

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. FI07922

JACQUELYN DILL

CLAIMANT

MEDICAL LODGES, INC.

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 6, 2004

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by GARNET NORWOOD, Attorney, Texarkana, Texas.

Respondents represented by ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 26, 2004, in Little Rock, Arkansas, before Administrative Law Judge C. Michael White. There was no pre-hearing order entered in this case.

At the hearing, the following stipulations have been offered:

1. On May 21, 2001, the relationship of employee-employer (presumably carrier) existed between the parties.
2. On May 21, 2001, the claimant sustained a compensable injury or injuries presumably to her back and right hip.
3. On May 21, 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$355.00 for total disability and \$266.00 for permanent partial disability.

The foregoing stipulations are hereby accepted.

By agreement of the parties, the sole issue for resolution, at the present time, is the claimant's entitlement to continued temporary total disability benefits from the date those benefits ceased (presumably on or about January 8, 2004), through a date yet to be determined.

In regard to this issue, the claimant contends that she has continued to be temporarily totally disabled, as result of her compensable injuries, and that this temporary total disability will continue until some date in the future.

The respondents contend that the claimant reached maximum medical improvement, on or before January 8, 2004, and at that time, her temporary total disability benefits were stopped.

The record to be considered in resolving this issue, is not entirely clear. Obviously, the transcript of the hearing on August 26, 2004, together with the exhibits introduced at the hearing, comprise at least a part of this record. Subsequent to the hearing, the claimant tendered a voluminous packet of medical reports and records. On September 1, 2004, Judge White wrote respondents' counsel and requested if he had any objections to the introduction of these subsequent exhibits. I cannot find in the file any reply by the respondents' attorney to this inquiry. On October 12, 2004, Chief Judge Greenbaum advised the parties that he considered the record to comprise the transcript of August 26, 2004 hearing, and the voluminous packet of medical reports subsequently tendered by the claimant on September 1, 2004. Again, respondents' counsel has voiced no objection. Therefore, I (as did Judge Greenbaum) assume that the present record in this case consists of the transcript of the hearing (together with its exhibits) and the voluminous packet of medical records subsequently introduced by the claimant.

DISCUSSION

_____The sole issue presented for resolution at the present time is the claimant's entitlement to continued temporary total disability benefits, after January 8, 2004. The burden rests upon the claimant to prove her entitlement to these continuing benefits. As the claimant's injuries, in this case appear to involve portions of her body that are "unscheduled" under Ark. Code Ann. § 11-9-521, she must prove two separate facts to entitle her to the continued temporary total disability benefits that she now seeks. First, she must establish that she has continued within her healing period from the effects of her compensable injury or injuries. Secondly, she must show that her compensable injury or injuries have continued to render her totally disabled from performing all

forms of regular gainful employment for which she is otherwise qualified.

In regard to the duration of the healing period, this is a medical question that must be resolved upon the basis of the greater weight of the credible medical evidence presented. The healing period ends when the underlying physical damage caused by the compensable injury or injuries resolves or at least stabilizes, at a level where nothing further in the way of time and medical treatment offers a reasonable expectation of improvement. The continued presence of symptoms or even disability is not sufficient, in and of itself, to extend the healing period.

In support of their contention that the claimant's healing period ended on or about January 8, 2004, the respondents have offered the medical reports and records of Dr. John A. Sklar. Dr. Sklar's reports indicate, that he possesses expertise in the area of physical medicine and rehabilitation, pain medicine, and disability evaluation. In November of 2003, he evaluated the claimant at the respondents' request. He states that he had available for his review various test results and records provided him by the respondents. In his report of February 25, 2004, Dr. Sklar opined that the claimant had reached maximum medical improvement (MMI) in regard to her compensable physical injuries. He also expresses the opinion that the claimant's continued difficulties and extensive disability are primarily psychosomatic in origin.

In support of her contention that she has continued within her healing period, the claimant has offered a narrative report from Dr. Rodney Chandler, a narrative report from Dr. Johannes Gruenwald, and the voluminous packet of subsequent medical records by physicians too numerous to mention (much of which has no particular relevance on the issue currently before the Commission). Dr. Chandler appears to be a family practitioner. Dr. Gruenwald appears to be an orthopaedic surgeon and has been one of the claimant's primary treating physicians.

