

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212244

KIMBERLY K. TAYLOR, EMPLOYEE

CLAIMANT

BALDWIN PIANO & ORGAN CO., EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO. CARRIER

RESPONDENT

OPINION FILED NOVEMBER 4, 2003

_____ Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 5, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine claimant's entitlement to additional workers' compensation benefits.

On July 22, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission's Exhibit #1.

The testimony of Kimberly K. Taylor, the claimant, coupled with medical report and other documents comprise the record in this claim.

DISCUSSION

_____ Kimberly K. Taylor, the claimant, with a date of birth of December 12, 1960, is a high school graduate. Claimant commenced her employment with respondent on May 29, 1987. Claimant

continued in the employment of respondent until the plant was closed, November 9, 2001.

Claimant asserts on August 12, 1998, while discharging her employment duties for respondent, she suffered a specific incident injury to her right elbow. With respect to the August 12, 1998, injury, claimant's testimony reflects:

I was a quality inspector but I also - - that's how I got hurt I ended up helping on the line. I helped out because I did all the jobs, like we were working a lot of overtime. I helped out wherever they needed me. Mostly at the end of the line trying to get the pianos out. (T. 8)

Claimant further elaborated that:

Okay. At the end of the line of the grand piano line - - they buff the keys to get them shiny right before they are packed and put in a box so that's what I was doing helping them get their quota out that day. Well, they have like a drill and they put a buffing pad that they use to buff the finish but for the keys they cut it down like to smaller. Well, when I got over there they just put one on it but it wasn't cut down. And, I had different supervisor. The supervisor on the line was a different supervisor and then mine sent me. Well, she - - I told her that they wasn't cut down and she said okay. Well then, my supervisor come along and I told him because when you buff with one that big, it will grab the keys because it threads out and that's actually how it got hurt and they just didn't have time or maintenance didn't get there and, you know, we had to get the piano out so that's I was doing. And, when that thread grabbed a sharp it twisted my elbow and I heard something pop. And, my supervisor just happened to be coming up with the company, he was showing around. And I said, something just popped in my elbow and it hurt. And, we talked a little bit and he said, well, just tell me, you know, it was the end of the day so like two days later it was just swollen and it hurt and I said, I can't stand it anymore so he initially filed with the office. And, the office sent me. (T.9-10)

Claimant is right hand dominant.

The testimony of the claimant reflects that after initial treatment for her right elbow complaint following the August 12, 1998, accident, she was referred to Dr. Henry F. Stroope, a Jonesboro orthopedic physician. Claimant continued under the care of Dr. Stroope through January 10, 2002. The testimony of the claimant reflects that the medical bill for treatment under the care of Dr. Stroope and the initial treating physician were paid by respondents until there was a recommendation for surgery relative to the August 1998, injury.

Claimant noted that as she continued to discharge her employment duties for respondent subsequent to the August 1998, accident, she would periodically receive medical treatment under the care of Dr. Stroope when her elbow became symptomatic, swollen and painful. She returned to Dr. Stroope and would be given an injection for the complaints. Claimant testified that following her January 10, 2002, visit to Dr. Stroope, surgery was again recommended and she agreed to have the procedure. Claimant testified that the bill for the January 2002, visit to Dr. Stroope was paid by respondent on February 15, 2002.

Claimant testified that Dr. Stroope had recommended surgery relative to right elbow on several occasions prior to January 10, 2002, however she had declined to undergo the procedure, opting instead for an injection in her right elbow to treat the injury when every the same became symptomatic. During the January 10, 2002, visit to Dr. Stroope, surgery was again recommended. Claimant agreed to undergo the surgery. Claimant noted that efforts to obtain approval for the surgery were unsuccessful. As a consequence of respondents refusal to authorize the surgery, claimant on October 29, 2002, filed a claim for workers' compensation benefits with the Commission.

Claimant acknowledged that submitting the claim for benefits, Form AR-C, on or about

October 29, 2002, she indicated that the same was for initial benefits. Claimant explained that she had spoke with a legal advisor, and that in completing the form, although having previously received workers' compensation benefits relative to the claim, she felt that it was the initial filing and as such indicated same on the claim form.

The testimony of the claimant reflects that prior to the filing of the Form AR-C in October 2002, she had attempted to contact Ms. Jackie Johnson, who was the human resource officer for respondent at the time of her compensable injury, in an effort to obtain approval for the procedure. Claimant explained that although respondent-employer had gone into bankruptcy and the facility purchased by another company, Ms. Johnson continued in the employment of the new employer, Gibson Guitar. Claimant was unable to reach any one with respondent-carrier prior to filing her claim for benefits on October 29, 2002.

Claimant acknowledged that she had been employed by other employers since leaving the employment of respondent on November 9, 2001. Claimant denied that she suffered an injury to her right elbow in the employment of any subsequent employer. Claimant explained that while working for a building contractor her job duties entail office work. Recently, claimant has secured employment as bus driver, however claimant noted that the bus had an automatic transmission and power steering.

From all of the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 12, 1998, the relationship of employee-employer-carrier existed among the parties.
3. On August 12, 1998, the claimant sustained an injury arising out of and in the course

of her employment.

4. Respondents last paid workers' compensation benefits in this claim on February 15, 2002, relative to claimant's January 10, 2002, medical treatment. Claimant filed a claim for workers' compensation benefits relative to her August 12, 1998, compensable injury on or about October 29, 2002, which constituted a claim for additional benefits. The claim for additional benefits was filed within the statutory time period and it not barred pursuant to Ark. Code Ann. §11-9-702(b).

5. Medical treatment recommended by Dr. Henry F. Stroope, to include surgery, is reasonable necessary medical treatment relative to claimant's August 12, 1998, compensable injury.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of August 12, 1998.

7. The respondents have controverted the payment of all benefits in this claim subsequent to January 10, 2002.

CONCLUSIONS

The present claim before the Commission is one for additional medical benefits relative to the claimant's injury of August 12, 1998. Claimant commenced her employment with respondent on May 29, 1987, and last discharged employment duties for same on November 9, 2001, when the plant closed. The present claim relates to an injury to the claimant's right elbow as a result of a specific injury sustained while discharging employment duties on August 12, 1998.

The injury was reported to appropriate supervisor of respondent and claimant was permitted to obtain medical treatment from respondent designated medical provider. There is not a dispute regarding the mechanics of the August 12, 1998, injury. The credibly testimony of the claimant reflects that while using a hand held buffer to polish the keys on a piano the thread from the buffer

pad was caught by a key causing it to twist her a little . Claimant heard a pop in her right elbow accompany by pain. Claimant noted that in addition to the pain she experienced swelling her elbow and was directed to respondent designated medical provider. Claimant ultimately came under the care and treatment of Dr. Henry Stroope, for treatment relative to the August 1998, right elbow injury.

The evidence in the record reflects that respondent paid for the cost of claimant's medical treatment relative to August 1998, right elbow injury. While the October 2, 1998, office note of Dr. Stroope, relative to the claimant, is the earliest medical report contained in the record, a review of the note clearly discloses that claimant had been seen and treatment by Dr. Stroope for the right elbow complaint prior to the October 2, 1998, visit. The October 2, 1998, clinic notes reflects, in pertinent part:

10-02-98 Kim is a 37 year old, white female who presents today with a CC of right elbow pain. She had a history of injuring her right elbow at work on 08-19-98 when she was buffing keys at Baldwin Piano. She had a steroid injection into her right elbow last week with some minimal relief and has been on an oral anti-inflammatory agent.

Examination of her right elbow today reveals tenderness over the lateral epicondyle consistent with lateral epicondylitis. Provocative testing is also positive. She is neurovascularly intact.

* * *

RECOMMENDATION: Is that of a steroid injection into the lateral epicondyle today which was accomplished with some Depo-Medrol and Lidocaine. In addition to this, I believe that it would benefit her if she would wear a tennis elbow strap through the day and a volar cock up wrist splint at nighttime. I will have her go by and get her splint today. . .(CX 1)

Dr. Stroope 's assessment of the claimant's complaint was that of lateral epicondylitis of the right elbow. A review of the medical in the record reflect that claimant was seen by Dr. Stroope on April 19, 1999, for a recurrent lateral epicondylitis of her right elbow. The April 19, 1999 office note of Dr. Stroope reflects, in pertinent part:

She initially did well after her last steroid injection but over the last month or so she had to do some drilling aw work using an electric drilling activities as aggravated her lateral epicondylitis. (CX 1)

As a result of the April 19, 1999, visit, claimant was directed to remain off work for three days, and refrain from using the drill at work for two weeks. Claimant also received medical treatment during the April 19, 1999, visit in the form of an injection in the lateral epicondylitis with some Depo-Medrol and Lidocaine.

Claimant was again seen by Dr. Stroope on October 28, 1999 for a recurrent lateral epicondylitis of her right elbow. During the visit the claimant underwent another injection in the epicondylitis and was directed to return if the pain recurred. Claimant was seen by Dr. Stroope on February 22, 2000, with complaints of right elbow pain. Dr. Stroope's clinic note relative to the February 22, 2000, visit noted that clinic exam of the claimant revealed lateral epicondylitis, for which she received an injection in the lateral epicondylitis and was provided a note to return to work at light duty using her left arm only for three days.

Claimant was seen by Dr. Stroope on April 18, 2000. Dr. Stroope's clinic note reflects that the clinical exam of the claimant again showed recurrent lateral epicondylitis of the elbow. At the conclusion of the April 18, 2000, visit claimant was again provided an injection in the lateral epicondyle. Further Dr. Stroope noted that if the claimant's symptoms were not alleviated then

consideration would be had for lateral epicondyle release. Thereafter, claimant was seen on June 8, 2000, July 18, 2000, October 17, 2000, and February 27, 2001. The evidence discloses that respondent paid for each of the claimant's visits to Dr. Stroope, relative to the right elbow complaint. Further, claimant continued to discharge employment duties for respondent during the afore time period.

Claimant was seen by Dr. Stroope on April 26, 2001, for complaints relative to her right elbow. Dr. Stroope noted that the April 26, 2001, injection was about the fifth injection the claimant had had relative to the right elbow. Further, Dr. Stroope noted in the April 26, 2001, clinic note that he discussed with the claimant the possibility of the need for surgery in the future if the injections failed to help her. (CX 1). A July 24, 2001, office note of Dr. Stroope, relative to the claimant reflects:

Ms. Taylor was seen in follow-up for her lateral epicondylitis of her right elbow. She has had multiple injections into the elbow and always gets good relief with these, but her pain always recurs with her repetitive job duties. I would recommend one more injection and if this doesn't take care of it permanently, then I would recommend a lateral epicondyle release. (CX 1)

Claimant was again seen by Dr. Stroope on October 9, 2001, for her recurrent lateral epicondylitis of her right elbow. The October 9, 2001, clinic note reflects, in pertinent part:

. . . At this point she really wishes to continue to have one more steroid injection, but if her pain recurs, I would highly recommend lateral epicondyle release. Under aseptic technique today the right lateral elbow was once again injected with Depo-Medrol and Lidocaine. We will see her back as needed and if her pain recurs, then I will counsel her in surgical release of the extensor mechanism of the lateral epicondyle. (CX. 1)

As previously noted, on November 9, 2001, respondent ceased operation as a business. Claimant last discharged employment duties on said date. The evidence disclosed that after respondent-employer ceased during business the facility was purchased by Gibson Guitar. While some of the former employees of respondent obtain employment with the new employer, claimant was not one.

The testimony of the claimant reflects that while she continued to work for respondent-employer, although she continued to have symptoms and complaints attributable to the August 1998, injury which required periodically medical treatment, she had resisted the recommendation relative to surgery. Claimant explain that after her employment with respondent ceased and she continued to have the complaints and symptoms in her right elbow attributable to the August 1998, compensable injury, she decided to proceed with the surgery as had been recommended by Dr. Stroope.

On January 10, 2002, claimant was seen by Dr. Stroope. The office note relative to the afore visit reflects:

Ms. Taylor is seen once again for recurrent lateral epicondylitis of her right elbow. I have encouraged her to try to get the workmen's compensation personnel to allow her to undergo surgery on her elbow for recurrent epicondylitis. At this point it has not been approved and she wishes this area to be re-injected. This was done under aseptic technique today. She will try to get her surgery pre-approved and will see me back in follow-up as needed.(CX 1)

Claimant noted that her efforts at obtaining approval for the surgery from the workers' compensation provider were unsuccessful. In that regard, claimant contacted Ms. Jackie Johnson who was human resource officer for respondent-employer and had been hired by the new employer, Gibson Guitar in a similar capacity. After respondent-carrier refused to authorize the treatment as

recommended by Dr. Stroope, claimant, on or about October 29, 2002, filed a Form AR-C with the Arkansas Workers' Compensation Commission for benefits relative to the 1998 compensable injury.

(RX 1)

There is no evidence in the record to reflect that claimant suffered an aggravation or a new injury to her right elbow in any other subsequent employment efforts after November 9, 2001, when her employment with respondent ceased. Claimant subsequent employment endeavors have included doing paper work for a contractor and working as a school bus driver.

The evidence clearly discloses that the August 1998, injury suffered by the claimant in the employment of respondent was reported to appropriate supervisory personnel. Further, the evidence discloses that respondent paid for medical treatment relative to the claimant's August 1998, injury through and including the visit of January 10, 2002, to Dr. Henry Stroope, an authorized treating physician. A review of the clinic notes of Dr. Stroope reflects that recommendation had been had relative to surgical release of the extensor mechanism the lateral epicondylitis, relative to the claimant, as early as April 18, 2000. At the time the subject was first broached claimant continued in the employment of respondent and declined to undergo the procedure. Claimant candidly acknowledged that the injections previously furnished to her by Dr. Stroope has ceased to provide relief for her right elbow symptoms.

The evidence preponderates that the claimant suffered a specific incident injury on or about August 12, 1998, while discharging employment duties for respondent. Further, the injury was reported to appropriate supervisory personnel of respondent and claimant was furnished medical treatment relative to the injury at the expense of respondent. Claimant's injury as been diagnosed by her treating physician, Dr. Henry Stroope, at lateral epicondylitis of her right elbow. Dorland's

Illustrated Medical Dictionary, 26th Edition, defines epicondylitis as inflammation of the epicondyle or of the tissues adjoining the epicondyle of the humerus.

In the instant claim the evidence preponderates that while discharging employment duties on August 12, 1998, claimant suffered a specific injury to her right elbow. The injury, after having occurred, resulted in a pop in the claimant's right elbow and corresponding onset of pain. Thereafter, claimant experience swelling in the right elbow and sought medical treatment for same. Respondent paid for the cost of the claimant's medical treatment, which was had at a provider designated by respondents. As claimant continued to discharge her employment duties for respondent, she suffered periodic recurrence of the injury which was aggravated by the discharge of her employment duties with respondent and utilizing a drill to buff keys on the pianos at work. As a result of the recurrences claimant continue to require and received medical treatment which was paid for by respondent. Respondent paid for medical treatment received by the claimant through January 10, 2002.

Ark. Code Ann. §11-9-508(a) mandates employers to provide such medical services as may be reasonable necessary in connection with the employees injuries. Cox v Klipsch & Associates, 71 Ark. App. 433, 30 S.W.3d 746 (2000). Whether a medical procedure or treatment is reasonable and necessary treatment is a question of fact. In the instant claim Dr. Stroope, the claimant's authorized treating physician, has recommended a surgical procedure to address claimant's compensable injury of August 1998. While claimant commenced her employment with respondent on May 29, 1987, there is no evidence in the record to reflect that she required or sought treatment relative to her right upper extremity prior to August 1998, and the injury she suffered in the employment of respondent. Subsequent to the August 12, 1998, compensable injury, claimant has received regular and periodic treatment for her right epicondylitis. Further, after undergoing numerous injections in the right elbow

in the treatment of her complaint, Dr. Stroope has recommended surgical treatment. The procedure recommended by Dr. Stroope relative to the claimant's right elbow, is reasonable, necessary, and casually related to claimant's compensable injury. Respondents have controverted claimant's entitlement to workers' compensation benefits as a result of the August 12, 1998, compensable injury, to include medical benefits, subsequent to January 10, 2002.

As previously noted, claimant's injury has been diagnosed as lateral epicondylitis of the right elbow, by her treating physician. Claimant, though continued to discharge her employment duties subsequent to the August 1998 compensable injury, also continued to require medical treatment throughout the remainder of her employment with respondent, November 9, 2001. During her continued employment with respondent claimant refrained from undergoing surgery relative to the right elbow, as recommended by her treating physician, in the treatment of her compensable injury. The evidence is clear that the surgical recommendation had been made relative to the claimant's compensable injury, by her treating physician, prior to November 9, 2001. Claimant attempted to secure approval for the surgical procedure following a January 10, 2002, visit to her treating physician. Respondents refused to authorize the procedure.

As a result of respondents refusal to authorize the treatment, claimant, on or about October 29, 2002, filed a claim form with the Commission seeking workers' compensation benefits. Claimant filed the Form AR-C with the Commission without benefit of an attorney. Since respondents had previously paid medical benefits relative to the claim through January 10, 2002, the October 29, 2002, filing by the claimant represented a claim for additional benefits. Accordingly, pursuant to Ark. Code. Ann. §11-9-702 (b) was filed within the statutory time period such that the claimant's claim for additional benefits is not barred.

AWARD

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include the surgical procedure recommended by Dr. Henry Stroope, relative to claimant's August 12, 1998, compensable injury.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge