

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F302014

KENNETH MAYFIELD, Employee	CLAIMANT
WILLIS SHAW EXPRESS, INC., Employer	RESPONDENT
CRAWFORD & COMPANY, Carrier	RESPONDENT

OPINION FILED AUGUST 14, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CONSTANCE G. CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 23, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 18, 2003, and a pre-hearing order was filed on June 19, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his right knee on December 19, 2002.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to a change of physician.
2. Attorney fee.

The claimant contends that he is entitled to a change of physician and an attorney fee.

The respondents agree that on December 19, 2002, claimant sustained a compensable injury to his right knee when he stepped in a hole. Claimant was found to have reached maximum medical improvement on March 25, 2003 and was assigned a 3% permanent impairment rating by Dr. Tom Patrick Coker. The respondents have paid all appropriate temporary total and permanent partial disability benefits and the most recent report from Dr. Coker does not indicate that further medical treatment is reasonable, necessary, or recommended for the claimant's knee injury. Accordingly, while the respondents do not controvert the claimant's right to further treatment at the hands of Dr. Coker, should he subsequently find further treatment to be necessary, it is the respondents' position that there is no basis for granting the claimant's request for a change of physician.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 18, 2003, and contained in a pre-hearing order filed June 19, 2003, are hereby accepted as fact.
2. Claimant is entitled to a change of physician to Dr. Chris Arnold.
3. Pursuant to A.C.A. §11-9-715(c)(1), claimant's attorney is hereby awarded \$200.00 for prevailing on the change of physician request.

FACTUAL BACKGROUND

The parties stipulated that the claimant suffered a compensable injury to his right

knee while working for respondent on December 19, 2002. Claimant testified that as a result of his compensable injury he was sent by the respondent to Dr. Craig Cooper. Dr. Cooper initially diagnosed claimant's condition as a strained right knee and subsequently indicated that he would schedule the claimant for an orthopaedic evaluation. This evaluation was performed by Dr. Tom Patrick Coker on January 14, 2003 at which time Dr. Coker ordered an MRI scan. The MRI scan revealed a medial meniscus tear and as a result Dr. Coker performed surgery to repair that tear in February 2003. On March 25, 2003, Dr. Coker stated that claimant had reached maximum medical improvement and assigned a permanent physical impairment rating in an amount equal to 3% to the body as a whole. The medical records subsequent to that date indicate that claimant continued to complain of knee pain. At his own expense, the claimant sought medical treatment from Dr. Chris Arnold on April 8, 2003. Dr. Arnold opined that claimant had not reached maximum medical improvement as of that date and recommended an additional six to eight weeks of home exercises. Claimant has not returned to Dr. Arnold since that date but did continue seeing Dr. Coker after his release on March 25, 2003. Dr. Coker in a report dated May 27, 2003, again opined that claimant had reached his maximum medical improvement as a result of his surgery.

Claimant has now filed this claim requesting a change of physicians to Dr. Chris Arnold.

ADJUDICATION

In *Collins v. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W. 3d 204 (2002), the Court interpreted the change of physician statute to be mandatory with no discretion left to the Commission. While respondent has acknowledged the decision in *Collins*, it contends that it should not be liable for past treatment from Dr. Arnold and also argues that claimant is not in need of additional medical treatment according to Drs. Arnold and Coker.

With respect to the past treatment claimant received from Dr. Arnold at his own

expense, I note that claimant indicated that he is not asking for payment of prior medical treatment received from Dr. Arnold. Therefore, this is not an issue. Furthermore, respondent's defense that claimant is not in need of additional medical treatment is likewise without merit. Although the Arkansas Court of Appeals has not addressed the issue, the Full Commission has interpreted the decision in *Collins* as entitling claimant to at least one visit with a new physician at the respondent's expense. *Kemberly M. Brown v. Wal-Mart, Inc.*, Full Commission Opinion filed October 18, 2002 (E803946).

The argument that additional medical treatment was not reasonable and necessary was also at issue in *Gordon v. Wal-Mart, Inc.*, Full Commission Opinion filed March 17, 2003 (F107611). In that particular case, the Full Commission stated:

Absent any further guidance from the Courts, we interpret from *Collins, supra*, and *Brown, supra*, that a one-time change of physician is mandatory, and that the respondents may not assert an argument that no additional treatment is reasonably necessary as a defense to a request for a mandatory change of physician at a hearing where the only benefit sought by the claimant is a mandatory change of physician.

Thus, respondent cannot raise as a defense to a mandatory change of physician an argument that additional medical treatment is not reasonable and necessary. Furthermore, even if this were a valid defense, I do not interpret Dr. Arnold's medical reports as indicating that claimant is not in need of additional medical treatment.

Finally, I note that this case is somewhat unusual in that claimant is requesting a change of physicians to Dr. Arnold, a physician he has previously seen. However, I note that that evaluation was performed at the claimant's expense and was not within the chain of referrals. I also note that according to respondent's attorney, respondent is not a member of a managed care organization. Therefore, claimant is entitled to a change of physicians to a physician who is associated with any managed care entity certified by the Commission. My review of the managed care organization provider list reveals that Dr.

Arnold is associated with a certified managed care entity. Even when the provider lists have not been entered into the hearing records by either party, the administrative law judges and the Commission have the duty to consult the managed care organization provider list to determine whether a physician is associated with a managed care entity. *Allison v. GES/Food Giant*, Full Commission Opinion filed January 9, 2002 (F006203).

In summary, I find that claimant is entitled to a change of physicians to Dr. Chris Arnold. There is no evidence that claimant has previously exercised his right to a change of physician. Therefore, pursuant to *Collins*, claimant is entitled to exercise his absolute statutory right to a one-time change of physician. Furthermore, respondent cannot raise as a defense an argument that additional medical treatment is not reasonable and necessary. Having determined that Dr. Arnold is associated with a managed care organization certified by the Commission, Dr. Chris Arnold is hereby recognized as claimant's authorized treating physician.

AWARD

Claimant is entitled to a change of physicians to Dr. Chris Arnold. Respondent has controverted claimant's entitlement to a change of physician. Accordingly, pursuant to A.C.A. §11-9-715(c)(1), claimant's attorney is hereby awarded \$200.00 as a legal fee. This fee is to be paid one-half by claimant and one-half by respondent pursuant to A.C.A. §11-9-715(a)(b)(B)(i) and *Taylor v. Jonesboro Human Development Center*, Full Commission Opinion filed April 8, 1997 (E602230).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE