

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM E911047**

**TINA A. GENTRY,  
EMPLOYEE**

**CLAIMANT**

**SALINE MEMORIAL HOSPITAL,  
EMPLOYER**

**RESPONDENT**

**VIRGINIA INSURANCE  
RECIPROCAL OF AMERICA,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED DECEMBER 22, 2004**

Hearing conducted September 28, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. J. Gary Davis, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for benefits for vocational rehabilitation in the amount of \$5,000.00 related to the cost of retraining at Ouachita Technical College. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents opposed this request, contending that the proposed vocational rehabilitation was not reasonable in relation to the disability sustained by the claimant.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable injury to her right ankle August 12, 1999; and her average weekly wage was \$312.80.

3. The preponderance of the evidence fails to show that the claimant is entitled to benefits requested for vocational rehabilitation, pursuant to Ark. Code Ann. §11-9-505.

### **DISCUSSION**

On August 12, 1999, the claimant twisted and injured her right ankle and foot while attempting to transfer a patient from a wheelchair to a bed. The respondents accepted the claim as compensable and initiated payment of benefits including medical treatment.

Her medical care included the attention of Dr. Steven A. Kulik, who performed arthroscopic ankle ligament reconstruction surgery April 24, 2000, and assigned an impairment rating of 14% to the lower extremity as of December 6, 2000. At that time, he indicated the claimant could return to work to a sitting job with no standing more than 15 minutes, no walking greater than 15 minutes, no lifting greater than 10 pounds.

The claimant had other health problems and was diagnosed by Dr. William Ackerman as having reflex sympathetic dystrophy. She was eventually given a subarachnoid drug delivery system which requires periodic maintenance.

The claimant also received psychotherapy and medication from the UAMS Adult Psychiatry Outpatient Clinic. In a letter dated May 10, 2004, Dr. Leigh Anne Bennett wrote the claimant's counsel concerning her psychiatric care and noted that the onset of symptomatology correlates temporally with her injury sustained on August 12, 1999, and stated that she had been unable to maintain employment due to mental illness. However, when the claimant was evaluated by clinical

psychologist Dr. Judy White Johnson, which included fairly extensive testing, it was Dr. Johnson's opinion in her letter of June 9, 2000, that the claimant had multiple emotional and personality problems which were present long before her ankle injury and that the only psychological intervention that might be helpful to her was biofeedback for pain management.

The record shows that the claimant had some preliminary discussions with the respondents concerning vocational rehabilitation and then consulted Arkansas Rehabilitation Services to develop a program that would allow her to obtain a degree in accounting. This included financing by Pell grants which the claimant testified covered the expenses of this program and that she did not have to repay. Even though, by her own testimony, the expenses of this program has been covered by the Pell grants, she now seeks reimbursement from the respondents.

As noted above, Dr. Kulik has indicated that the claimant could pursue sedentary work. Similarly, in a note dated December 7, 2000, Dr. Ackerman wrote that it was his medical opinion that there was no contra-indication to the claimant for a safe return to gainful employment based on his examination. The report of a functional capacity evaluation dated January 3, 2001, indicated that the claimant did not demonstrate consistent effort during the testing, but noted that she reported that she was able to sit up to two hours at a local library using a computer and, if possible, might be able to transfer within the hospital for some type of data entry position. The report stated that it appeared the claimant could perform the physical requirements of a ward clerk with minimal accommodations. On a functional abilities form, the therapist noted that the claimant, in an eight hour work day, could sit six hours, stand two hours, and walk two hours.

On cross-examination, the claimant testified that although the hospital offered to put her back to work, she told them she was unable to work. She also testified that she has not attempted to look

for full time or part time work since her accident. She is drawing Social Security Disability Benefits but has attempted to make and sell crafts, including a dream catcher and hemp jewelry. She also stated that she would have to wait and see if she was even physically able to do accounting.

Ark. Code Ann. §11-9-505 requires that respondents provide for the cost of a program of vocational rehabilitation if the Commission finds the program is reasonable in relation to the disabilities sustained by the employee, where the employee has not been offered an opportunity to return to work or re-employment assistance. In considering the level of disability sustained by the employee in this case, it should be noted that her average weekly wage was \$312.00 at the time of the injury, that she has an impairment of 14% to the lower extremity, and that she has declined to attempt to return to work for the employer but prefers to attempt to change careers and enter an entirely new field of endeavor. This appears to exceed the requirements of Ark. Code Ann. §11-9-505 and is not reasonable in relation to the disability sustained by the employee as a result of her compensable injury.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge