

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F112953

LISA COLLINS, EMPLOYEE

CLAIMANT

WARD VETERINARY CLINIC, EMPLOYER

RESPONDENT

CENTENNIAL INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED MARCH 10, 2004

Remanded by the Full Commission on January 14, 2004. Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 17, 2003, at El Dorado, Union County, Arkansas.

Claimant represented by the HONORABLE F. MATTISON THOMAS, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim on April 17, 2003, to determine claimant's entitlement to additional workers' compensation benefits as a result of her compensable October 17, 2001, low back injury in the employment of respondent. In a September 4, 2003, Opinion filed pursuant to the hearing, claimant was awarded certain benefits, to include a determination of the appropriate compensation benefit rate, temporary partial disability benefits, a change of treating physician, and the payment of medical benefits.

An appeal of the Administrative Law Judge's September 4, 2003, Opinion was filed by the respondents to the Full Arkansas Workers' Compensation Commission. On December 10, 2003, respondents filed with the Full Commission a Motion to Stay Appeal and Remand to the Administrative Law Judge for Consideration of New Evidence. On December 26, 2003,

claimant notified the Full Commission of her agreement with the Motion filed by respondents. In an Order filed January 13, 2004, the Full Commission granted the Motion, and remanded the matter to the Administrative Law Judge to consider the new evidence.

On February 24, 2004, a teleconference was conducted in this claim. During the course of the afore conference the new evidence which served as the basis for the motion, a November 6, 2003, report of Dr. Ronald N. Williams was identified, and is herein designated a part of this record, as Commission Supplemental Exhibit #1.

DISCUSSION

As reflected in the September 4, 2003, Opinion, Lisa Collins, the claimant, with date of March 27, 1965, commenced her employment with respondent-employer in August 2001. Claimant performed the duties of a veterinary technician at a wage rate of \$7.00 per hour. Approximately sixty (60) days after starting work for respondent-employer, claimant received an increase in wages in the form of a percentage of the sales. During her employment with respondent-employer claimant did not consistently work a forty-hour work-week. Claimant's work-week ranged from thirty-six to forty hours.

Claimant acknowledged that prior to October 17, 2001, she had experienced muscle strains which had resulted in muscle spasms and pain in her lower back for a period of time. On October 17, 2001, claimant suffered an injury to her lower back within course and scope of her employment while lifting a bag of trash from a trash can. (T. 10).

Claimant received treatment relative to her October 17, 2001, injury on the date of its occurrence under the care of Dr. Larry Horn. The following day claimant initiated treatment under the care of Dr. Rick Brown, an El Dorado chiropractic physician. Claimant was seen in

follow-up by Dr. Brown on several occasions.

Once the claimant filed a claim for workers' compensation benefits relative to the October 17, 2001, injury, she was directed by respondents to Dr. Gregg Massanelli, an El Dorado orthopedic physician, for further medical treatment. While under the treatment of Dr. Massanelli claimant was referred to physical therapy. Claimant noted that Dr. Massanelli wanted to refer her to a pain management doctor. Claimant treated with Dr. Massanelli until she was referred by same to Dr. Scott Schlesinger, a Little Rock neurosurgeon.

Claimant was eventually seen by Dr. Thomas Hart, a pain management specialist, for her continued complaints growing out of her October 17, 2001, injury. Claimant was not referred to Dr. Hart by either Dr. Massanelli or Dr. Schlesinger. While under the care of Dr. Hart a specific treatment regimen was recommended, to include discography.

Claimant desired to proceed with the medical treatment as recommended by Dr. Hart, and noted that she had benefitted from his treatment to date. Accordingly, claimant requested a change of treating physician to Dr. Hart. Claimant was not furnished a Form N, pursuant to Ark. Code Ann. § 11-9-514, following her October 17, 2001, injury. Accordingly the change of physician rules were not applicable with respect to medical treatment received by the claimant from physicians other than those recognized or sanctioned by the respondents. Since the medical treatment rendered to the claimant was reasonably necessary and related to the treatment of the her compensable injury, respondents are liable for the cost of same.

Claimant was granted a change of treating physician to Dr. Thomas Hart relative to her October 17, 2001, compensable injury pursuant to Ark. Code Ann. § 11-9-514 (a) (3) (ii). As previously noted, Dr. Hart had recommended discography relative to the claimant's injury. Prior

to proceeding with the treatment recommendations of Dr. Hart, while the claim was in litigation, claimant suffered an event in the employment of a subsequent employer which resulted in additional medical treatment.

Due to the residuals of her October 17, 2001, injury, claimant was unable to continue in the employment of respondent-employer. As of October 11, 2002, claimant came under the care of Dr. Thomas Hart relative to her October 17, 2001, compensable injury. Claimant received active medical treatment to address the underlying condition causing her disability growing out of the injury. Claimant, though employed by a different employer as of October 11, 2002, was earning less than when employed by respondent at the time of her injury. Claimant, as of October 12, 2002, was again within her healing period, and since she was employed at a reduced average weekly wage, was entitled to temporary partial disability benefits, pursuant to Ark. Code Ann. § 11-9-520.

On September 11, 2003, while carrying an air conditioner within the course and scope of her subsequent employment, claimant fell. Claimant was referred to Dr. Ronald N. Williams, a Little Rock neurosurgeon, for medical treatment relative to her low back complaint. In a report of November 6, 2003, relative to the claimant, Dr. Williams noted:

. . . She tells me she originally injured her back around October 17, 2001 and had some mild right leg pain associated with that. She had some steroids and physical therapy and got somewhat better. She retired work and re-injured her back on 9/11/03 when she fell carrying an air conditioner. That has caused an increase in both back pain and right leg pain, which goes as far as the heel. She is not presently working. She had a MRI done on 11/19/01 that shows a bulging disc at L4-5. A more recent MRI on 9/22/03 shows a fairly large ruptured disc on the right at L4-5 and degenerative changes elsewhere. (Comm. Supp. Ex. 1).

The report further reflects the recommendation for surgery and claimant's desire to proceed with

same. Claimant did in fact under go the surgery under the care of Dr. Williams.

As previously noted this claim was remanded to consider the impact of the new evidence, the November 6, 2003, report of Dr. Williams, on the September 4, 2003, Administrative Law Judge ruling.

After a through consideration of all the evidence in the record, to include the November 6, 2003, report of Dr. Ronald Williams, I make the following:

FINDINGS

1. Findings 1 through 4 as reflected in the September 4, 2003, Opinion of the Administrative Law Judge, are re-affirmed, and remain in full force and effect in this ruling, in that the same is not impacted or in conflict with the new evidence considered in the November 6, 2003, medical report.

2. The claimant was temporarily partially disabled for the period beginning October 12, 2002, and continuing until September 11, 2003.

3. There is no evidence in the record to reflect that claimant was furnished a Form N pursuant to Ark. Ann. Code § 11-9-514, such that the change of physician rules are not applicable in the instant claim. Medical treatment rendered to the claimant by Dr. Brown, Dr. Horn, and Dr. Hart was reasonable, necessary and related to the treatment of claimant's compensable injury, the cost of which respondents are liable.

4. Claimant's request for a change of treating physician relative to her October 17, 2001, compensable injury, pursuant to Ark. Code Ann. § 11-9-514 (a) (3) (ii), has been rendered moot by the events of September 11, 2003,- - her fall and subsequent medical treatment under the care of Dr. Gary L. Bevill and Dr. Ronald N. Williams relative to same. Also rendered moot

by the events of September 11, 2003, is the recommendation of Dr. Hart regarding discography with respect to the claimant's back complaint growing out of the October 17, 2001, compensable injury.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of October 17, 2001.

6. Respondents have controverted the payment of medical benefits to the claimant relative to her treatment under the care of Dr. Thomas Hart, and her entitlement to temporary partial disability benefits.

CONCLUSION

The compensability of the claimant's October 17, 2001, injury in the employment of respondents is not disputed. Claimant asserts entitlement to additional workers' compensation benefits relative to her compensable injury.

The present claim is governed by the provisions of Act 896 or 1993, in that claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. Claimant sought additional medical benefits, the appropriate weekly compensation benefit rate, temporary partial disability benefits, and a change of treating physician.

The Opinion filed September 4, 2003, addressed each of the above issues. The claim was remanded to consider the impact of new evidence, a November 6, 2003, report, on the September 4, 2003, ruling. On the issue of the appropriate weekly compensation benefit rate, the findings, conclusions, and award, as reflected in the September 4, 2003, Opinion are re-affirmed and incorporated in this ruling.

The findings, conclusions, and award on the issue of the reasonable and necessary medical treatment as reflected in the September 4, 2003, Opinion are re-affirmed and incorporated in this ruling. The afore has not been adversely effected or impacted when consideration is had of the new evidence on the facts relative to this issue.

Claimant's request for a change of physician relative to the October 17, 2001, compensable injury in the employment of respondent-employer has been rendered moot by the events as reflected in the new evidence. While the evidence clearly reflects that claimant continued to experience residuals relative to her October 17, 2001, compensable injury as of October 11, 2002, when she was initially seen by Dr. Thomas Hart, and that she had not had a change of physician pursuant to Ark. Code Ann. § 11-9-514 (a)(3)(ii), respect to her compensable injury, the events of September 11, 2003, rendered same an exercise in futility.

The November 6, 2003, medical report of Dr. Ronald N. Williams, clearly reflects, base on a comparison of two MRI studies, a change in the affected disc, L4-5, as well as a change in the claimant's symptoms, which resulted in a change in the medical treatment, surgery. Granting a change of treating physician at this juncture, in light of the new evidence, would be one of form over substance. In so far as the findings, conclusions, and award reflected in the September 4, 2003, Opinion, are in conflict with the change of physician issue in this ruling, they are reversed and of no effect.

Likewise, on the issue of temporary partial disability benefits, in so far as the findings, conclusions, and award reflect in the September 4, 2003, Opinion, are not in conflict with the findings, conclusions, and award in this ruling, they are herein re-affirmed and incorporated in this ruling. In so far as the findings, conclusion, and award on the issue of claimant's entitlement

to temporary partial disability benefits in this ruling conflict with the September 4, 2003, Opinion, the present ruling is controlling.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary partial disability benefits of 66-2/3 % of the difference of her average weekly wage at the time of her employment with respondent and her average weekly wages in her subsequent employer, as a result of the October 17, 2001, compensable injury. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the discharge of the aforementioned obligation.

Respondents are further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, to include the cost of claimant's medical treatment under the care of Dr. Thomas Hart, relative to the claimant's October 17, 2001 compensable injury, through September 11, 2003.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable F. Mattison Thomas, III, on the controverted portions of this award, pursuant to Ark. Code Ann. § 11-9-715, and in accordance with *Holiday Inn-West v. Coleman*, 31 Ark. App. 224, 792 S.W. 2d 345 (1990).

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-802, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

ANDREW L. BLOOD,
Administrative Law Judge