In his narrative report of August 24, 2004, Dr. Chandler opined that the claimant is experiencing a multitude of disabling conditions, thoracic strain, lumbar strain with nerve root irritation, seizure disorders, anxiety, migraine headaches, and chronic hip pain. He summarized his report by stating:

“Ms. Jacquelyn Dill is currently unable to work. Her symptoms have persisted and she continues to suffer with these chronic conditions. It is in my opinion that she should be strongly considered for disability benefits. Please contact me, if you have any further questions regarding this matter.”

However, he did not state that the claimant requires further medical treatment for the physical damage caused by her compensable injuries. His indication that these conditions are chronic would imply that the damage had stabilized and that any further treatment she might require would be merely for symptomatic relief. His narrative report is not particularly supportive of the claimant’s contention that she continues within her healing period from the effects of her compensable injuries.

In his report of March 24, 2004, Dr. Gruenwald indicated that he saw the claimant for an evaluation on that date. He noted that the claimant continues to have significant symptoms involving her right hip. It is also his opinion that these symptoms are sufficient to cause the claimant to be “completely disabled.” However, he did not indicate the physical damage to her hip required continued treatment, nor did he recommend or provide any further treatment (except to recommend possible treatment for her depression). He simply directed the claimant to return for follow up in approximately a year or as needed. Dr. Gruenwald’s report also fails to support the claimant’s contention that she continues in need of active medical treatment to resolve or improve any actual physical damage produced by her compensable injury or injuries within her “healing period”.

The unindexed morass of medical records that comprise the claimant’s subsequently admitted exhibit (contained in the white Fed Ex envelope in the Commission’s file) also fails to support the claimant’s contention that she has continued within her healing period from the effects of her compensable injuries after January 8, 2004. Of relevance to this issue, are the reports and records of Dr. Rodney Chandler, various reports and records of Dr. Gruenwald, some scant record from a Dr. Wong of Wadley Health System, and the results of an EMG test (performed on January 27, 2004).

The reports and records of Dr. Chandler reveal that he has seen the claimant for approximately once a month for the last several years. His reports show that, for at least a year prior to January 8, 2004, the claimant's complaints have remained essentially the same. These consist not only of her standard complaints of pain involving her hip and right lower extremity, but various other complaints that are focused primarily on seizure disorders and psychological difficulties. Throughout this period, Dr. Chandler's treatment for the claimant's chronic symptoms with her back, right hip, and right leg have consisted of pain medication, occasional physical therapy (sometimes refused by the claimant) and directions to follow up with any appointments she might have with the various specialists. After January 8, 2004, the claimant's complaints to Dr. Chandler have continued to remain the same and Dr. Chandler's treatment has also continued to be the same. All of the actual treatment rendered the claimant by Dr. Chandler has been directed toward alleviating her chronic complaints of pain.

From the claimant's testimony and the scant records of Dr. Wong, it appears that Dr. Wong has been authorized by the respondents to also provide the claimant with treatment directed towards alleviating her chronic pain complaints. From his bare records and the claimant's testimony it appears that he is attempting to do this by using medication, such as Neurotin and by epidermal trigger point injections with steroids and local anesthetics. There is no indication that Dr. Wong's treatment is in any way directed toward resolving or improving the physical damage caused by her compensable injury or injuries.

The nerve conduction studies performed on the claimant's lower extremities (apparently at the request of Dr. Chandler) are interpreted as demonstrating abnormalities, in the form of a peroneal neuropathy of the right lower extremity and isolated denervation of the sacral paraspinal muscles of "unknown" significance. However, there is no indication that these particular abnormalities are even related to the claimant's compensable injury or injuries or are playing any role in her current difficulties. More importantly, there is no absolutely no medical evidence presented to indicate that these observed defects require or would be amendable to any particular

type of treatment. It is of particular importance to note that Dr. Gruenwald was apparently aware of these tests at the time of his last visit with the claimant on March 4, 2004, but does not appear to attach any significance to these findings in his report of that date.

Contrary to the claimant's testimony, there is absolutely no indication in any of the reports and records of Dr. Gruenwald that he anticipates any further medical treatment directed toward the physical damage caused by the claimant's compensable injury to her right hip. In her testimony, the claimant stated:

"Q. What impression did you get from (Dr. Gruenwald)?

- A. That I have severe arthritis and if it gets much worse, he could either--if the infection got in the bone, they would end up taking the bone out from the knee to the hip joint, or if the arthritis and everything goes worse and the pain keeps getting worse like it is, they can go in and do a hip replacement, because I am missing cartilage inside the hip joint and it is causing the joints to rub against each other and it is causing--and it is messing my back up."

In his report of July 31, 2003, Dr. Gruenwald diagnosed the claimant's difficulties as "chronic pain right hip, previous right hip infection". He further gave his impression of the claimant's right hip complaints as:

1. There does not appear to be an orthopaedic cause for the patient's right hip pain as the MRI and the previous other radiographic studies of the right hip are negative.
2. The patient was given Ultraset #30 for pain. The patient was advised to follow up with her primary care physician for continued management of the right hip pain.
3. The patient will return to the clinic on a p.r.n. basis."

The MRI study, to which Dr. Gruenwald referred was performed on May 19, 2003. This study was interpreted as showing "chronic" soft tissue defects that were "largely unchanged" since the previous study on February 11, 2003. This study was also expressly interpreted as showing no definite evidence of acute inflammatory process, regional fracture, arthritic disease, or bone necrosis involving the claimant's right hip. All the medical records show that the infection involving the claimant's right hip had totally resolved long before January 8, 2004.

The claimant's visit with Dr. Gruenwald, on July 31, 2003, was the last visit she had with him until the most recent visit on March 4, 2004. Clearly, Dr. Gruenwald's reports, concerning this most recent visit, do not show any significant change in his opinion from that expressed in his prior report of July 31, 2003.

It is impossible to understand from the medical evidence presented how the claimant arrived at her "impression" of her condition. However, it is clearly erroneous. None of the medical evidence presented shows that the claimant has ever experienced osteomyelitis or an infection of the bone in her hip. There is no evidence that she is experiencing any significance arthritis in her right hip. Nor is there any evidence that she is missing any significant amount of cartilage in her hip. In fact, as evidenced by Dr. Gruenwald's report of March 31, 2003, there is no evidence of any type of "orthopaedic cause" for the claimant's continuous chronic right hip pain. There is certainly no evidence of any orthopaedic condition that might require a total hip replacement.

I find the facts in the present case similar to those before the Court in the case of Mad Butcher, Inc v. Parker, 4 Ark. App. 124, 628 S.W. 2nd 582 (1982), and I find the result controlling here. After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence shows that the actual physical damage caused by the claimant's compensable injury had resolved or at least, become fixed and permanent by January 8, 2004. Thus, she has failed to prove that her healing period has extended beyond that date and that she would be entitled to continuing benefits for temporary total disability. However, this in no way means that the claimant may not be entitled to reasonable appropriate medical services directed solely toward the treatment of her chronic complaints. The claimant may also prove herself to be entitled to permanent disability benefits for any continuing disability produced by her compensable injury or injuries.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 21, 2001, the relationship of employee-employer-carrier existed between

the parties.

3. On May 21, 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$355.00 for total disability and \$266.00 for permanent partial disability.
4. On May 21, 2001, the claimant sustained compensable injuries, including a compensable injury to her right hip.
5. The only dispute currently before the Commission is the claimant's entitlement to continued temporary total disability benefits after January 8, 2004.
6. The claimant has failed to prove her entitlement to continued temporary total disability benefits, after January 8, 2004. Specifically, she has failed to prove by the greater weight of the credible evidence that she has continued within her healing period from the effects of her compensable injury or injuries after that date.
7. The respondents have controverted the claimant's entitlement to any additional temporary total disability benefits after January 8, 2004.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss the present claim for continued temporary total disability benefits from January 8, 2004 through a date yet to be determined.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge