

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F012053**

**KERRI D. HILLARD**

**CLAIMANT**

**POCAHONTAS NURSING & REHAB**

**RESPONDENT EMPLOYER**

**WAUSAU**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED AUGUST 11, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE M. JOSEPH GRIDER, Attorney at Law, Pocahontas, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Jonesboro, Arkansas on July 8, 2003. A prehearing conference was held on April 9, 2003 and a prehearing order was filed on April 10, 2003. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable back injury on June 19, 2000.
2. The claimant's average weekly wage is \$213 and the temporary total disability rate is \$142.

The claimant contends that she is entitled to additional medical treatment, namely, back surgery, as recommended by Dr. Richard McCarthy. If the back surgery is performed, the claimant would request temporary total disability benefits while she remained in her healing period and unable to earn wages.

The respondents contend that the claimant's condition was a temporary aggravation of a pre-existing back condition and other physicians the claimant has seen have determined that she is not a surgical candidate. The respondents contend the requested surgery is not reasonable and necessary.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was a compensable back injury on June 19, 2000.
2. The claimant's average weekly wage is \$213 and the temporary total disability rate is \$142.
3. The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment of surgery is reasonable and necessary and pursuant to the claimant's compensable June 19, 2000, injury.

**DISCUSSION**

The claimant, 23 years old, began working for the respondent employer as a CNA in August 1999. According to the claimant, on June 19, 2000, she and another CNA, Shelly King, were assisting a patient in bed. The claimant testified that she lost her balance and sat down on the bed in a twisted position and a 300-pound patient

came on top of her. The claimant testified that she felt a pulling in her left leg, which started in her lower back and went down to her left toes. The claimant also verified that she had strained her back at work before this incident, one time in October 1999, and another time in November 1999. According to the claimant, in October 1999, she was getting a patient up and she turned to move the wheelchair and could not straighten back up. This incident involved a visit to the doctor and a week on light duty. The claimant testified that the November 1999 incident involved picking up a patient with another individual and putting her in a whirlpool chair while she was holding on to the shower bar. The claimant felt a burning pain in her back. She sought medical treatment, received some physical therapy and was placed on light duty after being diagnosed with a strain.

After the June 19, 2000, incident, the claimant saw Dr. Randall Guntharp and was referred to Dr. Terence Braden who ordered a MRI. Dr. Braden referred the claimant to Dr. Benjamin Soeter who performed two injections. According to the claimant, she did not have relief and another MRI was ordered and she returned to see Dr. Braden. Dr. Braden referred the claimant to Dr. Anthony Russell and Dr. Russell referred the claimant to Dr. Robert Valentine. Dr. Valentine ordered a discogram. The insurance carrier then referred the claimant to Dr. P. B. Simpson in Pine Bluff for a second opinion. The claimant returned to see Dr. Russell and Dr. Russell referred the claimant to Dr. Barry Baskin who provided physical therapy.

The claimant described her pain as being in the lower back, going down her buttocks into her left leg and toes. The claimant also testified that on two occasions her leg has given out when she was walking up stairs and also while she was working light

duty.

The claimant also saw Dr. Andrew Jansen in November 2001 and was treated for her back and leg and she was referred by Dr. Baskin to Dr. Yeshwant Reddy. According to the claimant, she treated with Dr. Reddy for a time with no real relief and Dr. Reddy referred her to Dr. McCarthy who recommended fusion surgery on her back. Dr. McCarthy recommended she quit smoking but she had a difficult time quitting and finally stopped cold turkey one week before the planned surgery. According to the claimant, the insurance adjuster canceled the surgery because of the claimant's smoking. The claimant testified that she took a urine test that came back negative. Surgery was canceled but the claimant now contends she has quit smoking.

The claimant now is working at a home care facility, Colonial Home, where she goes into homes and sits with elderly people. She may wash dishes or clothes for them, but if she is unable to do these chores because of back pain, she is able to just sit with the people.

The claimant contends she has also seen Dr. L'Heureux and Dr. Simpson again. She has also been to the emergency room.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 1996). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the

compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, I find the claimant has failed to prove that surgery at this time is reasonable and necessary pursuant to her compensable June 19, 2000, injury at work. The claimant has been treated with a number of doctors, to include Dr. Randall Guntharp, D.O., Dr. Terence Braden, D.O., Dr. Benjamin Soeter, Dr. Anthony Russell, neurosurgeon, Dr. Robert Valentine, Dr. Barry Baskin, D.O., Dr. Andrew Jansen, Dr. Yeshwant Reddy, orthopedic specialist, Dr. P. B. Simpson, neurosurgeon, and Dr. Richard McCarthy, orthopedic surgeon. She has been diagnosed with a disc bulge/herniation of L5-S1 that appears to be abutting left S1 nerve root. She has been treated conservatively with steroid injections, medication, therapy and exercise. Dr. Russell opined in a January 16, 2001, letter that he would be extremely reluctant to consider surgical intervention of the claimant and recommended some pain management care. Dr. P. B. Simpson, Jr., neurosurgeon, performed an independent medical evaluation at the request of the insurance company, and opined on May 14, 2001, that the claimant was not an operative candidate for regular disk surgery and recommended conservative care. Dr. McCarthy, orthopedic surgeon, did recommend on January 27, 2002, that the claimant undergo a PLIF with posterior spinal fusion with instrumentation at the L5-S1 level. Dr. McCarthy described the results of the MRI as a degenerated L5-S1 with an associated herniated disk and a hyperintensity zone. Dr.

McCarthy evaluated the claimant after she had already seen a number of specialists and had conservative care. I simply am unable to give Dr. McCarthy's opinion to pursue surgery as much weight as the surgical opinions of Dr. Anthony Russell and Dr. P. B. Simpson, neurosurgeons, who have seen the claimant on more than one occasion. These physicians maintain that conservative treatment is the best avenue at this time and respondents have paid for a variety of conservative care treatments. The Commission's authority to resolve conflicting evidence also extends to medical testimony. *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). I find that the claimant has pursued medical treatment with a variety of specialists and has undergone conservative management care for her condition and respondents have paid for this care and treatment. I find the claimant has failed to prove by a preponderance of the evidence that the additional medical treatment of surgery is reasonable and necessary and pursuant to the claimant's compensable June 19, 2000, injury.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment of surgery is reasonable and necessary and pursuant to the claimant's compensable June 19, 2000, injury. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**