DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, Judge

CA06-570

NOVEMBER 29, 2006

COLEMAN CABLE SYSTEMS and ROYAL & SUNALLIANCE
APPELLANTS

V.

RACHEL L. THOMASON
APPELLEE

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION, [NO. E912874]

AFFIRMED

Coleman Cable Systems and its insurer, Royal & SunAlliance, appeal an opinion of the Workers' Compensation Commission issued on February 27, 2006, in favor of appellee, Rachel L. Thomason. Appellants raise one point on appeal, contending that no substantial evidence supports the Commission's decision that additional diagnostic testing is reasonably necessary and related to Thomason's compensable injury of 1999. We affirm the decision of the Commission.

Arkansas Code Annotated section 11-9-508 (Supp. 2005) requires employers to provide medical services that are reasonably necessary in connection with compensable injuries. Whether a medical procedure or device is reasonably necessary is a question of fact

to be determined by the Commission. *Cox v. Klipsch & Assocs.*, 71 Ark. App. 433, 30 S.W.3d 764 (2000).

This case was presented to the administrative law judge on a stipulated record. Among the stipulations of fact were the following: appellants paid medical benefits, temporary-total-disability benefits, and permanent-partial-disability benefits for Thomason's compensable back injury of September 16, 1999; Thomason reached maximum medical improvement on June 18, 2003; appellants accepted and paid a whole-body impairment rating of twelve percent, assessed by Dr. Bruce Safman on June 18, 2003; and on January 21, 2005 Thomason was granted a change of physicians from Dr. Joel Patterson to Dr. Harold Chakales, who treated her on February 28, 2005.

The sole issue for determination by the law judge was whether Thomason was entitled to additional diagnostic testing as recommended by Dr. Chakales in his report of February 28, 2005. The law judge determined that Thomason had proven entitlement to the recommended testing, specifically, an MRI of the back and an EMG of the back and legs, in order to determine whether additional treatment was reasonably necessary. The Commission affirmed and adopted the opinion of the administrative law judge.

Appellants point out on appeal, as they did below, that Thomason had previously undergone extensive diagnostic testing, had reached maximum medical improvement, and had been released to return to work with restrictions. Therefore, they contend that additional medical treatment was not reasonably necessary in relation to her compensable injury.

Thomason asserts that appellants' arguments are irrelevant because Dr. Chakales essentially was the "tie-breaker" in the face of a potential new surgery that one doctor recommended but another did not. She concludes that updated testing such as the MRI and EMG recommended by Dr. Chakales is reasonably necessary.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Substantial evidence is that relevant evidence which reasonable minds might accept as adequate to support a conclusion. *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997). When the medical evidence is conflicting, the resolution of that conflict is a question for the Commission. *Haney v. Smith, Doyle & Winters*, 46 Ark. App. 212, 878 S.W.2d 775 (1994).

Thomason sustained her compensable injury on September 15, 1999, while lifting a box of wire. She was treated by Dr. Mark Gabbie, the company doctor, who initially diagnosed a left lumbosacral strain and released her to regular duty work. Thomason continued to complain of back pain, however, and an MRI performed on November 4, 1999 showed a moderate bulge on the left at L4-5. Dr. Gabbie then referred her to Dr. Robert Dickins for a neurological consult. After injections failed to help her, Dr. Dickins conducted a second MRI on August 31, 2000: the MRI showed "chronic disc desiccation and combination of diffuse protrusion and mild left paracentral extrusion" at L4-5 with small

herniation on the left. Dr. Gabbie next recommended evaluation by neurosurgeon Dr. Steven Cathey, who offered surgery in the form of an L4-5 laminectomy and diskectomy on the left, but Thomason did not undergo surgery at that time. In May 2001 she underwent another MRI because of additional acute symptoms. Dr. Gabbie referred her to neurosurgeon Dr. Joel Patterson, who also recommended surgery. In October 2001 Thomason underwent left L4-5 lateral recess stenosis decompression and left laminectomy and diskectomy at L3-4 by Dr. Patterson.

After this surgery Thomason continued to complain of pain in her left leg and back, and in early 2002 she underwent EMG testing and another MRI. The EMG revealed mild left S1 radiculopathy. On June 3, 2002, Dr. Patterson opined, "With the knowledge that she does have an S-1 radiculopathy on EMG's, one might be tempted to say that there is some compression of her left S-1 nerve root on the plain film myelogram." On October 21, 2002, Dr. Patterson wrote:

> Mrs. Thomason returns to the office today. She is now having pain radiating down to the foot down through the hip. She is now symptomatic from this S1 radiculopathy and I have offered her an L5-S1 laminectomy with a look at the disc and a possible discectomy. . . . To date we have had EMG evidence of an S1 radiculopathy, but she hasn't had any radicular type pain, it has all been in her hip. I think we are now ready to operate on her and she seems willing to proceed. She will need a second opinion.

In an office note of January 8, 2003,[1] Dr. Patterson reported that Dr. Steve Cathey did not feel that Thomason was a candidate for surgery and that pain management had been recommended. Dr. Patterson also noted:

> She is now having quite a [bit] of leg pain. Given the presence of the S1 radiculopathy, I am willing to operate on her. She is going to try some pain management for a short period of time and see if this helps. If this doesn't help, she certainly has the right to a third opinion. Although we are sending her for pain management, she is still under my care.

Thomason next was treated by Dr. Bruce Safman for pain management.

Thomason requested and received from the Commission a change of physicians from Dr. Patterson to Dr. Chakales, who saw her on February 28, 2005. Dr. Chakales reported that x-rays of that date were "highly suggestive of a Grade 1 spondylolisthesis of L5 on S1," with "a questionable defect of the pars interarticularis . . . most pronounced on coned down lateral, with a slip of about 1 cm." Opining that Thomason might be a candidate for a discogram, Dr. Chakales stated that she needed "a repeat MRI of her back, as well as an EMG of her back and both legs."

The Commission noted that Dr. Chakales seemingly agreed with Dr. Patterson about the need for surgery at the L5-S1 level, and that updated diagnostic tests were reasonable and necessary before any such surgery. The Commission also noted that the previous EMG showed chronic nerve root irritation, that Dr. Patterson never completely ruled out the possibility of additional surgery, that Dr. Patterson was willing to operate even though Dr.

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[1]Referring to "2002" as an apparent typographical error in the medical report, the Commission found that it was irrelevant whether the year was 2002 or 2003.

Cathey disagreed, that Dr. Patterson recommended another opinion such as the one by Dr. Chakales, and that Dr. Patterson kept Thomason under his care after sending her for pain management.

In light of the EMG test and the reports of Drs. Patterson and Chakales, the Commission found Dr. Safman's maximum-medical-improvement assessment to be highly suspect. Rejecting appellants' assertion that Dr. Patterson showed agreement with Dr. Cathey's recommendation against surgery by sending her to Dr. Safman for pain management, the Commission found it clear from Dr. Patterson's report of October 21, 2002 that he was still offering surgery even after Dr. Cathey's assessment. The Commission noted Dr. Patterson's statement in the report that he was "willing to operate" and that Thomason needed another opinion, and it noted that Dr. Patterson's early diagnosis of problems at the L5-S1 level had been proven by EMG studies. We hold that the medical evidence to which the Commission referred constitutes substantial evidence to support the Commission's findings that updated EMG and MRI testing recommended by Dr. Chakales is reasonably necessary in connection with the compensable injury.

Affirmed.

GLADWIN and ROAF, JJ., agree.