



**STATE BOARD OF WORKERS' COMPENSATION**

**P. O. Box 71985**

**Albany, Georgia 31708**

**[www.sbwc.georgia.gov](http://www.sbwc.georgia.gov)**

The Employee requested a hearing to determine the Employer/Self-Insurer's liability to pay for the expenses of certain disputed medical treatments. The hearing was held on October 10, 2013 in Dougherty County, Georgia. The record was left open for the submission of briefs. Subsequent to the hearing the following have been received and considered: letter brief of the Employee; and brief of the Employer/Self-Insurer.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the evidence submitted, I make the following findings of fact and conclusions of law:

1. The Employee suffered an injury by accident arising out of and in the course of her employment for the Employer on December 13, 2006, in Worth County, Georgia. The Employee was injured while working as a manager for a restaurant operated by the Employer.
2. The Employer, which was self-insured for workers' compensation purposes, accepted this claim as compensable. The Employer/Self-Insurer has paid the Employee temporary total disability income benefits and paid for most of her injury related medical expenses.
3. The principal issues to be determined in this case are: the Employer/Self-Insurer's liability to pay for the expenses of certain disputed medical treatments.
4. The State Board of Workers' Compensation has jurisdiction to determine the issues presented in this case. Proper venue is in Worth County, Georgia.
5. The Employee worked for the Employer for some seven and one-half years before her December 13, 2006 injury. As a result of this injury the Employee developed neck pain radiating down into both hands and she developed lower back pain radiating into both legs. She became economically disabled due to this injury beginning May 9, 2007.
6. The Employee underwent cervical surgery to try to relieve her neck and upper extremity symptoms on March 5, 2008. She underwent anterior cervical discectomies for herniated discs at the C5-6 and C6-7 levels. The Employee did not obtain significant relief from her post injury cervical and upper extremity symptoms from this surgery. In October 2011 she underwent lumbar surgery, a decompressive laminectomy and fusion from L4 to S1. The Employee did not obtain significant relief from her post injury lumbar and lower extremity symptoms from this surgery.
7. The was referred for pain management treatment in 2008 or 2009 to Dr. Sung Chang, M.D., of Columbus, Georgia, who has been treating the Employee symptomatically through the date of the hearing for both her cervical, lumbar, and upper and lower extremity symptoms. Dr. Chang's treatments have included various oral medications, and topical analgesic patches. The oral medication treatment has been complicated by the Employee developing allergic reactions to a number of the medications tried by Dr. Chang. Dr. Chang has

also given the Employee epidural and facet injections which gave the Employee some transitory relief from her symptoms. In 2009 Dr. Chang treated the Employee with lumbar radiofrequency ablations, which both the Employee's medical records and her testimony indicate gave the Employee some relief from her lumbar and lower extremity symptoms. Since at least December 2012, Dr. Chang has regularly prescribed repeat lumbar radiofrequency ablation as treatment for what he diagnosed as the Employee's intractable pain. The Employer/Self-Insurer has denied its liability for this treatment contending that it is not a treatment for an injury related condition.

8. Dr. Chang has also recommended treatment of the Employee with a spinal cord stimulator trial to see if subsequent implantation of a spinal cord stimulator would be likely to give the Employee relief from her lower back and lower extremity pain. The Employer/Self-Insurer has also denied its liability for this treatment contending that it is not a treatment for an injury related condition.

9. In addition to regularly prescribing the treatments in question for many months, on October 1, 2013, Dr. Chang signed a document expressing his medical opinion that both lumbar radiofrequency ablation treatment and a spinal cord stimulator trial and possible spinal cord stimulator implantation are treatments for symptoms related to the Employee's work injury of December 13, 2006, and that in his medical opinion both treatments are reasonably required and appear likely to provide relief for the Employee.

10. On July 10, 2013 the Employee underwent a medical evaluation at the request of the Employer/Self-Insurer by Dr. Randy Rizor, M.D. of the Physicians' Spine and Rehabilitation Specialists of Georgia. After examining the Employee and her medical records Dr. Rizor expressed the opinion that the treatments in question prescribed for the Employee by Dr. Chang are for treatment for what Dr. Rizor characterized as degenerative changes in her lumbar spine which he believed to be unrelated to the Employee's December 13, 2006 injury at work for the Employer. He also expressed the opinion that the a spinal cord stimulator would not likely give the Employee any significant relief from her symptoms so as to improve her physical functionality or allow her to decrease her use of narcotic medications being prescribed for her by Dr. Chang.

11. Echoing the effective language of the statute in effect at the time of the Employee's December 13, 2006 injury, Georgia Laws 2003, p. 364, § 2, Official Code of Georgia Annotated Section 34-9-200(a)(1) currently provides: "For all injuries occurring on or before June 30, 2013, and for injuries occurring on or after July 1, 2013, designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the employer shall furnish the employee entitled to benefits under this chapter such medical, surgical, and hospital care and other treatment, items, and services which are prescribed by a licensed physician, including medical and surgical supplies, artificial members, and prosthetic devices and aids damaged or destroyed in a compensable accident, which in the judgment of the State Board of Workers' Compensation shall be reasonably required and appear likely to effect a cure, give relief, or restore the employee to suitable employment".

12. Official Code of Georgia Annotated Section 34-9-1(4) provides in pertinent part: "Except as otherwise provided in this chapter, "injury" and "personal injury" shall include the aggravation of a preexisting condition by accident arising out of and in the course of employment, but only for so long as the aggravation of the preexisting condition continues to be the cause of the disability; the preexisting condition shall no longer meet this criteria when the aggravation ceases to be the cause of the disability."

13. The medical evidence indicates that the Employee had preexisting degenerative changes to both her cervical and lumbar spine at the time of her December 13, 2006 injury. Notwithstanding this circumstance, the Employee was able to perform her job duties for the Employer for some seven and one-half years prior to her December 13, 2006 injury without evidence of any significant impairment in her ability to perform that work in a manner that was apparently satisfactory to the Employer/Self-Insurer. As a result of her December 13, 2006 injury the Employee experienced significant and disabling pain in her neck, lower back and upper and lower extremities. The physician who has been treating the Employee for these symptoms since at least 2009 has expressed the opinion that these symptoms are caused by the Employee's December 13, 2006 injury. He has

prescribed the treatments in question, which in his opinion are likely to give the Employee relief from her lower back and lower extremity symptoms. Contrary to Dr. Rizor's report, both the Employee's medical records and her testimony indicate she did obtain some relief of her symptoms from radiofrequency ablation treatments administered to her by Dr. Chang in 2009.

14. Dr. Rizor's report indicated his opinion that the degenerative changes in the Employee's spine were caused by her being very significantly overweight. She weighed 243 pounds on her 5'4" frame at the time of his July 10, 2013 examination. However, the evidence indicates that the Employee was not that overweight at the time of her December 13, 2006 injury as she testified that she had gained some 70 pounds after her December 13, 2006 injury while undergoing steroid treatment for that injury.

15. After considering all the evidence presented, I find the Employee has shown by a preponderance of the evidence that in addition to causing or aggravating possibly preexisting herniated cervical discs in her neck, the Employee's December 13, 2006 injury also aggravated preexisting but asymptomatic degenerative changes in her cervical and lumbar spine causing her to develop debilitating and chronic pain in her neck and low back radiating into her upper and lower extremities. The radiofrequency ablation treatment prescribed by the Employee's authorized treating physician has previously been shown to give the Employee at least some noticeable relief from the symptoms she developed as a consequence of her December 13, 2009 injury, and based on this evidence and the opinion of the Employee's authorized treating physician I find it to be treatment reasonably required and appearing likely to give the Employee some noticeable relief from her injury caused symptoms. Therefore, I find the Employer/Self-Insurer is liable to pay for the expenses of radiofrequency ablation treatments of the Employee as prescribed by Dr. Chang. *See* O.C.G.A. § 34-9-200.

16. As I find that the preponderance of the evidence shows that the Employee's low back and radiating lower extremity symptoms are caused by her December 13, 2006 injury at work for the Employer, I find that the spinal cord stimulator trial and, based on the results of that trial, the possible implantation of a spinal cord stimulator, are treatments shown by the preponderance of the evidence to be treatments reasonably required and appearing likely to give the Employee some noticeable relief from her injury caused symptoms. Therefore, I find the Employer/Self-Insurer is liable to pay for the expenses of spinal cord stimulator trial and, based on the results of that trial, the possible implantation of a spinal cord stimulator, as treatments for the Employee's December 13, 2006 injury as prescribed by Dr. Chang. *See* O.C.G.A. § 34-9-200.

### **AWARD**

WHEREFORE, based on the foregoing, the Employer/Self-Insurer is ordered to pay for the expenses of the Employee's treatment as prescribed by her authorized treating physician Dr. Sung Chang, M.D. with radiofrequency ablation treatments and a spinal cord stimulator trial, and based on the results of that trial, the possible implantation of a spinal cord stimulator.

**IT IS SO ORDERED**, this the 04th day of November, 2013.

**STATE BOARD OF WORKERS' COMPENSATION**



**This order is electronically signed and approved.**

**Gordon Zeese**

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**ADMINISTRATIVE LAW JUDGE**