca, who opined as follows:

> If you were doing well before the event, and you have an event that creates symptoms that then need to be treated, that is the cause of your need for surgery; not the fact that you have degenerative scoliosis; not the fact that wear and tear is causing your back to deteriorate, because you had the degenerative scoliosis before the event, and you weren't having symptoms. So the way I look at it . . . if you have an event that temporally and reasonably can be related to the cause of the symptoms that need treatment, it's that event that is the . . . major factor that causes it. We have to take patients or people as they are.

Employees are to be accorded medical services "reasonably necessary in connection with the injury received by the employee." Ark. Code Ann. § 11-9-508(a) (Supp. 2011). Before his 2006 injury, Green was functioning. After the 2006 injury, he was not. Dr. Ricca opined that an event that is temporally and reasonably related to the cause of symptoms that need treatment is the factor that causes the symptoms. In similar circumstances, this court—after observing that an employer takes an employee as the employee is found—held that medical services were reasonably necessary where the compensable injury was a factor in the employee's need for medical services. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004). Thus, substantial evidence supports the Commission's conclusion that the medical services were reasonably necessary for the treatment of Green's 2006 injury.[2]

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[2]Appellants further challenge payment for an injection to one of Green's knees, asserting that Green did not hurt his knee in 2006. A Medicare summary shows a $205 charge with a billable amount of $41. Green testified that problems with his knee had recurred as a result of problems he now had walking. Thus, substantial evidence supports the Commission's decision.

Appellants further argue that substantial evidence does not support the Commission's decision that Green remained within the healing period and suffered from a total incapacity to earn wages; that is, Green was temporarily and totally disabled. *St. Edward Mercy Med. Ctr.*, *supra*. The healing period is "that period for healing of an injury resulting from an accident." Ark. Code Ann. § 11-9-102(12) (Supp. 2011). We conclude that there is substantial evidence to support the Commission's decision, as one doctor, Dr. Butchaiah Garlapati, opined that Green had not yet reached maximum medical improvement and another physician, Dr. Ricca, opined that he was totally disabled.

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.

Frye Law Firm, P.A., by: *William C. Frye*, for appellant.

Roy E. Green, pro se appellee.

Roberts Law Firm, P.A., by: *Jeremy Swearingen* and *Stephanie Egner*, for appellee Arkansas Guaranty Fund.