

cc all attys

CCM-FV1

JUN 17 09 33

el

55703

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

LEON SMITH,
<i>Applicant,</i>
vs.
CHURN CREEK CONSTRUCTION COMPANY; STATE COMPENSATION INSURANCE FUND,
<i>Defendant(s).</i>

Case No. RDG 0111743

OPINION AND ORDER
GRANTING RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

R. CRAIG LINGO

JUN - 6 2004

Redding Legal

Defendant, State Compensation Insurance Fund (SCIF), seeks reconsideration of the Findings and Award of March 17, 2004, wherein it was found, inter alia, that applicant, Leon Smith, sustained an admitted injury on May 22, 2003 to his low back and shoulder, and that he is in need of further medical treatment, specifically including but not limited to epidural injections. In her Opinion on Decision, the workers' compensation administrative law judge (WCJ) states:

"Applicant requests treatment in accordance with the recommendation of the primary treating physician. Defendant is denying provision of it on the basis it does not fit into the utilization review guidelines as established by the ACOEM.

"Based upon the testimony of Allen Krohn, M.D. it is found that Dr. Krohn had not examined Applicant and whose testimony and opinion are limited to determination as to whether the recommended treatment conforms to the ACOEM guidelines, and without consideration of the particular patient, course of treatment to date, or the fact that other modalities, specifically physical therapy (which is also is not recommended by the ACOEM, despite affording Applicant some temporary relief) have been tried with only limited success, and was not award that Applicant had been

1 advised of the risks and still wished to proceed.

2 "Based upon a review of the entire medical record, particularly the
3 medical reports of Applicant's treating physician Gary Crawford,
4 M.D., who it is found to have actually examined the Applicant and
5 followed his progress, who appears to have tried several treatment
6 modalities, and whose opinion is confirmed by the report of Dr.
7 David Leppla, M.D., who also examined the Applicant, and despite
8 finding no distinct neurological reason for Applicant's condition,
9 concurred in the recommendation for epidural injections, it is
10 found that the reports recommendation of Dr. Crawford are
11 generally the more reasonable, sensible, better reasoned and more
12 persuasive."

9 Defendant contends that (1) applicant's treater, Dr. Crawford, requested
10 epidural lumbar blocks after two neurosurgeons, Dr. Leppla and Dr. Guity
11 opined they did not see any lesion that would suggest applicant would benefit
12 from an operation (see, letters, dated February 2, 2004 and February 10, 2004,
13 defendant's exhibit "C"); (2) defendant's Utilization Review physician, Dr. Allen
14 C. Krohn, denied authorization for spinal injections on the basis that the
15 American College of Occupational and Environmental Medical Guidelines
16 (ACOEM) state that such a modality is not appropriate for a non-surgical
17 candidate (see pages 300 and 309 of ACOEM guidelines); (3) the primary
18 treating physician no longer has a presumption of correctness on the extent
19 and scope of medical treatment; (4) no evidence was submitted by applicant to
20 rebut the ACOEM guidelines or Dr. Krohn's testimony; and (5) Labor Code
21 section 4610 (f) (2) states that the ACOEM guidelines shall be the standard and
22 therefore, epidural lumbar blocks must be denied for a non-surgical candidate.

23 Based on our review of the record and for the reasons stated herein, we
24 will grant defendant's petition for reconsideration and as our decision after
25 reconsideration, amend the decision to delete the award of epidural injections.

26 At the outset, we note that although the ACOEM guidelines were in effect
27 on the date of trial on February 3, 2004, because they were published in

1 December 2003, they did not become presumptively correct until March 22,
2 2004 on the issue of the extent and scope of medical treatment, pursuant to
3 Labor Code section 4604.5 (a).¹ On the matter of epidural injections, the
4 ACOEM guidelines state, at page 300:

5 "Invasive techniques (e.g., local injections and facet-joint
6 injections of cortisone and lidocaine) are of questionable merit.
7 Although epidural steroid injections may afford short term
8 improvement in leg pain and sensory deficits in patients with
9 nerve root compression due to a herniated nucleus pulposus, this
treatment offers no significant long-term functional benefit, nor
does it reduce the need for surgery."

