

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204718

KATHALEEN BLAYLOCK, EMPLOYEE	CLAIMANT
PINEDALE NURSING & REHAB., EMPLOYER	RESPONDENT
WAUSAU UNDERWRITERS, CARRIER	RESPONDENT

OPINION FILED DECEMBER 20, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 20, 2004, at Little Rock, Arkansas.

Claimant represented by THE HONORABLE M. KEITH WREN, Attorney-at-Law, Little Rock, Arkansas.

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-style claim to determine the claimant's entitlement to additional workers' compensation benefits.

On November 23, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issue to be addressed during the course of the hearing, and the parties' respective contentions relative to the issue. The Pre-hearing Order is herein designated Commission Exhibit #1.

The testimony of Kathaleen Blaylock, the claimant, coupled with medical reports and

other documents comprise the record in this claim.

DISCUSSION

Kathaleen Blaylock, the claimant, with a date of birth of June 9, 1954, commenced her employment with respondent on December 17, 2001, as assistant director of nursing, and continued therein until her April 15, 2002, compensable injury. Claimant was a registered nurse. There is no evidence in the record to reflect that claimant encountered difficulties, restrictions, or physical limitations discharging her assigned job duties in the employment of respondents prior to her April 15, 2002, compensable injury.

The testimony of the claimant reflects that she moved to Mississippi in 1994, and remained there until she moved to Arkansas. Claimant held various supervisory nursing positions prior to her employment with respondents. The testimony in the record reflects that claimant moved to Arkansas in November 2001, and secured her employment by respondents on December 17, 2001.

The compensability of the claimant's April 15, 2002, injury is not disputed. Claimant suffered an injury to her low back when, while pushing an elderly patient down the hall in a merry walker, the patient stopped abruptly resulting in the claimant's back strain. Following her April 15, 2002, compensable injury claimant returned to Jackson, Mississippi, when she was physically unable to maintain her Newport, Arkansas residence due to residuals of her injury.

After receiving initial medical treatment relative to the April 15, 2002, injury under the care of respondents' designated medical provider, Dr. Aris Calhoun, and following diagnostic studies, claimant came under the care of Dr. Jeffrey A. Kornblum, a Jonesboro neurosurgeon. Claimant underwent further diagnostic studies pursuant to the direction of Dr. Kornblum, to

include EMG/nerve conduction studies by Dr. Terrence Braden. The diagnostic studies disclosed a diffuse bulge of the L3-4 disc, broad based disc protrusion versus herniation at L4-5 with compromise of the left superior lateral recess, probably compromising the left L5 root, and broad based disc bulging at L5-S1 touching the S1 root but no compromise.

On August 7, 2002, claimant underwent surgery under the care of Dr. Kornblum in the form of a left L4 laminotomy, foraminotomy and discectomy. Following her surgery and discharge home from the hospital claimant continued to recuperate, however she was severely restricted in daily living activities. Claimant encountered difficulties in standing, sitting, lifting, walking and bending. Correspondingly, she was unable to prepare meals, or encountered great difficulty in doing so; perform routine domestic household activities of cleaning and laundry; as well as difficulties addressing her personal needs. As a consequence of the afore claimant relocated to Jackson, Mississippi.

Claimant continued to require medical care and treatment relative to her April 15, 2002, compensable injury following her return to Mississippi. Claimant had not been released by her treating surgeon, Dr. Kornblum, when necessity dictated the move to Mississippi. The testimony of the claimant reflects that any return scheduled follow-up appointment with Dr. Kornblum in Jonesboro, Arkansas from her residence in Jackson, Mississippi would have been unduly burdensome and painful. Accordingly, she requested a change of treating physician from Dr. Kornblum to her family physician, Dr. Fred McDonnell, in Hazlehurst, Mississippi.

Dr. McDonnell, the claimant's family physician, agreed to abide by the medical fee schedule pursuant to Rule 30, of the Arkansas Workers' Compensation Commission relative to his medical treatment regarding the claimant's April 15, 2002, compensable injury. On

September 4, 2002, a Change of Physician Order was entered designating Dr. McDonnell as the claimant's authorized treating physician relative to the April 15, 2002, compensable injury.

On January 13, 2003, claimant was evaluated by Dr. Barry D. Baskin, a Little Rock pain specialist, at the request of respondents. As a part of his evaluation Dr. Baskin recommended that claimant undergo another MRI scan. In a January 20, 2003, addendum to the January 13, 2002, evaluation, Dr. Baskin noted receipt of additional medical records of the claimant dating back to August 4, 2000. In addition to opining that the April 15, 2002, incident may represent an exacerbation of her pre-existing disc injury, Dr. Baskin again requested an MRI of the claimant's lumbar spine in the January 20, 2003, addendum. In correspondence dated December 2, 2003, Dr. Baskin concluded that the claimant had reached maximum medical improvement relative to the April 15, 2002, reported injury, which he defined as "an exacerbation of a preexisting condition". Dr. Baskin rated the claimant with an 8% permanent partial impairment to the whole person based on the lumbar spine surgery.

After being furnished a copy of Dr. Baskin's January 13, 2003, report, Dr. McDonnell, in a October 20, 2003, correspondence, noted that he was repeating the MRI and having the claimant evaluated by Dr. Lynn Stringer, a Jackson, Mississippi neurosurgeon. In correspondence dated August 27, 2004, Dr. McDonnell noted, in pertinent part:

Ms. Blaylock suffers from muscle spasms along with burning in her feet, legs and hips. In my opinion it is a medical necessity that she sees Dr. Stringer.(CX. #1, p.72)

Respondents take the position that the proposed treatment as recommended in the August 27, 2004, correspondence of Dr. McDonnell, is not reasonably necessary. Further, respondents question whether the recommendation represents a valid referral.

The testimony of the claimant reflects that she has no knowledge of Dr. Stringer other than the fact that he is a neurosurgeon and that Dr. McDonnell has repeatedly relayed that she needs to be evaluated by him. It is the recollection of the claimant that in January 2003, following her evaluation by Dr. Baskins that respondents refused to pay the cost of her prescription medication relative to her compensable injury. As a consequence of the afore, claimant noted that she has paid for such medication.

Regarding her continuing symptoms and complaints attributed to the April 15, 2002, compensable injury, claimant testified that she experiences constant pain in her low back which radiates down into both hips, legs, and feet. Claimant also noted a burning sensation in feet. Claimant's testimony reflects that due to allergic reactions she is unable to take a lot of medications containing narcotic that could address her pain complaints. Additionally claimant noted that she has a history of peptic ulcers which also restricts her intake of pain relieving medications.

Claimant's testimony reflects that when the pain and symptoms particularly sever she will take prescription medication. Other than the afore, claimant's pain relieving mechanism is lying down on her left side with a pillow between her knees. Claimant noted that since the surgery she has experienced occasions of her knee or hip going out. Claimant testified that the surgery performed by Dr. Kornblum made her condition worse.

Claimant's testimony reflects that she is physically restricted in her activities as a result of her continuing symptoms and complaints growing out of her compensable injury. Claimant acknowledges that she continues to drive, however doing so is difficult and requires periods of rest to recover. Claimant has only been back to Arkansas on two (2) occasions since returning to Mississippi following her injury- - the January 13, 2003, evaluation by Dr. Baskins, and

December 20, 2004, hearing before the Commission.

Claimant testified that she has not been released by her treating physician to return to work relative to April 15, 2002, compensable injury. Claimant added that she is not physically capable of returning to work due to the compensable injury. Claimant has been approved for social security disability and currently received said benefits.

Claimant testified that she desires to be evaluated by Dr. Stringer pursuant to the recommendation of Dr. McDonnell, relative to her back. Claimant has not been seen by a neurosurgeon since she was last seen by Dr. Kornblum following the August 7, 2002, surgery. Claimant noted that at the time of her discharge from the hospital following the surgery she was not seen by Dr. Kornblum.

After a thorough consideration of all the evidence in this record, to include the testimony of the claimant, review of the medical reports, and application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 15, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On April 15, 2002, the claimant earned wages sufficient to entitle her to weekly workers' compensation benefits of \$425.00/\$319.00, for temporary total/permanent partial disability.
4. In a September 4, 2004, Change of Physician Order, Dr. Fred McDonnell was designated the authorized treating physician relative to the claimant's April 15, 2002,

compensable injury, and charged with the responsibility of directing and furnishing such medical treatment as he deemed appropriate, to include referrals for further diagnostic studies and/or evaluations. The referral of the claimant by Dr. McDonnell to Dr. Stringer is a legitimate medical referral and reasonably necessary medical treatment for the claimant's compensable injury.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of April 15, 2002.

6. The respondents have controverted the claimant's entitlement to additional medical benefits as recommended by Dr. McDonnell, to include the referral to Dr. Lynn Stringer.

CONCLUSIONS

The compensability of the claimant's April 15, 2002, low back injury is not disputed. At issue before the Commission at this juncture is the claimant's entitlement to additional medical benefits as a result of the compensable injury. Specifically, in dispute is a referral of the claimant by her authorized treating physician a neurosurgeon for an evaluation. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

While it is undisputed that claimant suffered a complaint relative to her low back in 1999, and received medical treatment relative to same, to include a August 4, 2000, MRI scan, there is no evidence in the record to reflect that she sought or obtained medical treatment relative to same between November 2001, and her April 15, 2002, compensable injury. The evidence reflects that claimant successfully discharged her job duties in the employment of respondents until the April 15, 2002, compensable injury.

Subsequent to her April 15, 2002, compensable injury claimant underwent diagnostic studies and a various treatment modalities to include physical therapy, medication, and surgery. Claimant has been continuously symptomatic since her injury, opining that the August 7, 2002, surgery worsened her condition. Due to her physical limitations following surgery and discharge from the hospital claimant was unable to continue to maintain her independent living status without assistance. Claimant was relocated to Jackson, Mississippi where family members resided who were available to assist her.

Claimant was continuing to recuperate from her surgery at the time of her relocation and in need of continued medical treatment for the compensable injury. On September 4, 2002, a change of physician order was entered designating Dr. Fred McDonnell, the claimant's family physician, as her authorized treating physician relative to the April 15, 2002, compensable injury.

Parenthetically, the evidence reflects that the only physicians to the claimant since 1994, have been Dr. McDonnell [her family physician], emergency room physicians seen in connection to the April 15, 2002, compensable injury, respondents' designated medical provider, and the physician designated by respondents to perform an evaluation of the claimant relative to the compensable injury [Dr. Baskins].

While the evidence clearly reflects that the claimant had a degenerative disc disease process in place relative to her lumbar spine prior to the April 15, 2002, compensable event, she had been asymptomatic for a period of time- - throughout the entirety of her employment with respondents. The claimant's current status relative to her lumbar spine is the product of the April 15, 2002, compensable injury.

In workers' compensation law, the employer takes the employee as he finds him, and

employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). The aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. *Hublely v. Best Western-Governor's Inn*, 52 Ark. App. 226, 916 S.W. 2d 143 (1996). The aggravation of a pre-existing condition by a specific work-related incident need not be the major cause of a claimant's disability in order to be compensable. *Farmland Insurance Co. v. Dubois*, 54 Ark. App. 141, 923 S.W. 2d 883 (1996).

Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W. 3d 764 (2000). Whether a medical procedure or device is reasonable and necessary treatment is a question of fact.

In the instant claim, claimant has not received medical treatment under the care of a neurosurgeon since being discharged from the hospital following her August 7, 2002, surgery under the care of Dr. Kornblum. Claimant's authorized treating physician relative to the compensable injury has been Dr. McDonnell, a family practitioner, since September 4, 2002, and she has remained under the active care and treatment of same since.

Pursuant to the directions of respondents claimant was seen on one occasion by Dr. Barry Baskin, a Little Rock physiatrist. Several reports have been generated by Dr. Baskin pursuant to the evaluation. In the January 20, 2003, addendum to his January 13, 2003, examination of the claimant, Dr. Baskin noted:

. . . . It would be my opinion that the injury to the L4-5 disc was preexisting, although she may have exacerbated that with her reported work related injury of 4/15/02. The injury sounded

minor as she was just pushing a patient in a merry walker when the patient put her feet down and Ms. Blaylock strained her back. Again, I would request an MRI of the lumbar spine. I could render an opinion then regarding whether she has anything that needs to be done further with regard to her spine and also return to work, etc. (CX. #1, p. 66).

A December 2, 2003, correspondence of Dr. Baskins reflects, relative to the claimant:

Based on the information that I have and from looking at these recent scans, it appears that Ms. Blaylock had pre-existing degenerative disc disease in the lumbar spine, worse at L4-5. She has had an L4 left lateral laminectomy and discectomy foraminotomy. She has residual postoperative epidural scar tissue in the left lateral recess at this level. She has diffuse degenerative disc changes throughout the lumbar spine.

Given that she was still working prior to the work reported injury of 4/15/02 and that she required subsequent surgery on what is apparently a preexisting condition, I would define this as an exacerbation of a preexisting condition. She should be at a point of maximum medical improvement. . . .

* * *

Again, I think at this date she should be at a point of maximum medical improvement and she is given an impairment rating accordingly. An FCE would be of benefit to determine what she is able to do and I would be happy to review that if it done. (CX. #1, p. 70-71).

Claimant has never been released from active medical treatment or to return to work by her authorized treating physician relative to the April 15, 2002, compensable injury. In a October 20, 2003, correspondence, Dr. McDonnell relayed relative to the claimant:

You are aware of this patient's past history and present condition regarding her chronic low back pain syndrome. At this time the patient remains totally disabled, as she is still awaiting further evaluation. I have discussed the situation with Mr.

Mike Ryburn and at this time we are repeating a MRI and having her evaluated by Dr. Lynn Stringer of Jackson, Mississippi. The patient remains totally disabled and is not ready for any type of rehabilitation or work hunting [hardening] program until Dr. Stringer's evaluation. (CX. #1, p. 67).

In a August 27, 2004, correspondence relative to the claimant, Dr. McDonnell wrote:

Mrs. Blaylock suffers from muscle spasms along with burning in her feet, legs and hips. In my opinion it is a medical necessity that she sees Dr. Stringer. (CX. #1, p. 72).

Respondents have refused to approve the claimant's referral to Dr. Stringer. The evidence preponderates that the referral of the claimant to Dr. Stringer by Dr. McDonnell, her authorized treating physician, grows of the opinion of same that it is a medical necessity to treat the compensable injury. Claimant has not had access to a neurosurgeon since her return to Mississippi following the August 7, 2002, surgery by Dr. Kornblum. Dr. Baskins is an examining physician who has seen the claimant on one occasion at the request of the respondents. Dr. McDonnell is not obliged to defer to the recommendations or opinions of Dr. Baskins in his treatment relative to the claimant's compensable injury.

The Arkansas Court of Appeals noted in *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W. 2d 831 (1998), that while a claimant remains off work and sought continued medical treatment for a compensable injury there was no need for any of the subsequent treating physicians to opine the he should be off work. Accordingly, when an injured employee has been instructed to remain off work there is no need for the employee's physician to continually state that the claimant needs to be off work. In the instant claim, the evidence preponderates that further medical treatment has been recommended relative to claimant's compensable injury, namely the neurosurgical evaluation. Respondents have controverted the claimant's entitlement

to the medical treatment recommended by Dr. McDonnell.

AWARD

Respondents are hereby ordered and directed to pay all reasonably necessary medical treatment relative to the April 15, 2002, compensable injury of the claimant, to include the recommendations of Dr. Fred J. McDonnell, the claimant's authorized treating physician, regarding to the referral to Dr. Lynn Stringer, as well as medical related travel.

An attorney fee in the amount of \$200.00, in herein awarded to the claimant's attorney, the Honorable M. Keith Wren, pursuant to Ark. Code Ann. § 11-9-715, to be paid by respondents.

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