

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110779

PATRICIA J. BRITT, EMPLOYEE	CLAIMANT
WYNNE PUBLIC SCHOOLS, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 1, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on October 1, 2004, at Forrest City, St. Francis County, Arkansas.

Claimant represented by Ms. M. Kathleen Talbott, Attorney-at-Law, Wynne, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 1, 2004, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on August 25, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the August 25, 2004, Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was undisputed that the claimant sustained a compensable injury on September 13, 2001; that she earned sufficient wages to entitle her to the

maximum compensation rates of \$410.00 per week for temporary total disability and \$308.00 per week for permanent partial disability; that a prior decision filed January 8, 2003, was now final and the law of the case; that respondents paid benefits awarded therein, including temporary total disability through October 16, 2003; and that the respondents had controverted all benefits beyond those previously paid.

By agreement of the parties, the issues presented for determination included:

- 1) Whether the claimant's healing period had ended, as well as claimant's entitlement to additional temporary total disability.
- 2) Whether surgery performed during April, 2004, was causally related to the admitted injury.

Claimant contended, in summary, that her healing period had not ended; that she was entitled to continued, temporary total disability after October 16, 2003; that the surgery performed by Dr. Keith Williams was directly and causally related to the admitted injury; that further medical treatment was reasonably necessary and should remain the responsibility of the respondents; and that a controverted attorney's fee should attach to any additional benefits awarded.

The respondents contended that it had paid all appropriate benefits pursuant to the prior Opinion and that the additional treatment the claimant received from Dr. Williams, including surgery, was not reasonably necessary or

causally related to the work-related injury.

The claimant, Patricia J. Britt, testified in her own behalf. The record is composed of the transcript of the October 1, 2004, hearing containing a volume of medical exhibits consisting of 192 pages, together with the evidentiary deposition of Dr. Keith Williams, which was introduced as "Joint Exhibit C" and retained in the Commission file in bound form. In addition, the prior Opinion and Order filed January 8, 2003, was introduced as "Commission's Exhibit 2." The record of the prior hearing conducted November 8, 2002, was incorporated by reference and made a part of the record herein.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant's healing period had not yet ended as of the date of the most recent hearing on October 1, 2004.
4. The claimant has proven, by a preponderance of the credible evidence,

that she is entitled to additional temporary total disability for the period beginning October 17, 2003, and continuing through at least October 1, 2004, and until such time that the claimant's healing period is determined to have ended.

5. The claimant has proven, by a preponderance of the credible evidence, that surgery performed by Dr. Keith Williams, an authorized treating physician, is directly and causally related to the September 13, 2001, admitted injury, and was reasonably necessary.
6. Respondents are responsible for outstanding hospital, medical, and related expenses, including, but not limited to the surgery performed by Dr. Williams, and respondents remain responsible for continued, reasonably necessary medical treatment.
7. Respondents have previously controverted all benefits beyond those previously paid.
8. Respondents are entitled to a credit or offset equal to, dollar-for-dollar, the amount of benefits the claimant has previously received for the same medical services pursuant to Ark. Code Ann. §11-9-411.
9. Additional issues not addressed herein are specifically reserved.

DISCUSSION

_____As reflected above, this claim has been the subject of prior litigation. Specifically, a hearing was conducted on November 8, 2002, to determine the

claimant's entitlement to additional workers' compensation benefits, and an Opinion was filed January 8, 2003, from which no appeal was taken by either party and which is now the law of the case. A summary of the prior record is illuminating in addressing the immediate issues.

On September 13, 2001, the claimant was employed as a school teacher at the Wynne Public Schools. The claimant sustained an admitted, compensable injury on that date when a student, running out of a bathroom collided with the claimant, knocking her into a wall. At the time of the claimant's admitted injury, she had recently returned to work following a spinal fusion which had been performed on July 12, 2001. As a result of the claimant's September 13, 2001, compensable injury, she was immediately transported by ambulance to the Crossridge Hospital in Wynne, Arkansas. The claimant was treated at the hospital and released to follow-up with Dr. Keith Williams, an orthopedic surgeon at the Campbell Clinic in Germantown, Tennessee. Dr. Williams was the claimant's primary care physician for her pre-existing condition, and has remained her primary treating physician for the immediate claim. The record reflects that the claimant experienced significant back problems and underwent prior back surgeries before sustaining her admitted, compensable injury on September 13, 2001. The claimant first underwent back surgery in 1988. Dr. Rodney Field, a neurosurgeon at Mid-South Neurological Clinic, in Memphis, Tennessee, performed a

hemilaminectomy at L5 with removal of left L5 disc on July 19, 1988. The claimant experienced additional back problems in the later part of 1991 when she tripped over a dog at home which temporarily exacerbated her back problems and required additional medical treatment. Following the 1991 incident, the claimant was essentially asymptomatic. She subsequently graduated from college and continued working without any further difficulties until on or about 1999 when she began experiencing additional back problems of unknown etiology. The claimant underwent a second back surgery on or about June, 2000, which was performed by Dr. Gregory Ricca, a neurosurgeon in Jonesboro, Arkansas. Claimant's physical condition deteriorated following the June, 2000, back surgery. The claimant eventually came under the care and treatment of Dr. Keith D. Williams, aforementioned, who has been the claimant's primary treating physician since on or about June 20, 2001. As previously noted, Dr. Williams performed a lumbar fusion at L5 S1 on July 12, 2001. The prior record reflects that the claimant underwent the lumbar fusion during the summer recess in order that she could return to teaching during the school year. The claimant had resumed her teaching duties at the time of the September 13, 2001, admitted injury. The claimant has not returned to gainful employment since the September 13, 2001, accident.

Respondents initially exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt medical

treatment, as well as indemnity benefits through on or about April 22, 2002, at which time it controverted all additional benefits. A hearing was conducted on November 8, 2002, to determine claimant's entitlement to additional benefits. An Opinion was filed January 8, 2003, wherein the following findings of fact and conclusions of law were made, *inter alia*:

3. The claimant has shown, by a preponderance of the credible evidence, that she is entitled to additional temporary total disability beginning April 23, 2002, and continuing through a date yet to be determined.
4. The claimant's healing period had not ended as of the date of the within hearing.
5. The claimant has proven, by a preponderance of the evidence, that the respondent is responsible for all outstanding medical and related treatment, including, but not limited to additional back surgery performed on April 29, 2002, and respondent remains responsible for continued reasonably necessary medical treatment.
6. The respondent has controverted all benefits beyond those previously paid. (Comm. Ex. 2)

As reflected by the stipulations, respondents paid the benefits previously awarded, including medical treatment and temporary total disability through October 16, 2003, at which time respondents, for reasons unexplained, once again terminated all benefits. At the time benefits were terminated, the claimant remained under the care and treatment of Dr. Keith Williams. Dr. Williams has, at all relevant times, been recognized as the claimant's treating physician. His treatment has previously been authorized by this Commission.

The claimant's testimony is undisputed. She testified that she has never

been released by Dr. Williams and was receiving active medical treatment at the time respondents stopped paying all benefits. She pointed out that once the respondents stopped paying Dr. Williams, her health insurance policy started paying and that she continued her regular scheduled appointments. Following a failed course of conservative treatment, the claimant underwent additional diagnostic studies including a lumbar discogram. Dr. Williams performed another surgery, specifically, an anterior lumbar interbody fusion with instrumentation during the later part of February, 2004. He discharged the claimant from the hospital on February 29, 2004. The claimant testified that the last surgery improved her back pain, but that she continued to experience leg pain. The claimant had not been released by Dr. Williams as of the date of the within hearing. The claimant stated that her next scheduled appointment with Dr. Williams was October 15, 2004. (Tr.12)

The claimant's credible testimony is corroborated by Dr. Williams. In a report dated July 10, 2003, Dr. Williams pointed out that although the claimant had a solid fusion, she did have some disc space narrowing and slight retrolisthesis at the L4, 5 level which she did not have previously. Dr. Williams scheduled the claimant for a lumbar MRI and also an EMG nerve conduction study. The claimant returned to Dr. Williams on August 28, 2003, complaining of constant pain in both her back and left leg. Based on a review of the lumbar MRI, Dr. Williams concluded that the claimant had endplate changes at L5, S1

and that the L4 disc was somewhat desiccated. In addition, the claimant had a broad based disc bulge at the L4 level. Due to the lack of improvement in symptoms over time, Dr. Williams recommended additional treatment options, specifically, facet injections to see if it would help the claimant's pain while opining that she might ultimately require a fusion due to the changes. Dr. Williams clearly indicated that the claimant was to remain off work until after the facet injections. Thereafter, respondents, for unexplained reasons, unilaterally terminated the claimant's treatment. Following lumbar discography on January 15, 2004, the claimant was scheduled for the surgery previously described which was carried out at the Baptist-Collierville hospital. (Jt. Ex. A, pp.187-190.)

TEMPORARY TOTAL DISABILITY

When an injured employee is totally incapacitated from earning wages and remains in her healing period, she is entitled to temporary total disability benefits. *Arkansas State Highway & Transportation Dept. vs. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *J.A. Riggs Tractor Co. vs. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990). Ark. Code Ann. §11-9-102(12) (Repl. 2002) defines "healing period" as that period for healing of an injury from an accident. The healing period ends when the employee is as far restored as the permanent character of the injury

will permit. *Carroll Gen. Hospital vs. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1976). Where an employee's healing period has ended is a factual determination to be made by the Commission. *Chamber Door Industries, Inc. vs. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

Respondents have offered no credible evidence that the claimant's healing period has ended. Respondents were not justified in terminating temporary total disability on October 16, 2003. To the contrary, Dr. Williams' medical reports clearly kept the claimant off work.

ADDITIONAL MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Respondents maintain that the additional medical treatment that the claimant has received from Dr. Williams, including surgery, is not reasonably

necessary or causally related to the compensable injury. Respondents' contention is without merit.

The evidentiary deposition of Dr. Keith Williams was taken June 1, 2004, and introduced as a joint exhibit at the hearing. Portions of his deposition which I found relevant are set out below:

Q. What were her complaints when she came back in to see you in July of 2003?

A. She was having pain in the middle of her lower back and some discomfort in her right leg which was relatively less severe than her back pain. She had been seen in Little Rock in a pain management setting. She described her pain as constant, particularly in the morning and that her pain was increased with activity.

Q. What was your recommendation for her after your visit with her on July 10th, 2003?

A. At that point I felt like she had some changes at the 4-5 level. She had a little bit of retrolisthesis at 4-5 meaning that the L4 vertebra was shifted backward or posteriorly a little bit which was a new finding, and I asked that she have an MRI and an EMG done at that time. Looking particularly at the EMG of her left lower extremities.

Q. Looks like those were conducted and then she had follow-up with you on August the 28th of 2003?

A. Correct.

Q. What were the findings from the new diagnostic studies?

A. The L4 disk showed some desiccative type changes which is basically a degenerative type change, no significant disk herniation at that level, some slight lateral recessed narrowing. The lateral recess is an area where the nerve begins to exit and a common place for the nerve root to be entrapped or compressed. I felt like she had an increased angulatory changes at the L4 disk on the bending films meaning there was really excessive widening on the

bending films at the L4 disk level, and the EMG showed some very mild or subtle changes in the anterior tibialis muscle which were felt to be inconclusive on their own.

Q. What was your treatment recommendation at that point?

A. Because of her long history of back pain and failure of her other treatment option, I talked to her about doing a facet injection at that time, and I also spoke to her a little bit about possibly doing a fusion depending on how she did with the facet injections and if she was going to do the fusion that she would need to have a differential spinal and discogram done prior to making a final decision about fusion surgery.

Q. Okay. Would you describe to the judge what degenerative disk disease is or desecration of the L4 level of her lumbar spine?

A. Well, desiccative change is basically a descriptive change or change that we can see on particularly an MRI that has to do with a change in the water content of the disk. A normal healthy disk has a relatively high water content in the center portion of the disk, and as the cells that maintain the disk make the proteins and maintain the architecture of the disk and so forth, as those cells begin to die and no longer carry out their function, one of [the] things that happens is the proteins are not produced and the proteins are what binds the water molecules. So when that process breaks down, it shows up on the MRI as a desiccative type change.

Q. As I understand that, degenerative disk disease and dessication is something that just develops over time?

A. I mean the desiccative change is a degenerative change which is something that happens over time, that's correct.

Q. Was there anything from any of the diagnostic studies to determine what, if anything, started the degenerative process in Ms. Britt's L4-5 level of her lumbar spine?

A. Well, I think from an imaging standpoint there is not any particular thing and that's generally the case. I mean, there is usually not a specific incident, and it's not uncommon to not have a disk herniation, although the disk herniation is one sort of possible pathway of the degenerative process. Going back by her history, it does basically go back to her incident where she was

knocked down. That's when her symptoms seemed to have started and basically have continued on since that time. (Jt. Ex. C, pp.13-17)

* * * * *

Q. And do I understand that you can state with a reasonable degree of medical certainty that the accident in September 2001 is a major cause or more than 50 percent of her need for treatment, particularly this February 2004 surgery?

A. Well, I think that, again, to use the proper term, to a reasonable degree of medical certainty I think that the fall in September of 2001 precipitated or worsened this problem that ultimately led to the surgery that she had in February of this year. Does that answer that question?

Q. Yes.

A. Okay. (Jt. Ex. C, pp.36-37)

Although the exact reasons that respondents unilaterally terminated all benefits is unclear, it was apparently based upon its interpretation of some correspondence from Dr. Williams' office to the third-party administrator for the employer; however, as reflected by Dr. Williams' deposition testimony on June 1, 2004, he clearly indicated that he disagreed with respondents' interpretation and that he specifically retracted any such interpretation which was totally inconsistent with his medical opinion of record, aforementioned. (Tr.21-22)(Jt. Ex. C, pp.37-39)

Rather than conduct a further analysis of the voluminous medical evidence, suffice it to say that a preponderance of the credible evidence supports the claimant's contention that all medical treatment, to date, is reasonably necessary and causally related to the admitted injury, and remains

the responsibility of the respondents. Because some of the claimant's medical has been paid by a third-party provider, it is entitled to a credit, dollar-for-dollar, the amount of benefits the claimant has previously received under a group health care plan and must reimburse said provider, benefits previously paid, as well as reimburse the claimant for any out-of-pocket expenses pursuant to Ark. Code Ann. §11-9-411 (Repl. 2002).

AWARD

Respondent, Risk Management Resources, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$410.00 per week beginning October 17, 2003, and continuing through at least October 1, 2004, and until such time as claimant's healing period is determined to have ended.

All accrued benefits shall be paid in lump sum and without discount.

Respondents are further directed and ordered to pay, and/or reimburse, the appropriate provider for all hospital, medical, and related expenses, including, but not limited to surgery performed by Dr. Keith Williams during February, 2004, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Ms. M. Kathleen Talbott, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge