

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F012183

ROSIE I. HINES

CLAIMANT

FLASH MARKETS, INC.

RESPONDENT EMPLOYER

ZENITH INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED SEPTEMBER 8, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant is pro se.

Respondents represented by the HONORABLE ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Forrest City, Arkansas on July 11, 2003. A prehearing conference was held on April 9, 2003 and a prehearing order was filed the same date. 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 injury on October 7, 2000.
2. The temporary total disability rate is \$100.

The claimant contends she is entitled to additional medical benefits pursuant to her compensable October 7, 2000, incident and she requests a change of physician to a chiropractor. The claimant also contends she sustained another injury in March 2001 and requests benefits.

The respondents contend that additional medical is not reasonable and necessary for the compensable October 7, 2000, injury. The respondents further contend that the current need for treatment is too far causally removed from the original injury. The respondents further contend that the claimant's current condition in her back is likely a result of her degenerative arthritis condition and a potential independent intervening injury sustained in a November 19, 2002, motor vehicle accident. The respondents next contend that the claimant is not entitled to a change of physician, since the claimant has already requested and was granted a change of physician to Dr. Claude Stevens, a chiropractor, in 2000. The respondents contend it has no notice of a second injury. Even if such injury was found to be compensable, this injury would be barred by the statute of limitations (Ark. Code Ann. §11-9-702).

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 injury on October 7, 2000.
2. The temporary total disability rate is \$100.
3. The claimant has failed to prove a compelling reason or circumstance to justify a change of physician.

4. The claimant has failed to prove that additional medical is reasonable and necessary and related to her compensable October 7, 2000, injury.

5. The claim for benefits associated with a March 2001, injury is barred by the statute of limitations.

DISCUSSION

The claimant, 55 years old, worked as a clerk for the respondent employer doing a variety of jobs, to include cleaning and mopping, waiting on customers, closing and making deposits. The claimant worked from 2:00 p.m. to 9:00 p.m. and began her employment on May 24, 2000. According to the claimant, on October 7, 2000, she was mopping and had gotten weak and twisted her back. The claimant testified this happened on the weekend and her boss was out of town, therefore, no report was made until Monday. The claimant testified that she first saw Dr. Mohammed Khan and then a chiropractor and underwent some therapy. The claimant returned to work at the same job. According to the claimant, she sustained another injury in March 2001 and was told to simply ask for additional benefits. According to the claimant, she was mopping in March 2001 and she heard her back pop and was weak. The claimant stated she reported this incident to her supervisor and the supervisor went with her to Dr. Slater (sic). The claimant testified she returned to the doctor and asked for a change of physicians; however, the respondents sent her to Dr. Roy Tyrer and Dr. Anthony Segal. The claimant testified she last saw Dr. Segal in June 2001, but she continued working until July 2002 (sic) when she quit.

The claimant admitted that she chose the first chiropractor, Dr. Stevens, but she still wants to be evaluated by another chiropractor. The claimant testified that she has

back pain and cannot stand or sit very long and must take medication to survive.

Under cross examination, the claimant verified that she quit her employer in July 2001 and became qualified for social security disability benefits in July 2002. The claimant confirmed that she was involved in a car accident on November 19, 2002, where another driver crashed into the driver's side of her vehicle. The claimant confirmed that she experienced pain all over her body.

The claimant first contends that she would like a change of physician to another chiropractor. The claimant testified she first went to her family doctor and then requested a change of physician to a chiropractor, Claude Stevens, D.C. The change of physician to the chiropractor was approved and respondents accepted responsibility for medical benefits. The claimant also was evaluated by Dr. Roy Tyrer, a neurosurgeon, and by Dr. Anthony Segal, a neurosurgeon. The claimant now requests a change of physician to another chiropractor.

Ark. Code Ann. §11-9-514 provides:

(a)(1) If the employee selects a physician, the Workers' Compensation Commission shall not authorize a change of physician unless the employee first establishes to the satisfaction of the commission that there is a compelling reason or circumstance justifying a change.

In the present case, the claimant initially treated with her family doctor, Dr. Mohammed Khan, and then requested and was granted a change of physician to a chiropractor she selected, Claude Stevens, D.C. She treated with him for a time and saw two neurosurgeons for additional evaluations and was released to return to work. The claimant contends she still is in need of treatment and wants another chiropractor to evaluate and treat her. After a review of the medical evidence and considering the

testimony, I find the claimant has failed to prove by a preponderance of the evidence that there is a compelling reason or circumstance justifying a change of physician.

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 by a preponderance of the evidence that additional medical treatment is reasonable and necessary. The claimant's October 7, 2000, work incident was accepted as a compensable injury and medical benefits were paid for her care and treatment with her family doctor, Mr. Mohammed Khan, Claude Stevens, D.C., Dr. Roy Tyrer and Dr. Anthony Segal. She has been evaluated by her family doctor, a chiropractor and two neurosurgeons. The claimant's diagnosis was lumbar strain and lumbar spondylosis and has been treated with medication and chiropractor treatments. Dr. Tyrer ordered spine x-rays and his reports indicate the results were normal. On April 3, 2001, Dr. Tyrer recommended she

could return to her regular work. On June 12, 2001, Dr. Anthony Segal evaluated the claimant and opined that she could continue working. He did opine it was reasonable for her to continue pain medication but recommended nothing further for the claimant.

While the claimant may continue to have back pain, she no longer works for the respondent after leaving in July 2001 and no longer has to perform the mopping duties that seemed to cause her pain. The claimant has also been involved in a motor vehicle accident on November 19, 2002, which involved an emergency room visit for musculoskeletal pain.

Ark. Code Ann. §11-9-102(4)(F)(iii) (Supp. 2003) provides that “benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.”

In the present case, the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary for her compensable October 7, 2000, injury and there was no evidence that a subsequent injury on or about March 2001 was reported. There is no contemporaneous medical evidence that documents a March 2001, injury or re-injury. I find the claim for a March 2001, injury is barred by the statute of limitations. See, Ark. Code Ann. §11-9-702. The claim for compensation must be filed with the Workers’ Compensation Commission within two years from the date of the compensable injury or otherwise the claim is barred. The claimant has simply failed to prove by a preponderance of the evidence that the back pain she currently experiences is related to her compensable work injury

rather than to her more recent motor vehicle accident or her pre-existing arthritic condition.

ORDER

The claimant has failed to prove a compelling reason or circumstance to justify a change of physician. The claimant has failed to prove that additional medical is reasonable and necessary and related to her compensable October 7, 2000, injury. The claim for benefits associated with a March 2001, injury is barred by the statute of limitations. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE