

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312557

MELIA FENDLEY	CLAIMANT
PEA RIDGE SCHOOL DISTRICT	RESPONDENT
RISK MANAGEMENT RESOURCES INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 21, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 13, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 2, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On September 26, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her right ankle on September 26, 2003.

4. Medical expenses have been paid to January 9, 2004.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical after January 9, 2004.
2. Temporary total disability from November 13, 2003, to a date to be determined.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on September 26, 2003, when she fell while performing her duties in the hall of the Pea Ridge Middle School. She has not been paid medical and temporary or total disability. Regrettably, we certify this woman to have enough trust to teach our kids, but then we won't believe her when she says she was working at the time she fell. The doctor has clearly indicated he believes the major cause of the need for treatment was the result of the aggravation of a pre-existing condition or independently that it was simply a new injury and the respondent doesn't have a "leg" (sorry for the pun) to stand on. If they want to waste money by sending the claim to some lawyer this woman will wait them out because she has Blue Cross. By the enclosed notice we are placing the respondents on notice that they should reimburse Blue Cross for payment of any medical. The claimant requests TTD, medical and attorney fees.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to any additional medical treatment or temporary benefits.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1. The parties submitted the contract of hire for the claimant which is marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

The record was left open for the respondents to take the deposition of Dr. Sites. By letter from the respondents' attorney dated May 21, 2004, it is set forth that Dr. Sites refused to be deposed based on the fee schedule since he was not paid by the respondent. The respondent requested that a narrative report be allowed into evidence to avoid the taking of a deposition. The claimant's attorney, Mr. Tolley, objected in a letter dated March 28, 2004, to allow Dr. Sites to testify by letter rather than take his deposition. In a letter from the administrative law judge dated June 9, 2004, the respondents' request to submit a letter addressed to Dr. Sites addressing specific questions be admitted into the record was denied.

DISCUSSION

The claimant testified that she was thirty years old and employed with the respondent as a middle school teacher. The claimant agreed that she has a contract of hire setting forth the amount of money which she will receive for a certain number of days to be worked for the respondent.

The claimant testified that on September 26, 2003, she was going to the library from her classroom to pick up materials. The claimant testified that she was going down a carpeted incline onto the slick floor entering into the library when her right ankle gave way and she fell to the floor. The claimant testified that she laid down on the couch in the library and the librarian went and got the school nurse. The claimant testified that she was unable to go to her seventh period class but stayed in the library where the nurse put ice on he ankle. The claimant testified that the Tuesday after her injury which she was seen at the emergency room at St. Mary's Mercy Medical Center in Rogers. The claimant testified that it felt like she had broken something in her ankle and she had been unable to work from the 26th of September until she was seen at the ER. The claimant testified that after she was seen at the ER she continued to work for the respondent until she was seen by Dr. Dean Bright on November 13, 2003. The claimant testified that Dr. Bright took her off work and scheduled surgery on her right ankle for December 2.

The claimant testified that from the date of her accident until she was seen by Dr. Bright her condition worsened due to her being on her feet working. The claimant explained that her foot was swelling and that the bottom of the arch of her foot was very painful along with the outside and the inside of her foot making it difficult to work.

The claimant testified that she was seen by Dr. Sites on December 8, 2003. The claimant testified that Dr. Sites put her in

a cast, had x-rays made and scheduled her to be seen by Dr. Ruth Thomas at UMAS. The claimant testified that Dr. Thomas has recommended that she undergo surgery which was scheduled for the Friday following this hearing.

The claimant testified that she has been unable to work because she is unable to be on her foot. The claimant also testified that her doctors have recommended that she stay off of her foot at this time.

On cross examination, the claimant explained that the reason Dr. Sites did not go forward with the surgery on her foot was because he wanted Dr. Thomas to do the procedure because that was her expertise. The claimant also testified that her medical bills have been paid through her group insurance with Arkansas Blue Cross and Blue Shield. The claimant agreed that she also has drawn short term disability benefits since her injury on September 26, 2003, through U. S. Able receiving \$347.00 each week. The claimant testified that this short term disability lasted for twelve weeks. The claimant testified that she has applied for long term disability benefits through Standard Insurance which is also a part of her school package but she had not begun receiving these benefits at the time of this hearing. The claimant testified that right after her accident she tried to treat her ankle problems with keeping it elevated and icing it during the weekend. The claimant agreed that at the time she went to the emergency room her ankle was swollen and there was bruising in the area. The claimant

testified that the pain that she was experiencing felt more like a break rather than that of a sprain or strain.

The medical records set forth that the claimant was seen at St. Mary's Mercy Medical Hospital on September 29, 2003, where it is noted that the claimant was seen for an injury to her right foot and ankle due to a fall at work last Friday. X-rays of the claimant's right ankle indicate that she had a probable old trauma versus ossicle at the superior aspect of the navicular seen on the lateral projection. An x-ray of the claimant's right foot taken on September 29, 2003, sets forth that she has a probable old fracture at the superior aspect of the navicular and at the lateral aspect of the interphalangeal joint of the right great toe but no definite acute fracture or dislocation is identified. At this time it was recommended that the claimant limit her activities as tolerated and she was given an ace wrap. The claimant was seen by Dr. Lisa McGraw on November 4, 2003, for pain in the arch of her right foot. After examination, the claimant was prescribed medications and given an order to get orthotic arch support on her right foot and she was referred to a podiatrist. A radiology report dated November 12, 2003, indicates that the claimant underwent a nuclear bone scan which revealed that there were findings of an acute injury in the right foot in the region of the navicular. It is indicated that the plain films done that day were unremarkable and that an MRI of the foot might be helpful for further evaluation. The claimant was seen by Dr. Bright on November 13, 2003, for problems with her right foot. Dr. Bright notes that the claimant

reports that while walking down a ramp at school, she twisted and turned her right foot and immediately experienced pain and swelling and was initially seen at the ER. Upon examination, Dr. Bright notes that the claimant has some soft tissue swelling along the medial aspect of her right arch area overlaying the navicular tuberosity area and just dorsal to this area overlapping the dorsum of the right mid foot. After a complete examination Dr. Bright diagnosed the claimant with having multiple fractures of the right mid foot navicular area and probable tendon tear of the tibialis posterior tendon. Dr. Bright recommended surgery to repair the damage to her foot. On November 13th Dr. Bright released the claimant from work due to a right foot fracture noting that she was scheduled for surgery on December 2, 2003. Dr. Dean Bright writes on November 24, 2003, that he saw the claimant on November 13, 2003, for evaluation of her right foot injury that occurred on September 26, 2003, while working for the respondent. Dr. Bright indicates that clinical work up and diagnosis reveal a fracture of the dorsal aspect of the right navicular of the right mid food with the secondary diagnosis of a probable tear of the posterior tibial tendon and symptomatic accessory ossicle of the right navicular tuberosity right mid foot. Dr. Bright writes that he has recommended that the claimant consider surgical intervention as the most direct approach to resolving her condition and to get the best healing and long term prognosis. Dr. Terry Sites writes on December 8, 2003, that he has seen the claimant for her right foot injury which she sustained on September 29, 2003, while walking

down an incline at school. Dr. Sites notes that upon reviewing her x-rays her lateral view shows what may be a fracture at the dorsal aspect of her navicular at the talonavicular joint noting that a bone scan and report show increased uptake in the area of the navicular. Dr. Sites writes that reviews of the multiple x-rays of the claimant's right foot demonstrates what appears to be an accessory ossicle of the navicular more so than a navicular fracture. After examination, Dr. Sites assessed the claimant with having right foot pain, subacute, associated with a posterior tibial tendon insertional injury at the navicular, with non-complete recovery. Dr. Sites recommended the claimant undergo an MRI and recommended a period of immobilization followed by weight bearing as her symptoms would dictate. Dr. Sites notes that should this fail the claimant should be a candidate for surgical intervention. Dr. Sites concludes that based on the objective findings above and within a reasonable degree of medical certainty it is more likely than not that the injury sustained on September 26, 2003, is causing the claimant's current right foot symptoms. Dr. Sites recommended that she continue at her current work restrictions noting that she had not reached maximum medical improvement. On January 26, 2004, Dr. Sites referred the claimant to Dr. Ruth Thomas at UMAS for her right foot treatment. Dr. Thomas writes on February 25, 2004, that the claimant is diagnosed with a type two accessory navicular noting that in her opinion the claimant injured the connection between the accessory bone and the parent navicular bone. Dr. Thomas notes that she leads toward

operative intervention explaining the procedure which she would propose the claimant undergo. On February 25, 2004, Dr. Thomas signs a note indicating that the claimant needs to remain off work for a full month and use a 3D boot walker.

After an examination of all the testimony and documentation submitted in this matter, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment subsequent to January 9, 2004. Dr. Bright, her treating physician in November, recommended surgery for her compensable injury and Dr. Sites and Dr. Thomas, who the claimant went to see on her own, have also concluded that the claimant is in need of surgical intervention in order to correct the problem she sustained on September 26, 2003. The claimant testified that she went on her own to see Dr. Sites, therefore, he is unauthorized and the respondents shall not be responsible for any of his medical bills up to January 9, 2004. Dr. Sites referred the claimant to Dr. Thomas who is also unauthorized and the respondents will not be responsible for the payment of Dr. Thomas' bills up to January 9, 2004. The claimant has, however, proven by the preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury, therefore, all medical treatment related to this claimant's compensable right ankle and foot injury shall be the responsibility of the respondent subsequent to January 9, 2004.

It is also found based on the testimony and evidence presented that the claimant is entitled to temporary total disability from

November 13, 2003, when Dr. Bright took her off work until she is released by her treating physician following her surgery on her right foot and ankle.

The parties submitted the contract of hire for the claimant for the year 2003-2004. The claimant's contract sets forth that she will be paid \$30,021.00 for working 185 school days. 185 school days would equal 37 weeks, therefore, the claimant was earning an average weekly wage of \$811.37 which would entitle her to the maximum compensation rate for the year 2003. Therefore, the claimant is entitled to temporary total disability in the amount of \$440.00 per week and a permanent partial disability rate of \$330.00 per week.

The claimant has testified that her medical benefits have been paid through her group policy with Blue Cross and Blue Shield and she has received short term disability benefits through a group policy with USAble in the amount of \$347.00 per week for a period of twelve weeks. The claimant testified that she has applied for long term disability benefits and these benefits are through Standard Insurance. The claimant testified that these benefits both medical and indemnity are part of the package presented to her by the respondent. In accordance with Ark. Code Ann. §11-9-411 any benefits payable to an injured worker shall be reduced in an amount equal to, dollar for dollar, the amount of benefits the injured worker has previously received for the same medical services or period of disability whether those benefits were paid under a group health care service plan of whatever nature or form or a group

disability policy. Ark. Code Ann. §11-9-411(b) further sets forth that the claimant shall be required to disclose in a manner to be determined by the workers' compensation Commission the identity, address or telephone number of any person or entity which has paid benefit with any claim. The remainder of Ark. Code Ann. §11-9-411 requires that if releases cannot be obtained as to the entities subrogation rights the Commission shall then determine the amount of such potential subrogation claim and shall direct the carrier or self insured employer to hold in reserve only said sums for a period of five years and that after the expiration of five years if no release is presented or a court order directing payment otherwise then the carrier or self insured employer shall tender said sums to the Death and Permanent Total Disability Trust Fund.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On September 26, 2003, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her right ankle on September 26, 2003.
4. Medical expenses have been paid to January 9, 2004.
5. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to January 9, 2004.

6. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability from November 13, 2003, to a date to be determined. See discussion above.

7. The claimant is entitled to a compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability. See contract and discussion.

8. Any benefits payable to the claimant shall be reduced in an amount equal to, dollar for dollar, the amount of benefits the claimant has received for medical treatment or disability under her group policies for medical care and short term and long term benefits. See Ark. Code Ann. §11-9-411(a).

9. The claimant shall provide to the Workers' Compensation Commission the identity, address, or telephone number of any person or entity which has paid her benefits in connection with her claim. See Ark. Code Ann. §11-9-411(b).

10. The parties herein shall comply with all the provisions as set forth in Ark. Code Ann. §11-9-411(c).

11. That the respondents have controverted this claim for additional benefits.

12. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to January 9, 2004, at the respondent's expense.

The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability from November 13, 2003, to a date to be determined in the amount of \$440.00 per week to be paid by the respondent. The parties, however, are subject to the provisions set forth in Ark. Code Ann. §11-9-411.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE