

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E305438

JAY CLARK, Employee

CLAIMANT

CITY OF SPRINGDALE, Employer

RESPONDENT

MUNICIPAL LEAGUE WORKERS' COMPENSATION  
TRUST, Carrier

RESPONDENT

OPINION FILED FEBRUARY 20, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by G. CHADD MASON, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 28, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 3, 2003, and a pre-hearing order was filed on December 5, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to his right shoulder on January 9, 1993.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rate of \$252.00 per week for temporary total disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.
2. Statute of limitations.
3. Attorney fee.

4. Independent intervening cause.

The claimant contends that he is entitled to reasonable and necessary medical treatment arising out of and occurring as a result of his compensable injury. The claimant contends that he has seen a treating physician at least once a year subsequent to his initial injury. Nonetheless, the respondent has controverted payment of any and all medical benefits beginning January 2002. The claimant contends that he is entitled to ongoing medical benefits as well as a controverted attorney fee.

The respondents contend they last provided benefits June 6, 2000. Claimant subsequently sustained an off duty injury to the same body part. The claim for additional benefits said to be needed on account of the original on the job injury was filed on or around October 8, 2003. The claim is barred by the statute of limitations and is also barred because claimant's complaints are attributable to an off the job independent intervening event.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 3, 2003, and contained in a pre-hearing order filed December 5, 2003, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment as a result of his compensable right shoulder injury. The claimant's continued right shoulder problems are not the result of an independent intervening cause.

3. Claimant's claim for additional medical treatment is not barred by the statute of limitations.

4. Respondent has controverted claimant's entitlement to unpaid medical benefits in this case.

### FACTUAL BACKGROUND

The claimant worked as a firefighter for the City of Springdale and suffered a compensable injury to his right shoulder in 1993. As a result of that compensable injury claimant underwent a surgical procedure which was performed by Dr. John Park for a partial rotator cuff tear on March 4, 1993. On April 8, 1993, Dr. Park performed a second surgery which was an anterior glenolabral reconstruction procedure. On March 22, 1994, Dr. Park assigned the claimant a permanent physical impairment rating in an amount equal to 5% to the body as a whole as a result of his right shoulder injury. Since that time, the claimant has continued to return to Dr. Park on a periodic basis for additional treatment on his right shoulder. Dr. Park's treatment has primarily consisted of injections to the claimant's right shoulder.

The respondent paid for some of claimant's treatment with Dr. Park but at some point ceased paying medical benefits. Claimant continued to see Dr. Park but those medical bills were not paid for by respondent. As a result, on October 8, 2003, claimant filed this claim contending that he is entitled to additional medical treatment for his compensable right shoulder injury.

### ADJUDICATION

Initially, I find that claimant has met his burden of proving by a preponderance of the evidence that he is in need of additional medical treatment for his compensable right shoulder injury. A claimant has the burden of proving by a preponderance of the evidence

that medical treatment is reasonably necessary and causally related for treatment of their compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291).

My review of the medical evidence, as well as the testimony of the claimant which I find to be credible, leads me to conclude that claimant has met his burden of proof. As previously noted, claimant underwent two surgical procedures to repair a partial rotator cuff tear in 1993. Although claimant was eventually released by Dr. Park with a 5% permanent physical impairment rating, Dr. Park's medical reports clearly indicate that claimant could expect future problems with his rotator cuff in the future. Medical reports addressing potential future problems include April 8, 1993; March 3, 1994; March 22, 1994; November 9, 1994; and August 13, 1999.

In addition, the remaining medical reports also support a finding that claimant's current problems are simply a continuation of the original injury in 1993. In fact, Dr. Park in a report dated December 18, 2002, indicated that claimant's condition was simply a progression of his original compensable injury.

In reviewing his whole situation, it's obvious that with his prior decompression surgery that he had and partial tearing of the cuff, which we shaved, the majority of these ultimately go on down to full tear pull off with time in active young males.

Dr. Park went on in that report to again indicate that he anticipates in the future that claimant will require a reconstruction of his surgery due to continued problems.

Respondent contends that claimant's continued shoulder problems are not the result of his original compensable injury but rather to a non-work related independent intervening cause. If there is a causal connection between the primary injury and the subsequent disability, there can be no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the

circumstances. *Guidry v. J & R Eads Construction Company*, 11 Ark. App. 219, 669 S.W. 2d 483 (1984). I find no evidence of an independent intervening cause in this case which has resulted in claimant's subsequent disability or need for additional medical treatment.

In support of its contention, respondent relies primarily upon medical treatment claimant received from Dr. Park on February 16, 2001. Claimant testified that he made this appointment with Dr. Park as a result of continued problems with his right shoulder. However, before claimant was seen by Dr. Park on that date he had a slip on the ice and had some pain in his left shoulder. However, claimant testified that he did not injure his right shoulder as a result of the slip on the ice and that he did not receive any medical treatment to his left shoulder at the time of his accident with Dr. Park on February 16, 2001. Instead, claimant testified that Dr. Park simply gave him another injection in his right shoulder as had been done on prior occasions. A reading of Dr. Park's report from that date could lead one to conclude that claimant had re-injured his right shoulder as a result of this incident. Claimant was aware of this potential confusion and contacted Dr. Park who authored a letter dated April 11, 2001, in which he seems to relate his treatment on February 16, 2001 to the incident on the ice as a new strain to claimant's prior shoulder problem.

I find based upon claimant's testimony which I find to be credible that claimant did not receive any medical treatment on his left shoulder from Dr. Park on February 16, 2001. Dr. Park's medical reports prior to February 2001 and subsequent to February 2001 all indicate that claimant's shoulder problems are related to his right shoulder, not his left shoulder. Furthermore, claimant specifically testified that when he slipped on the ice he did not injure his right shoulder in any way.

Thus, while Dr. Park's medical report of February 16, 2001 is somewhat confusing and his letter of April 11, 2001 is even more so, I find that Dr. Park's treatment on February 16, 2001 and his subsequent medical treatment were for claimant's right shoulder injury

which resulted from his original compensable injury, not an incident of slipping on the ice.

The medical records also indicate that at one point claimant was involved in a motor vehicle accident and that in 1995 claimant had additional pain after pulling on a starter cord. With respect to the motor vehicle accident, I find insufficient evidence that claimant suffered any additional injury to his right shoulder as a result of that motor vehicle accident. Furthermore, I do not find that pulling on a starter cord was unreasonable under the circumstances.

In summary, I find based upon the evidence presented that claimant has met his burden of proving by a preponderance of the evidence that the medical treatment he has received from Dr. Park subsequent to his surgery is reasonable and necessary and causally related to his original compensable injury. This includes medical treatment which has previously been paid for by the respondent as well as unpaid medical treatment. In addition, I also find based upon the medical reports of Dr. Park that claimant is entitled to continued medical treatment for his right shoulder injury. Respondent has controverted claimant's entitlement to all unpaid medical expenses.

The next issue for consideration involves respondent's contention that claimant's claim for additional compensation benefits is barred by the statute of limitations. A.C.A. §11-9-702(b)(1) states that claims for additional compensation are barred unless they are filed with the Commission within one year from the date of last payment of compensation or two years from the date of injury, whichever is greater. Here, respondent contends that its last payment of compensation occurred in June 2000 and that this claim for additional benefits was not filed until October 8, 2003; therefore, this claim is barred by the one year statutory time period.

However, I note that it is the furnishing of medical treatment, not the actual payment for those services, which constitutes payment of compensation for purposes of the statute of limitations. *Heflin v. Pepsi-Cola Bottling Company*, 195 Ark. 224, 424 S.W. 2d 365

(1969); *Cheshier v. Foam Molding*, 37 Ark. App. 78, 822 S.W. 2d 412 (1992). Thus, if an employer furnishes medical treatment the statute of limitations is tolled. *McFall v. U.S. Tobacco Company*, 246 Ark. 43, 434 S.W. 2d 838 (1969).

\_\_\_\_\_The furnishing of medical services was discussed by the Full Commission in *Diane Jack v. Around The World Travel*, Full Commission Opinion filed June 15, 1995 (D916900).

In that particular case, the Full Commission stated:

Consequently, the receipt of medical treatment is not sufficient, standing alone, to prevent the statute of limitations from barring a claim. Instead, it must be shown that the employer furnished the medical services. Where a respondent furnishes medical treatment and has either actual or constructive knowledge that the claimant is receiving medical treatment or that the claimant would require further medical treatment, the respondent continues to furnish medical treatment until it communicates to the claimant that it is controverting the claimant's entitlement to further medical treatment. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1995); see also, *Safeway Stores, Inc. v. Lamberson*, 5 Ark. App. 191, 634 S.W. 2d 396 (1982).

In this particular case, I find that respondent had constructive knowledge that claimant was receiving medical treatment and that he would require further medical treatment. As previously noted, Dr. Park on numerous occasions had indicated that claimant would continue to have problems with his right shoulder.

Dr. Park's letter of, April 8, 1993:

He realizes that hopefully this will resolve stability to the shoulder, but there still may be problems with the rotator cuff that linger down the line.

Dr. Park's letter of March 3, 1994:

Certainly this could progress down the line to a complete tear requiring formal operative reconstruction and he understands this.

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It is certainly not unlikely that down the line if rotator cuff symptoms persist that he could progress to rotator cuff lesion which would require formal repair.

Dr. Park's letter of March 22, 1994:

He may well require additional surgery in the future if his rotator cuff progresses on to a complete tear. Certainly this is speculation, but with known rotator cuff disease present, this is a real possibility.

Dr. Park's letter of November 9, 1994:

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He realizes that he does have rotator cuff disease, in addition, and this could be a problem down the line.

Dr. Park's report of August 13, 1999:

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He realizes he will probably have to have some further work-up regarding this in the future and this appears to be an increasingly symptomatic problem with him but he wants to get through this summer at least prior to this.

Furthermore, as previously noted, Dr. Park in his report of December 18, 2002 noted that claimant's continued problems were expected and that future surgery is a possibility. In each of Dr. Park's medical reports following his release of claimant in 1994 he states that claimant should return on an as needed basis. Claimant testified that he did return to Dr. Park on an as needed basis and that each time he did so he would receive an injection in his shoulder which provided temporary relief.

Respondent last paid for Dr. Park's medical treatment in June 2000. However, claimant continued to see Dr. Park for further evaluations regarding his right shoulder on August 22, 2001; February 28, 2002; December 18, 2002; and October 8, 2003. I find that all of these medical visits with Dr. Park were reasonable and necessary and causally related to his original compensable injury. I also find that respondent was aware that this additional medical treatment would be necessary based upon Dr. Park's numerous statements that claimant would have additional problems in the future.

Accordingly, for the foregoing reasons, I find that claimant's claim for additional

benefits filed October 8, 2003 was within one year of the date of last payment of compensation. Here, claimant's claim was filed within one year from the date he last received medical treatment from Dr. Park on December 18, 2002. That medical treatment and the other visits to Dr. Park since June 6, 2000 served to timely toll the statute of limitations based upon respondent's constructive knowledge that claimant would need continued medical treatment for his right shoulder injury. Therefore, this claim is not barred by the statute of limitations.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that medical treatment provided by Dr. Park is reasonable and necessary and causally related to his compensable injury. This includes prior medical treatment which remains unpaid by the respondent as well as future medical treatment. Respondent has controverted claimant's entitlement to all unpaid medical benefits. Claimant's claim for additional compensation benefits is not barred by the statute of limitations.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half to be paid by the respondents but with no fee forthcoming from the claimant since no benefits are being paid directly to the claimant.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE