

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-449

JACKIE R. SHAVER

APPELLANT

V.

LAND O' FROST

APPELLEE

Opinion Delivered February 11, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[No. F602908]

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Jackie R. Shaver argues that the Arkansas Workers' Compensation Commission erred in finding that appellee Land O' Frost was not required to provide Shaver with a new, cosmetic arm because it was not a reasonable and necessary cost associated with his compensable injury. Because substantial evidence supports the Commission's decision, we affirm.

The facts of this case are not in dispute. Shaver sustained a compensable injury to his left arm on March 10, 2006, in the course of his employment with appellee. On that day, he reached into a large meat-tenderizing machine, his sleeve got caught in the machine, and his arm was pulled inside. As a result, he sustained a severe injury to his left arm resulting in an amputation below the elbow. The claimant reached the end of his healing period and presently wears a prosthesis. The sole issue before the Commission was whether appellee should be required—because it was a reasonable and necessary medical treatment—to provide Shaver with

a more life-like and desirable cosmetic arm.

According to the record, shortly after his accident, Shaver was prescribed and provided a working prosthesis, which was paid for by appellee. At the hearing, Shaver described this prosthesis as “a working arm, where I can do things without anybody else being with me.” This prosthesis straps to his right arm, which allows him to control the movement of the prosthesis. Although a hand (with a functional thumb) came with the prosthesis, Shaver testified that he often wore a metal hook instead. He noted that although the hand attachment has a moving thumb, it was “real heavy.” In his deposition, Shaver remarked that the hand device felt like it weighed thirty pounds. However, when questioned on cross-examination as to the actual weight of the hand attachment, he testified that the metal hook weighs three pounds and the rubber hand weighs five pounds.

The records reflects that on one occasion, while having an adjustment made to his prosthesis, Shaver inquired about a new, lightweight prosthesis that he had seen other people wearing. According to his testimony the major advantage of this new device is that it matches the wearer’s skin tone, but this advantage is mitigated by the fact that it does not have a hook or working thumb. Shaver notes in his testimony that there are other intrinsic advantages of the more life-like arm. He stated that it would help him to be less self-conscious, which is how he feels when wearing his current prosthesis. Shaver asserted that he does not like to go out in public as much as he did prior to his injury. He also claims that the unnatural appearance of his current prosthesis (especially when wearing the hook mechanism) has hampered his enjoyment of many of his daily life activities, like playing with his grandson and square dancing.

On appeal, Shaver argues that the meaning of “function” should not be limited to a translation of ambulating and that a “plain reading” of the statute would support a conclusion that if the device facilitates a more comfortable path for him to interact with his environment (like he did before the injury) then it should be considered to improve his “functioning.” However, notably absent from the proof submitted at trial was a doctor’s prescription for the new arm or any medical evidence from psychologists or therapists indicating that his mental health would be improved by having a more “life-like” arm.

Arkansas Code Annotated section 11-9-508(a) (Supp. 2005) provides that an employer shall provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, employers are only liable for medical treatment and services that are deemed reasonably necessary for the treatment of the employee’s injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of the compensable injury. *GEO Specialty Chemical v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *Wackenbut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

Here, the record establishes that appellee did provide Shaver with a functional, working prosthesis that came with both a hook and a hand attachment. The Commission reasoned that because the prosthetic device at issue here will not offer Shaver any additional functional

capabilities, and will reduce the level of function that he currently maintains (the cosmetic arm does not have a functional thumb or a hand attachment), it cannot be considered to be a reasonable and necessary medical treatment. In support of its denial of benefits, the Commission relied on two cases. Both are worthy of mention. In *Crain Burton Ford Co. v. Rogers*, 12 Ark. App. 246, 674 S.W.2d 944 (1984), a claimant's physician prescribed a penile implant to increase the claimant's functional capacity. This court found that "the surgical procedure in question was 'necessary' to restore the claimant, as far as practicable, to the physical condition he enjoyed immediately preceding this injury." Likewise, in *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000), we held that a myoelectric prosthesis (that the claimant's physician stated was best suited for the claimant's future needs) was reasonable and necessary medical treatment. Specifically, the court stated "Given the testimonies of the appellee's plastic and reconstructive surgeon and the board-certified prosthetic orthotist, there was substantial evidence to support the finding that the myoelectric prosthesis was reasonable and necessary to restore the appellee as far as practicable to his physical condition before this work-related injury."

Therefore, in accordance with our case law, if Shaver's desired cosmetic prosthesis would "restore [him] as far as practicable to his physical condition before the work-related injury," appellee should be required to provide it. However, prior to his injury Shaver had a working left hand. After his injury, Shaver received a working prosthesis, outfitted with both a metal hook and a rubber-hand attachment. Both provide Shaver with the ability to grasp objects. The requested prosthesis does not bolster Shaver's arm function; it diminishes it. Further, Shaver

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failed to offer any medical evidence or opinion that the cosmetic prosthesis would provide him with either a psychological or physiological benefit.

As such, the Commission's conclusion that the cosmetic prosthesis that Shaver desired was not reasonable and necessary medical treatment is supported by substantial evidence, and we affirm.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.