

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307510

MARGIE F. SHUFFIELD

CLAIMANT

**KROGER
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED SEPTEMBER 18, 2003

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE CHARLES R. PADGHAM, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE WENDY S. WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This opinion is written on the record by agreement of the parties regarding the sole issue of change of physician. Included as evidence in this matter are the prehearing filings by respondents, along with 24 pages of medical evidence, the claimant's prehearing notice letter and the Prehearing Order Filed September 9, 2003.

The respondents stipulated that the claimant sustained a compensable injury to her neck and back on April 25, 2002. The respondents accepted these injuries as compensable and paid medical and indemnity benefits relating to these injuries. The respondents paid medical benefits through Dr. Reginald Rutherford's May 2003, visits and additional medical was controverted thereafter.

The respondents contend additional medical treatment is not reasonable and necessary and respondents further contend that appropriate medical care has been provided and deny the claimant's request to change doctors. The respondent employer

is not a member of a managed care organization.

The claimant requests a change of physician to an orthopedic surgeon for an evaluation. The claimant contends that she continues to have pain and problems following her compensable injury and contends that she has never selected any of the doctors she has seen for treatment of her compensable injuries. The claimant contends she has only seen the respondents' choice of doctors.

Ark. Code Ann. §11-9-514(A)(3)(iii) provides:

Where the employer does not have a contract with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician, to a physician who must either be associated with any managed care entity certified by the commission or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to a physician associated with any managed care entity certified by the commission for any specialized treatment, including physical therapy, and only if such primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by any managed care entity certified by the commission.

The Court of Appeals in *Collins v. Lennox Industries*, 77 Ark. App. 303, 75 S.W.3d 204 (2002) found that Ark. Code Ann. §11-9-514(a)(3) established an absolute, statutory right to a one-time change of physician under Act 796, where the employer has exercised the right to select the initial primary care physician.

I find that Ark. Code Ann. §11-9-514 clearly established an absolute statutory right to a change of physician and the Court of Appeals has further clarified this section

in *Collins, supra*. I find the claimant is entitled to a change of physician to an orthopedic surgeon.

The respondents and claimant are ordered to review the Managed Care Organization list of doctors and find an orthopedic surgeon for the claimant to change physicians. This process should be expedited with contact made with the doctor's office to assure he/she will take the new patient.

The respondents contend that additional medical treatment is not reasonable and necessary. After reviewing the Court's decision in *Collins, supra*, I find the Court was clear in finding the Commission is without authority to find the respondent has fulfilled its obligation of providing adequate medical treatment for the claimant's compensable injury prior to the claimant receiving his mandatory one-time change of physician. The claimant is entitled to at least a one-time change of physician evaluation at respondents' expense to determine what proposed treatment, if any, might be reasonably necessary for the claimant's compensable injury.

ORDER

The claimant has an absolute statutory right to a one-time change of physician to an orthopedic surgeon.

The claimant's attorney is entitled to a \$200 attorney's fee in connection with the change of physician pursuant with Ark. Code Ann. §11-9-715(c)(1.)

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**