

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306043

PATRICIA A. CURRY, EMPLOYEE **CLAIMANT**

**CONAGRA POULTRY COMPANY,
SELF-INSURED EMPLOYER** **RESPONDENT**

GALLAGHER BASSETT SERVICES, INC., TPA **RESPONDENT**

OPINION FILED SEPTEMBER 15, 2004

Hearing before Administrative Law Judge J. Mark White on July 29, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. R. Theodor Stricker, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by Mr. Norwood Phillips, Attorney at Law, El Dorado, Arkansas.

STATEMENT OF THE CASE

On July 29, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on May 17, 2004, and a Prehearing Order was entered that same day. A copy of the May 17, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee/self-insured employer relationship existed at all relevant times, including June 17, 2002; that on June 17, 2002, the claimant sustained a compensable injury to her leg and knee; that the claimant sustained a compensable gradual-onset injury to her right wrist; that the respondents have provided some medical benefits for both injuries; that the claimant earned an average weekly wage of \$358, entitling her to a compensation rate of \$239 for total disability benefits and \$180 for permanent partial disability benefits; and that any injury to the spine is not under consideration herein.

The parties agreed that the issues to be presented were whether the claimant is entitled to temporary total disability benefits; whether the medical treatment rendered by Dr. Prather was reasonably necessary in connection with a compensable injury; whether additional medical treatment remains reasonably necessary in connection with a compensable injury; and controversion and attorney's fees. All other issues, including rehabilitation and permanent partial disability, are reserved.

The claimant contends that she is entitled to temporary total disability benefits from her last date of work, October 14, 2002, to a date yet to be determined; that she is entitled to medical benefits and relief to which she may be entitled, including payment of medical treatment provided by Dr. Prather; that this claim

was controverted in its entirety until July 19, 2004; and that she is entitled to attorney's fees.

Respondents contend that the claimant did not sustain any period of temporary total disability; that the claimant has no permanent partial disability on account of either compensable injury; and that the medical treatment provided by Dr. Prather was on account of the claimant's back and spine, not her compensable injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she

remained in the healing period for her compensable wrist injury after June 14, 2002.

4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her compensable wrist injury.
5. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period for her compensable knee injury after October 11, 2002.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her compensable knee injury.
7. The claimant has failed to prove by a preponderance of the evidence that the medical treatment rendered by Dr. Prather was reasonably necessary in connection with a compensable injury.
8. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury.
9. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant has a variety of medical problems, some compensable and some not. In 2001, she sustained a compensable gradual-onset injury to her right hand and wrist in the form of carpal tunnel syndrome and tendonitis. She was treated conservatively by Dr. Matthew Callaway, who released her from care on June 14, 2002. Throughout her treatment, the claimant was able to continue working, albeit at light duty. On June 17, 2002, she sustained a compensable injury to her right leg and knee when she fell at work. Dr. Callaway treated her and diagnosed a "sprain/strain." He treated her conservatively, and again, the claimant continued working.

The claimant last worked on October 14, 2002. On October 16, she applied for a medical leave of absence. Her application for disability benefits filed December 13 listed her injury as, "degenerative disc disease of lumbar spine" and "chronic back & leg pain." The claimant testified that she stopped working because of both her back problems and her compensable injuries; Mona Johnson, a nurse for the respondent-employer, testified that the claimant said only that her leave of absence was due to her back. The parties have stipulated that the claimant's back and spine problems are not under consideration herein.

At some point in 2003 the claimant began to treat with Dr. Kenneth Prather. The only records of Dr. Prather submitted into evidence are from July, 2003. The claimant contends that Dr. Prather's treatment was intended to address both her unrelated spinal problems as well as her compensable injuries. The claimant testified at the hearing that she is still having problems with both her right wrist and her right knee. She testified that both are still swollen, and that she uses a cane because of her leg and back problems. She testified that the medication she is now taking helps the problems she has in her right wrist and right knee.

II. Adjudication

A. Temporary Total Disability

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period or until she returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant herein alleges that she is entitled to temporary total disability benefits, in that she stopped working on account of one or both of her compensable injuries – an injury to the right leg and knee, and an injury to the right wrist, both of which are scheduled injuries. *See* ARK. CODE ANN. § 11-9-521. The claimant testified at the hearing that she continues to have pain and swelling in both her right knee/leg and right wrist, and that she has recently been treated for both injuries. Yet, the medical records do not corroborate her testimony.

The last documented treatment of the claimant's wrist was June 14, 2002, when she was released from care by Dr. Callaway. The claimant testified that Dr. Prather has treated her for her wrist since that time, but there are no medical records in evidence to establish what that treatment was or when it was provided. The claimant acknowledged in her deposition that the pain in her wrist now is the same as it was when Dr. Callaway released her. Clearly, the claimant's wrist condition has stabilized, and there is no evidence to show that additional treatment would have improved her condition after June 14, 2002. In other words, the claimant was as far restored as the permanent character of her injury would permit. Therefore, I find that the claimant reached the end of her healing period for her compensable wrist injury no later than June 14, 2002. The claimant seeks temporary total disability benefits from October 14, 2002, to a date yet to be determined; therefore, I conclude

that the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her compensable wrist injury.

As for her compensable right knee injury, the claimant was initially treated by Dr. Callaway from June 18, 2002, through July 10, 2002. On July 10, she complained of buckling in her knee. She returned to Dr. Callaway again on October 11, 2002, still complaining of buckling and swelling. When Dr. Callaway saw the claimant on October 11, he provided no treatment and prescribed no medications. He only examined the claimant, and then referred her to Dr. Dwayne Daniels.

Dr. Daniels examined the claimant on October 16 and ordered an MRI. After the MRI showed only degenerative changes, Dr. Daniels released the claimant from his care on October 23. Significantly, at no point in time did Dr. Daniels actually *treat* the claimant's knee injury; he only examined her, and concluded that further treatment was not indicated. Given the fact that neither Dr. Callaway nor Dr. Daniels actually provided treatment intended to relieve the knee condition after October 11 (e.g., medication, injections, physical therapy, etc.), I must find that the claimant's knee condition had stabilized by that time. There is no evidence in the record to show that any treatment rendered after October 11 would have improved the claimant's condition; given the lack of treatment by Drs. Callaway and Daniels, I must conclude that nothing in the way of treatment would have improved the

claimant's knee condition after October 11. In other words, the claimant was as far restored as the permanent character of her injury would permit.

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that she remained in the healing period for her compensable knee injury after October 11, 2002. The claimant seeks temporary total disability benefits from October 14, 2002, to a date yet to be determined; therefore, I conclude that the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her compensable knee injury.

In making this finding, I am aware that the claimant was again treated for her right knee on January 6, 2003. This time, however, Dr. Callaway recorded in his history, "The onset of the knee pain has been gradual and has been occurring in a persistent pattern for 1 month." Dr. Callaway's earlier notes make clear that he was aware of the claimant's compensable knee injury. Given Dr. Callaway's description of this knee problem as "gradual," and given the lapse of time from the last treatment provided for the claimant's compensable knee injury, I cannot find a causal connection between the claimant's compensable knee injury of June 17, 2002, and this treatment provided by Dr. Callaway on January 6, 2003. The treatment rendered by Dr. Callaway on January 6, 2003, will not extend the healing period of the claimant's compensable knee injury.

B. Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

The claimant contends that the treatment provided by Dr. Prather in July, 2003, was reasonably necessary in connection with the claimant's compensable injuries. The medical records do not support this contention. The letter drafted by Dr. Prather to the Social Security Administration on July 7, 2003, mentions only the claimant's non-compensable spinal problems and vascular disease; it makes no mention whatsoever of the claimant's compensable right knee or right wrist injuries. Dr. Prather's treatment and physical therapy notes do make mention of problems with the *left* leg, but the claimant's compensable injury was to her *right* leg, as established by the emergency room records of June 17, 2002, the date of her injury. In short, there is no evidence whatsoever in the medical records that the treatment provided by Dr. Prather in July, 2003, had any connection to the claimant's compensable injuries. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that the medical treatment rendered by Dr. Prather

was reasonably necessary in connection with a compensable injury.

As noted above, it has been some time since the claimant was last treated for her compensable injuries. The treatment recently provided by Dr. Prather was plainly for the claimant's back – not the compensable injuries to her right knee or wrist. There is no evidence in the record to show that any doctor has recommended additional medical treatment for these compensable injuries. And the claimant acknowledged in her deposition that the pain in her wrist now is the same as it was when Dr. Callaway released her. Given this evidence, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she is entitled to benefits. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge