

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F006282

BRENDA VOYLES, EMPLOYEE CLAIMANT

RONNIE DOWDY, INC,
SELF-INSURED EMPLOYER RESPONDENT NO. 1

CROCKETT ADJUSTMENT,
INSURANCE CARRIER RESPONDENT NO. 1

THE SECOND INJURY FUND RESPONDENT NO. 2

OPINION FILED AUGUST 11, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in
Batesville, Independence County, Arkansas.

The claimant was represented by Keith Wren, Attorney at Law, Little Rock,
Arkansas.

The respondents no. 1 were represented by Bill Walmsley, Attorney at Law,
Batesville, Arkansas.

The respondent no. 2 was represented by David Pake, Attorney at Law, Little
Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on May 14, 2003. A prehearing
conference was conducted on March 20, 2003, before former Administrative
Law Judge William Daniels, and a prehearing order was filed on that same
date . A copy of the prehearing order has been marked as Commission
Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following
stipulations:

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1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim;
2. Employer-employee-carrier relationship existed between the parties on May 8, 2000;
3. Claimant sustained a compensable injury to her back on May 8, 2000, which has been accepted by the Respondent;
4. Claimant's average weekly wage on May 8, 2000 was \$494.35. Her temporary total disability rate is \$330.00, and permanent partial disability rate is \$247.00
5. Respondent has previously paid all authorized, reasonable and necessary medical expenses, all temporary total disability which the claimant is entitled and currently paying the permanent partial injury rate of fifteen percent (15%) assigned by the treating physician.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether claimant is permanently and totally disabled, or in the alternative, is entitled to wage loss disability benefits pursuant to §11-9-522, and whether the Second Injury Fund has any liability;
2. Whether claimant is entitled to additional reasonably necessary medical treatment by a pain management clinic, and whether such need for treatment is causally related to her compensable injury;
3. Whether claimant is entitled to a controverted attorney's fee.

Prior to the hearing, the Second Injury Fund conceded liability and accepted liability for a fifteen percent (15%) impairment to the claimant's earning

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capacity in excess of the fifteen percent (15%) physical impairment established by the medical evidence. Consequently, there is no issue related to the Funds' liability.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. The claimant sustained a thirty percent (30%) impairment to her earning capacity in excess of the fifteen percent (15%) permanent physical impairment established by the medical evidence;
4. The Second Injury Fund is liable for a fifteen percent (15%) impairment to the claimant's earning capacity in excess of the fifteen percent (15%) that they have already accepted and the fifteen percent (15%) permanent physical impairment established by the medical records;
5. Treatment at a pain clinic is reasonably necessary for treatment of the claimant's compensable injury;
6. The respondents controverted liability for any wage loss disability benefits in excess of the fifteen percent (15%) accepted by the Second Injury Fund. Respondents No. 1

controverted liability for medical treatment at the pain clinic.

DISCUSSION

The claimant was employed as a long haul truck driver for the respondent employer. She and her husband worked as team drivers. She sustained an admittedly compensable injury to her back at L4-L5 on May 18, 2000, when her truck hit a dip in the road in Kentucky, causing the seat to bottom out. She began to experience low back pain, and reported an injury to her dispatcher. However, she continued on the run and did not see a doctor until she returned to Little Rock. She ultimately came under the care of Dr. Anthony Russell, a neurosurgeon, and Dr. Russell performed a L4-5 decompressive laminectomy and foraminotomy and posterior lumbar interbody fusion on August 8, 2000. The claimant had previously sustained a herniated nucleus pulposus at L4-5 in 1996, and on October 29, 1996, Dr. Gregory F. Ricca, a neurosurgeon, performed a partial hemilaminectomy and discectomy at that level.

Although the medical records indicate that the claimant initially received significant relief from the August 8, 2000, surgery, Dr. Russell's February 19, 2001, report indicates that she experienced a recurrence of pain comparable to the pain she experienced prior to the surgery. According to his report, the pain radiated into her lower extremities. She has continued to experience

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symptoms that have steadily increased in nature and severity, and, due to these symptoms, further testing was performed that revealed a lesion at T12-L1. This lesion was surgically corrected in January of 2002. The claimant has conceded that the T12-L1 condition is not related to her employment.

When determining the degree of permanent disability sustained by an injured worker, the Commission must consider the degree to which the worker's future wage earning capacity has been impaired by the compensable injury. In addition to medical evidence demonstrating the degree to which anatomical impairments caused by the compensable injury affect the claimant's earning capacity, the Commission must also consider other factors, such as the worker's age, education, work experience, and any other matters which may affect the workers' future earning capacity. Ark. Code Ann. § 11-9-522 (1987). A pre-existing disease or infirmity, in itself, does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Mfg. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979). However, under the law, as amended by Act 796 of 1993, “[p]ermanent benefits shall be awarded only upon a determination that the

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compensable injury was the major cause of the disability or impairment.” Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (1987). When it becomes evident that the worker's underlying condition has become stable and that no further treatment will improve the condition, the disability is deemed to be permanent. If the employee is totally incapacitated from earning a livelihood at that time, he is entitled to compensation for permanent and total disability. Minor v. Poinsett Lumber & Manufacturing Co., 235 Ark. 195, 357 S.W.2d 504 (1962).

In the present claim, the claimant was forty-six years old at the time of the hearing. She graduated from high school. During the course of her lifetime, she has completed the courses necessary to obtain her certification as an emergency medical technician and as a licensed practical nurse. In addition she has completed the training necessary to obtain her commercial drivers license. She has worked as a clerk in a shoe store, in housekeeping at a hospital, as an emergency medical technician, as a nurse’s aide, and as a licensed practical nurse. The medical records indicate that the claimant has a limited ability to lift and that her ability to sit and stand for long periods of time is limited. These limitations are due in part to the condition at T12-L1, which pre-existed the compensable injury, as well as the condition at L4-L5 that also pre-existed the compensable injury. These limitations prevent her from returning to her previous employment as a truck driver as well as either of her

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previous employments, and these limitations prevent her from enjoying many of the activities she enjoyed prior to the onset of these problems. However, I also note that the limitations are not caused solely by her compensable injury. Instead, the limitations are caused by her other back problems, including the underlying degenerative condition.

Accordingly, I find that the claimant sustained a thirty percent (30%) impairment to her earning capacity in excess of the fifteen percent (15%) permanent physical impairment to her earning capacity established by the medical evidence. In this regard, I note that the claimant is a relatively young woman and the medical records as well as my observations of her at the hearing indicate that she is not totally disabled from engaging in any employment. Moreover, she has proven that she has the mental capacity to obtain the skills necessary to perform at a variety of lighter duty jobs that are within her physical limitations.

I also find that the claimant continues to experience pain that is causally related to her compensable injury and that treatment at a pain clinic is reasonably necessary for treatment of the compensable injury. In this regard, I recognize that the claimant might receive an ancillary benefit to the conditions that are not compensable. However, the fact that treatment also benefits other conditions does not affect the finding that the treatment is

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reasonably necessary for treatment of the compensable injury.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809 (Cumm. Supp. 1997).

IT IS SO ORDERED.

C. Michael White
Administrative Law Judge