10 Turning to the medical evidence, we note that on January 13, 2004, Dr.
11 Crawford, applicant's treating physician, specifically recommended "three
12 lumbar epidural blocks." However, he did not state any reasons why the
13 epidural blocks would be of benefit to this applicant.

14 Thereafter, in a letter, dated January 16, 2004 to Dr. Crawford, Dr.
15 Krohn, the physician for defendant's Utilization Review program under Labor
16 Code section 4610 (a), denied authorization for epidural injections, based on
17 the above ACOEM guidelines. We note that on January 16, 2004, Dr. Krohn,
18 was within his authority to perform his utilization review. (See Labor Code
19 section 4610 (c).) Specifically, Dr. Krohn states:

20 "I am performing Utilization Review for State Compensation
21 Insurance Fund. In this capacity, I have been referred the case of
your patient:

22 ... as it pertains to: A request for a series of epidural lumbar
23 blocks.

24 "We feel we must deny liability for this portion of the claim on the
25 following basis:

26 ¹ Under Labor Code section 4604.5 (a), the presumption is rebuttable and may be controverted
27 by a preponderance of the evidence establishing that a variance is reasonably required to cure
or relieve the employee from the effects of his injury.

1 ACOEM Guidelines do not recommend ESBs unless the
2 patient is a surgical candidate (willing to have surgery,
3 positive MRI findings suggesting an amenable lesion, and a
4 clinical presentation consistent with these findings leading to
5 a surgical decision). None of these items appear to be
6 present here.

7 "As you know, Medical Utilization decisions must now be made on
8 the basis of evidence-based medical studies and/or guidelines.
9 There are no evidence based decision guidelines to cover this
10 particular request. Specifically, you may refer to our website at:
11 http://10.2.18.41/cr/vti/script/MedicalUR_SearchMedUR.htm0.i
12 [dq](http://10.2.18.41/cr/vti/script/MedicalUR_SearchMedUR.htm0.i) or the ACOEM Guidelines, Edition 2, Published January 2004.

13 "If you wish to respond or if you disagree, please do so in writing to
14 the adjuster on this case. Further review will be performed at your
15 request and will address any objections you offer."

16 On January 16, 2004, Dr. Crawford stated, in a letter to the adjuster at
17 SCIF, as follows:

18 "In regards to the denial for the series of epidural lumbar blocks.
19 Mr. Smith remains in pain, which is increasing in intensity. Quite
20 frankly, I do not know what to do with this patient. He wants to
21 get better so he can return to work. I would like to refer him to Dr.
22 Leppla, Neurosurgeon for a consultation. Mr. Smith has stated if
23 surgery is necessary in order to get better, he is ready to proceed. I
24 currently see only three alternatives available to Mr. Smith:
25 Approve the referral to Dr. Leppla. Approve the epidural blocks.
26 Keep Mr. Smith on Workers Compensation permanently."
27 (Emphasis added.) (Applicant's Exhibit 4.)

28 On January 22, 2004, Dr. Krohn, responded to applicant's attorney, as
29 follows:

30 "As noted in the written correspondence of January 15, 2004, the
31 request for epidural steroid injections was denied on the basis of
32 the ACOEM Evidence-Based guideline that is found in Chapter 12
33 of the recently published version of the Guides. I refer you to page
34 300 and 309 for specific recommendations regarding the
35 ineffectiveness of this treatment.

36 "As an editorial comment, and as a treater, I feel that many
37 patients get some temporary relief from these injections, but we all

1 know that the long term benefit is questionable, at best. When
2 applying the term 'cure and relieve,' I support the statements in
3 the Guides and no longer refer patients for these procedures
4 unless they meet the (rather stringent) recommendations herein."

4 Apparently, pursuant to Dr. Crawford's letter of January 16, 2004, the
5 referral to Dr. Leppla was approved. Dr. Leppla issued his neurosurgical
6 consultation report on February 2, 2004, stating:

7 "...I do not see any lesion that would suggest that he would benefit
8 from an operation. That is to say, I do not see anything on the
9 studies that would warrant surgery. He has been told the same
10 thing by Dr. Guity. I think it is reasonable for him [applicant] to
11 proceed with epidural steroid injections or perhaps facet blocks
12 and given that he has been told now twice by two neurosurgeons
13 that surgery is probably not going to help him, I think that one
14 should exhaust all other modalities to treat his pain. I endorse the
15 notion of proceeding with epidural steroid injections and other
16 invasive modalities to treat his pain. He did not request any refills
17 on pain medications." (Emphasis added.) (Applicant's Exhibit 6.)

14 Next, on February 10, 2004, Dr. Crawford stated in a letter to SCIF, as
15 follows:

16 "Please review the attached consultation letter from Dr. Leppla.
17 As indicated in his letter, Dr. Leppla recommends that Leon Smith
18 proceed with epidural steroid injections. He has now been told by
19 two neurosurgeons that surgery is probably not going to help him,
20 and that one should exhaust all other modalities to treat his
21 pain."

20 Thus, the recommendation by Dr. Crawford on January 13, 2004, and
21 January 16, 2004 to approve epidural blocks, was made on the basis that Dr.
22 Crawford did "not know what to do with this patient." Further, we note that
23 Dr. Leppla, the neurosurgical consultant, also recommended epidurals, again
24 without stating why they may be effective in this injured worker.

25 Under the circumstances of the case at hand, where the ACOEM
26 guidelines were in effect (but were not presumed correct) at the time of the
27 utilization review physician's opinion, the burden still shifted to the treating

1 physician to justify his requested treatment. (Cf., Lab. Code, § 4604.5 (c).)
2 Again, although the treating physician, Dr. Crawford, opined and
3 recommended that epidural blocks should be approved, he never provided any
4 reasons or basis for his opinion that epidural injections would benefit this
5 particular applicant and he did not respond to the opinion of Dr. Krohn,
6 defendant's utilization review physician. (Lab. Code, § 4610 [Second Enacted
7 Section].)

8 Therefore in this case, because the employer correctly applied utilization
9 review in declining to authorize recommended treatment, Dr. Crawford was
10 required to explain why his original recommendation for epidural blocks was
11 reasonably required to cure and relieve from the effects of the injury in this
12 employee. (Lab. Code, § 4604.5.) Further, Dr. Leppla's recommendation to
13 exhaust all modalities, without more, is not sufficient to justify the award of
14 epidural blocks as medical treatment in this non-surgical candidate.

15 Therefore, Dr. Crawford's opinion essentially to try something else is not
16 sufficient, standing alone, to overcome the evidence of the ACOEM guidelines
17 stating that the recommended treatment is not effective. On this basis, we will
18 delete the award for epidural blocks as a form of future medical treatment.

19 For the foregoing reasons,

20 IT IS ORDERED that defendant's Petition for Reconsideration filed
21 March 30, 2004, be, and the same hereby is, GRANTED.

22 IT IS FURTHER ORDERED that as the Decision After Reconsideration of
23 the Workers' Compensation Appeals Board that the Findings and Award of
24 March 17, 2004, be, and the same hereby is, AMENDED to read as follows:

25 FINDINGS OF FACT

26 Applicant is in need of further medical treatment, but not
27 including epidural injections.

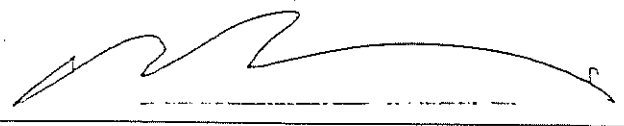
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

AWARD

AWARD IS MADE in favor Leon Smith against Churn Creek Construction Company and State Compensation Insurance Fund, as follows:

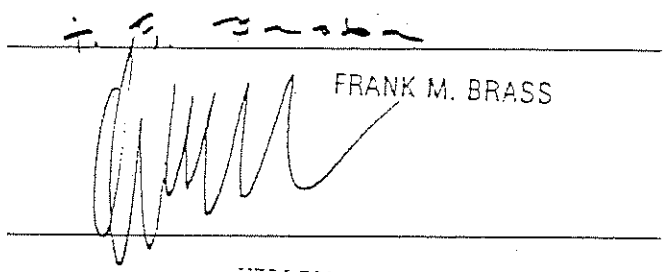
Further medical treatment.

WORKERS' COMPENSATION APPEALS BOARD



MERLE C. RABINE

I CONCUR,



FRANK M. BRASS



WILLIAM H. O'BRIEN

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUN 01 2004

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS.

mm 