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ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-578

JENNIFER L. CHANSLOR
APPELLANT

V.

SONIC DRIVE-IN; HARTFORD
UNDERWRITERS INSURANCE
COMPANY; GALLAGHER BASSETT
SERVICES

APPELLEES

Opinion Delivered SEPTEMBER 1, 2010APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F209697, F214297]

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Jennifer L. Chanslor, appeals from the Arkansas Workers' Compensation Commission's decision, arguing that the Commission erred by concluding that she failed to prove that recommended diagnostic testing was reasonably necessary medical treatment in connection with her compensable injuries. Further, appellant asserts that by concluding that the diagnostic tests recommended by appellant's new treating physician were not reasonably necessary, the Commission effectively denied appellant her statutory right to a one-time change of physician, because the new treating physician was unable to use reasonably necessary diagnostic tests to diagnose and treat her work-related injuries. We affirm the Commission's decision.

The administrative law judge, in an opinion adopted by the Commission, wrote that in 2001 and 2002, appellant sustained compensable injuries to her neck, back, and tail bone

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when on both occasions she fell at work. On August 30, 2002, she sought medical treatment, and x-rays of the sacrum, coccyx, and thoracic, cervical, and lumbosacral spine were normal. She was further provided medical benefits in the form of treatment by Dr. Bruce Safman. On October 9, 2002, Dr. Safman noted that an MRI showed a small left-paracentral disc protrusion at L5-S1 that produced no mass effect on the thecal sac or nerve roots. The doctor released appellant to full duty and further wrote that he would reassess her in one month, and if she was doing well, she would be at maximum medical improvement. On December 13, 2002, after appellant failed to appear for a follow-up appointment, Dr. Safman released appellant to full duty, opining that she was at maximum medical improvement with a zero-percent disability rating.

Approximately three and one-half years later, on June 22, 2006, appellant went to an emergency room with back pain that she had endured for about two weeks. Appellant sought a change of physician, which was granted, and she was assigned Dr. Rebecca Barrett-Tuck. On July 18, 2007, the doctor wrote that the earlier MRI indicated a narrowed disk space at L5-S1 with degenerative changes involving the L5-S1 disc, but no disc ruptures or spinal-canal compromise. The doctor assessed appellant as having multiple areas of numbness, including numbness in her hands possibly caused by carpal-tunnel syndrome, and numbness in her feet, which could be explained by S1 root irritation. The doctor also noted that appellant complained of pain in the thoracic and lumbar area. Dr. Barrett-Tuck wanted an MRI of both areas because of the previous abnormalities. In sum, the doctor recommended

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an MRI of appellant's thoracic and lumbar spine and EMG and nerve conduction studies of the upper and lower extremities. On January 29, 2008, Dr. Barrett-Tuck agreed that it was her belief within a reasonable degree of medical certainty that the treatment was reasonably necessary and related to appellant's work-related injuries.

Appellant sought before the administrative law judge additional medical treatment in the form of diagnostic testing recommended by Dr. Barrett-Tuck, asserting that the treatment was reasonably necessary in connection with her compensable injuries. The judge found that appellant failed to prove by a preponderance of the evidence that she was entitled to additional medical treatment. The judge noted that although the 2002 MRI revealed a small left-paracentral disc protrusion on the L5-S1 level effacing the epidural fat, it produced no definite mass effect upon the thecal sac or nerve roots. Further, the judge noted that x-rays taken in 2002 of the sacrum, coccyx, and spine were all normal. The judge also noted that appellant was released to full duty at maximum medical improvement without disability in 2002, that appellant did not seek treatment again until 2006, and that the 2006 treatment was for back pain that had lasted for two weeks. The judge found that given the approximately four-year gap in treatment, the results of the diagnostic testing, and Dr. Safman's opinion, appellant failed to establish by a preponderance of the evidence that the additional diagnostic tests recommended by Dr. Barrett-Tuck were reasonably necessary.

While the ALJ recognized that Dr. Barrett-Tuck opined that the tests were reasonably necessary, she attached minimal weight to the doctor's opinion because it was based on "a

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material mistake of fact” wherein appellant reported having continuously experienced problems with her spine since her compensable injuries. The ALJ noted that the medical records demonstrated that after Dr. Safman released appellant, there were no medically documented complaints of any spine-related problems until 2006, when appellant sought emergency room treatment, and appellant reported at that time that her back pain had a duration of only two weeks.

On appeal, appellant contends that the Commission erred by concluding that she failed to prove that the recommended diagnostic testing was reasonably necessary medical treatment in connection with her compensable injuries. Further, appellant asserts that by concluding that the diagnostic tests recommended by appellant’s new treating physician were not reasonably necessary, the Commission effectively denied appellant her statutory right to a one-time change of physician, because the new treating physician was unable to use reasonably necessary diagnostic tests to diagnose and treat her work-related injuries.

An employer shall provide medical services to an injured employee that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2009). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Goyne v. Crabtree Contracting Co.*, 2009 Ark. App. 200, 301 S.W.3d 16. What constitutes reasonable and necessary medical treatment is a question of fact to be determined by the Commission. *Id.* Where the Commission denies a claim because of the employee’s failure to meet her burden of proof,

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we affirm the Commission's decision if it displays a substantial basis for the denial of relief. *Id.*

Further, this court has previously held that a claimant has an absolute right to a one-time change of physician. *Collins v. Lennox Indus.*, 77 Ark. App. 303, 75 S.W.3d 204 (2002); Ark. Code Ann. § 11-9-514(a)(3)(A)(ii) (Repl. 2002). We have also held that “[w]ithout an initial visit and report from [the claimant’s] one-time-change-of-physician doctor, there is simply no way to determine whether any additional treatment proposed by that physician would be reasonably necessary.” *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 605, 120 S.W.3d 153, 156 (2003). This court held that the employer must pay for the initial visit to the new physician in order to fulfill its obligation to provide medical services. *Id.*

But here, appellant received her initial visit and report from her one-time-change-of-physician doctor. The question before this court is whether there was a substantial basis for the denial of diagnostic testing recommended by the new treating physician on the basis that it was not reasonably necessary medical treatment for appellant’s compensable injuries. See *Goyne, supra*. When the evidence is viewed in the appropriate light, we conclude that there was a substantial basis for the Commission’s denial of benefits. While Dr. Barrett-Tuck recommended additional diagnostic testing, the earlier MRI and x-rays did not reflect disc ruptures or spinal-canal compromise. Moreover, appellant was released to full duty in 2002, and there were no medical reports during an approximately four-year gap indicating that appellant had continuing problems. Consequently, the Commission’s decision displays a substantial basis for the conclusion that additional diagnostic testing was not reasonably

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necessary for the treatment of appellant's compensable injuries.

Affirmed.

GLOVER and HENRY, JJ., agree.