

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER D414698

OLGA RUTH STROUD, EMPLOYEE	CLAIMANT
LACROIX OPTICAL COMPANY, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED DECEMBER 18, 2003

The hearing was conducted on November 15, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Batesville, Independence County, Arkansas.

The claimant was represented by Zan Davis, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by J. Gregory Magness, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 15, 2003, in Batesville, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant is permanently and totally disabled due to a compensable injury on November 16, 1984.

The issues to be litigated at the hearing were as follows:

1. Is the claimant's medical treatment from psychiatrist, Dr. Thomas Zurkowski, reasonably necessary medical treatment?
2. Is claimant entitled to the services of a housekeeper as reasonably necessary medical treatment pursuant to A.C.A. § 11-9-508?

3. Is claimant entitled to an attorney's fee?

The claimant, 64 years of age, is a high school graduate. She was severely injured on November 16, 1984. The claimant testified regarding her injury:

A. Well, we went to work that morning, we were getting everything ready. At the time, I did not know that I was working with something that was explosive. We worked in the cleaning department. We were getting our stuff ready. I was standing with my back to a degreaser that we had had problems with. That was Xylene sitting next to that. I had my back turned to that and a very small area and I was pouring alcohol in water, which we used that to clean our lenses with and there was a certain point that I had to fill it to and I was there with my head down watching for that point and just all of a sudden, I looked up and things were on fire and I can remember thinking, I'm in a bad place, I've got to get out, out from around this table, I've got to get on my knees and get out, I didn't make it out. They said the sprinklers came on. They came in and got me. I didn't know when I was taken out to the plant, out in the plant and it, at one point, they took me to the parking lot. I did not know anything about them being taken to the hospital.

Q. Do you remember being on fire?

A. No sir, I just remember looking up and seeing it. They told me it was a flash fire, I don't - - -

Q. When did you first realize the extent of your injuries?

A. It took me some time. The time I spent in the hospital, I really didn't realize what was going on. I was there for quite sometime. I just, I didn't know anything for several months. Our son was in the Navy, the day after it happened, they told them, they needed to call him, get him home as soon as possible.

Q. What eventually - - -

A. He came home, I didn't know he was ever there. I didn't know anything until about sometime in, around the last or the first of February and I just, at the time, I couldn't talk very well because my throat had been burned and I didn't know really all that time, I didn't realize how bad I was hurt.
(T-16, 17, 18)

The claimant sustained nerve damage on almost her entire body. She

testified that her legs give way and she is often very weak. She sustained severe burns over 55% of her body. Fortunately, she did not receive facial burns. She displayed some of the severity of her burns during the hearing. The claimant testified that she received numerous skin grafts and has scars on a large part of her back, arm, legs and feet.

The claimant testified that she is not able to lift heavy items with her left arm. She is not able to reach very far with her right arm. She has had to undergo procedures to “loosen” the scars. She testified that because of her burns her skin is “tight” where the burn occurred. The claimant had to undergo a large amount of skin grafting and she explained that subsequent to the grafts, “her skin does not stretch.” The claimant suffers neuropathy in her hip area. Her ankles are weak and she is not very energetic.

The claimant testified that after she returned home from the hospital the respondents paid for a nurse to stay with her. Thereafter, over these many years, the claimant received approximately \$140.00 per week for a housekeeper. Only recently did the respondent decide to stop paying for the housekeeper.

According to the claimant there was nothing about her condition that had changed since 1984. She testified that the respondents simply decided not to pay for a housekeeper. The claimant testified that her condition has been the same for years and has not changed. She testified that the housekeeper was not an RN or a CNA (certified nurse assistant). The housekeeper would come at different times during three days of the week. The housekeeper would clean bathrooms, dust, clean the mini-blinds, dust the woodwork, change the beds, do laundry, vacuum the floor and clean

the ceiling fans. The claimant said that the housekeeper would perform cooking duties only occasionally. (T-34).

The claimant testified that her husband quit work to help with the housework. (Claimant's deposition, p. 15). At her deposition, the claimant testified that her husband helps with cooking and cleaning. (Cl. Depo. p. 27).

The claimant testified that she is able to help clean on occasions. She testified that she can do some laundry and wash the dishes occasionally. She cooks breakfast and is able to put her makeup on and fix her hair. She is able to bath herself, brush her teeth and is able to take her medication by herself. The claimant is able to go to the grocery store and sometimes she drives the automobile. The claimant is able to sew, and she can do some dusting, according to her testimony.

The claimant testified that her husband was doing the housekeeping at one time, because she could not find someone to do it. (T-39). The claimant testified that when the housekeeper is not present, her husband assists her. She testified as follows:

Q. Now, did I hear you say today, that you're paying someone to do your housekeeping?

A. Yes sir.

Q. Now, do you remember at the time I did your deposition, your husband was doing your housekeeping for you. You didn't have a lady doing it?

A. At that time, I didn't, I couldn't find anyone.

Q. Okay.

A. And this lady had worked for me before and I, I called her.

Q. So, is your husband not doing it anymore for you?

A. He helps, when they are not there, he helps.

Q. Well, you had told me that he had quit his job so he could home and take care of the house?

A. Well, he had to, he did.

Q. Well, is he back at his job now?

A. He's working part-time at Wal-Mart, he had to go back to work.
(T-39, 40)

The claimant testified that she has been suffering major depression since her injury. While she does have other problems, like dealing with her husband's past drinking problem, and her weight gain, she testified that burn patients are required to have a lot of calories in order to assist healing of the scars. She testified she put on weight after the severe burn injury. She has difficulty dealing psychologically with her scars, her weight problems, and problems with self-image.

The claimant's husband testified that they have been married for 46 years. He testified that claimant used to cook, clean house, and take care of everything. He stated that because of her depression she is not able to do much work at home. Mr. Stroud testified that he is a recovering alcoholic and has been sober for nine years.

The medical records in this case, primarily, consist of notes and letters from the claimant's psychiatrist, Dr. Thomas Zurkowski, in Batesville, Arkansas. In a letter dated May 20, 2003, Dr. Zurkowski stated:

"After working at LaCroix Optical Factor for about 20 years, Ruth was permanently injured both physically and mentally by a serious laboratory explosion. She sustained numerous severe burns which required weeks to months of hospital and recovery time to heal. As far as I understand it she has physically recovered however has severe scarring of her arms

and chest. **The mental injuries and scarring have yet to heal. She suffers post-traumatic stress disorder even today. Physically, she can pass for normal when she has long sleeves covering the burn scars. Mentally, is another story. She may or may not have had personality disorder prior to the injuries however it was not manifest until her floor dropped out from under her and her whole life changed** from the inability to work any longer to the relationship she has had with her husband and most of her acquaintances. She has been unable to do her housekeeping and this is something she used to enjoy immensely but no longer is able to do. She most certainly is still seriously disabled by the mental stress. Even just seeing the reflection in the mirror, of her scarred body makes her nauseous and she understands her husband's distance.

I believe there is good logic and reasoning for a compassionate re-evaluation of this ladies' request for further assistance. In good psychiatric judgment, I see no alternative."
(Cx-1, p. 5)

The medical records also consists of a letter from the claimant's family practice physician, Dr. Julia Allen, dated May 21, 2003. She states as follows:

"This letter is in regards to my patient Ruth Stroud. As you know Ms. Stroud is disabled after a chemical burn accident at work in 1984. She has had multiple skin grafts due to this burn injury. She also suffers from peripheral neuralgia and chronic pain secondary to the peripheral neuralgia due to nerve damage caused directly by the accident. **She also suffers from anxiety and post-traumatic stress disorder due to the accident.** She is unable to work around her home due to the peripheral nerve damage. She has an increased risk of falling. In addition, her left side has increased weakness to the extent that she is not able to complete her housework."
(Cx-1, P. 6)

The records show that the claimant has been taking Demoral and Xanax for many years. And EMG/NCV study in 2003 showed that the claimant has polyneuropathy. Claimant's Exhibit 1, page 12, a letter from claimant's surgeon, Dr. John S. Lambert, stated:

"Ms. Stroud continues to suffer from chronic anxiety and depression requiring psychiatric care on an outpatient basis as well as various anxiety

and antidepressive medications. She has a documented peripheral neuropathy which is felt to be on the basis of diffuse nerve ending damage and subsequent denervation of her musculature resulting in chronic weakness. Ms. Stroud was evaluated by a neurologist, Dr. Sarah Hays, in April of 1988. I have enclosed a copy of her evaluation for your review.

Ms. Stroud continues to suffer from chronic conditions related to her burn injury in 1984 which include post-traumatic stress disorder, chronic pain and weakness related to her burn-induced neuropathy.

I am certain it would be ill-advised and very detrimental to Ms. Stroud if her benefits are modified or reduced in any way. Therefore, I respectfully request that you reconsider your decision to discontinue her benefits as I believe this woman genuinely deserves continued financial assistance for chronic illnesses related to a tragic industrial accident.”

(Cx-1, p. 12)

The medical records in this case give a summary of Dr. Zurkowski's assessment of the claimant's physical and mental health. Dr. Zurkowski related the claimant's anger, fear and frustration to the severe life changing injury she had in 1984. In 1997, the claimant was taking Xanax and Prozac. She was experiencing family problems and was having to deal with changes in housekeepers. She expressed anger in dealing with her ex-employer, and according to Dr. Zurkowski, exhibited major depression. She would complain to Dr. Zurkowski about exhaustion and depression, which he readily diagnosed. The claimant was often anxious, depressed and the medical records reflect that she was concerned about hurting herself. She expressed problems getting through the day because of depression. She expressed problems with sleeping and experiencing flashbacks and nightmares. She suffered panic attacks and was concerned about the way she looked. She was limited in what she could do on a daily basis.

Dr. Zurkowski recently diagnosed the claimant to be “angry, anxious, depressed and paranoid.” In a letter dated February 16, 2002, Dr. Zurkowski stated,

“She continues to require housekeeping assistance due to her depression, anxiety and probably some physical limitations.” (Rx-2, p. 59).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant is permanently and totally disabled due to a compensable injury on November 16, 1984.
3. The preponderance of the evidence reflects that the payment by respondent to claimant of funds to hire a housekeeper is not reasonably necessary medical treatment pursuant to A.C.A. 11-9-508.
4. The preponderance of the evidence reflects that past and continued treatment and medication from Dr. Zurkowski, claimant’s psychiatrist, is reasonably necessary and related to claimant’s 1984 compensable injury.
5. The claimant is entitled to an attorney’s fee for controversion.

DISCUSSION

1. ARE HOUSEKEEPING SERVICES REASONABLE AND NECESSARY MEDICAL TREATMENT ACCORDING TO THE ARKANSAS WORKERS’ COMPENSATION LAW?

A.C.A. 11-9-508 says: “The employer shall promptly provide for an injured employee such medical, surgical, hospital, and **nursing services** as may be reasonably necessary in connection with the injury received by the employee.”

The major question, then, is whether the services which the claimant has described which were provided for her (and which she desires to continue) were “nursing services” or services which are not covered by the statute. There is a

distinction between “custodial services” and “nursing services.” Nursing services include such things as helping administer medication to an individual or helping with physical therapy or home exercises. Custodial services are services which include assistance with household and personal tasks which a claimant may be unable to perform, such as cooking. See: Leach v. WBC Construction, 1995, AWCC 149 (Claim # E304749), Full Commission Opinion filed July 13, 1995. The preponderance of the evidence in this case does not reflect that the housekeeper is performing “nursing services.” It is obviously very difficult for the claimant to clean her house. She testified that she requires assistance in order to keep it clean. An examination of the statute and case law, however, reflects that the claimant is not entitled to have the respondent pay for someone to clean her house. It does not appear that, from the description given by the claimant, that the housekeeper performs “nursing services.” Therefore, the respondent is not responsible for paying for a housekeeper for the claimant.

2. CLAIMANT’S VISITS TO DR. ZURKOWSKI, THE PSYCHIATRIST, AND MEDICATION PRESCRIBED BY HIM.

The preponderance of the evidence in this case reflects that the claimant is entitled to visit her psychiatrist because it is reasonably necessary medical treatment. It has long been recognized that when the healing level has been reached and the healing period has ended, reasonably necessary medical treatment to maintain at such healing level must be borne at the expense of the respondents. (Artex Hydroponic Inc. v. Pippen, 8 Ark. App. 200, 649 S.W. 2nd 845 (1983)). The claimant’s treating physicians, especially Dr. Zurkowski, who prescribed anti-depressant medication therapy, stated that the claimant’s physical infirmity and its direct complications are the

major precipitants for her psychological distress. The preponderance of the evidence in this case reflects that the compensable injury brought on the claimant's unstable psychological condition, that in turn makes it more difficult to deal with everyday problems and stresses. These problems and stresses also would include any personal problems that she might have. I believe it is rather impossible to avoid addressing personal concerns when dealing with emotional distress brought on by claimant's condition. Accordingly, the preponderance of the evidence reflects that the claimant has proven that her visits to the psychiatrist are reasonable and necessary and related to her compensable injury. See: Hicks v. PSC Fabricators, 2000 AWCC 292, (Claim # E813082), (Full Arkansas Workers' Compensation Commission Opinion filed December 1, 2000). This finding applies to continued visits and medication prescribed by Dr. Zurkowski.

The claimant's attorney, Zan Davis, is entitled to an attorney's fee for controversion of the above awarded benefits.

AWARD

The claimant is awarded the benefits specifically described herein, along with an attorney's fee for her attorney. This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DON N. CURDIE,
Administrative Law Judge

DC