

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300720

REVERTIS GIST, EMPLOYEE	CLAIMANT
SANYO MANUFACTURING CORPORATION, EMPLOYER	RESPONDENT
GARMI, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 24, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on May 7, 2004, at Marion, Crittenden County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Robert J. Donovan, Attorney-at-Law, Marianna, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted May 7, 2004, to determine whether the claimant is entitled to additional medical treatment at respondents' expense.

A prehearing conference was conducted in this claim on March 31, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the claimant sustained a compensable electrical shock injury on October 2, 2002; that the claimant petitioned, and has received,

a one-time only change of treating physicians to Dr. Charles Schultz; and that respondents had controverted medical treatment and prescription medications beyond those previously paid.

By agreement of the parties, the sole issue presented for determination was whether the respondents were responsible for additional medical treatment, including reimbursement of prescription medications.

Claimant contended, in summary, that she had attempted to fill prescription medications prescribed by Dr. Schultz which had been denied by the respondents. The claimant maintained that the additional medical treatment, including medications was reasonably necessary, as well as related to the admitted injury and should remain the responsibility of the respondents.

The respondents contended that the additional services provided by Dr. Schultz were not necessary in connection with the injury received pursuant to A.C.A. §11-9-508(a).

The claimant testified in her own behalf. Charlotte Gibson was called as a witness for the respondents. The record is composed solely of the transcript of the May 7, 2004, hearing containing a joint medical exhibit consisting of thirty (30) pages, together with the evidentiary deposition of Dr. Charles Schultz, introduced as "Joint Exhibit B" and retained in the Commission file in bound form.

From a review of 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 made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that she is entitled to additional medical treatment provided by Dr. Charles Schultz previously approved to be the claimant's primary care physician.
4. The claimant has shown that all outstanding medical and related treatment provided by Dr. Charles Schultz is reasonably necessary treatment, as well as related to the October 2, 2002, admitted injury. Accordingly, respondents are responsible for payment of medications prescribed by Dr. Schultz, together with additional diagnostic testing and any valid referrals deemed reasonably necessary by Dr. Schultz.
5. Respondents have controverted all medical treatment beyond that previously paid.

DISCUSSION

The facts in this case are basically undisputed. The claimant, Ms. Revertis Gist, is fifty-nine (59) years old. She has a ninth grade education. The claimant worked for Sanyo Manufacturing Corporation a total of thirty-three (33) years, including twenty-nine (29) consecutive years before sustaining an injury on October 2, 2002. The claimant has not returned to gainful employment since the admitted injury. A description of the injury, the claimant's physical problems since the injury, as well as her abilities before and after the accident are described further below:

Q Now, Revertis, let's go back to October of 2002, about a year and a half ago when this accident took place. What do you remember immediately before the accident took place?

A Well, we had just returned back from break and I had put on my gloves, and then the line started, so I was putting on backs. So I –

Q Backs on televisions?

A On the back of TVs.

Q Okay.

JUDGE GREENBAUM: I'm sorry what?

MR. DAVIS: Putting backs on televisions.

BY MR. DAVIS:

Q Okay.

A So I had the back up. Well, I had did about – I guess about ten. I was getting ready to put on another one. When I put my hand on the cord to secure it to the back, that's when it just looked like blew up, just popped real loud and a big old flash of light, and I couldn't turn it loose. They was telling me to turn

it loose. So I remember dropping the back, and I looked down at my hand and it looked like my hand was burning, you know, because of a big light. After that I don't remember anything else until we were outside and they was putting me in the ambulance out on the parking lot.

Q Let's stop for just a second now, Revertis. When you say that you were putting backs on televisions, are we talking about you were taking a piece of plastic and you're using maybe some sort of screw gun –

A Uh-huh.

Q – or something like that to attach –

A Uh-huh.

Q – the back of the television?

A Right.

Q Okay.

A But I had not picked up the gun yet. I was just putting it on. I was just putting the back up on set.

Q You have to get it in there –

A In there –

Q – to set it up and get it just right –

A Right –

Q – and then use the gun?

A Use the gun, yeah, but I hadn't got the gun up.

Q All right. Now, you say that after the break that you had done – I think you said you had –

A About ten, about ten.

Q Now, as the television arrives in front of you, is it on an assembly line?

A Yes.

Q The television arrives in front of you that you are going to work on where this problem took place. You mentioned that you grabbed the cord?

A Yeah, you have to hold on to the cord and then secure it to the back, then put it up on the set.

Q So you are actually – the plug in that is attached to the television, –

A To the television –

Q – that's part of what you are doing?

A Right, uh-huh.

Q All right. You said that you experienced the – I think you said explosion?

A Yeah.

Q But you said that your hand was burned?

A Yeah. When I looked down, my glove looked like it was just inflamed.

Q What sort of gloves were you wearing?

A Kind of like cloth gloves.

Q You said that the next thing that you remembered after this light and this explosion and so forth, and seeing your hand and this glove, was out in the parking lot and the ambulance coming to take you away and that sort of thing?

A Yeah.

Q Now, Revertis, since that time, you have experienced some problems, have you not?

A A lot of problems.

Q Tell us what kind of physical problems that you've experienced since that incident took place.

A I have real bad back pain in the lower part of my back and my right arm, down in my hand, my fingers are numb and I have noises in my right ear real bad, just keep up a lot of fuss all the time, and I be bothered with stiffness on this side of my neck.

Q On the right side of your neck?

A Yes.

Q What other kind of problems have you had?

A I don't sleep well at night. I constantly have to get up and down and have to take something to help me sleep, and I have headaches a lot when I normally used to didn't have them.

Q Dr. Schultz mentioned in his report that you had complained of some dizziness on occasion?

A Yeah, a lot of dizziness.

Q How often do you have dizziness?

A Like in the morning time when I get up, I can't, you know, like I used to just get up and go to the bathroom, now I have to get up and sit on the side of the bed a while and make sure that I'm not dizzy, you know. And then sometimes I still be dizzy, I have to hold on to the wall.

Q And I think Dr. Schultz also mentioned that you had complained to him about fatigue?

A Yeah, uh-huh.

Q Tell us about that.

A I be tired all the time.

Q What sort of – if you try to do something at home, are you able to do things around the house?

A Not very much.

Q Do you live by yourself, by the way?

A I was living by myself until my daughter came to take care of me.

Q All right. How long has your daughter been with you to take care of you?

A I got hurt in October. She came in November.

Q Before this accident took place, Revertis, you were living alone?

A Yes.

Q How long had you lived alone?

A About four years, I guess. It might have been longer than that, but I had a friend, you know, my friend was with me some.

Q All right. Were you able to take care of your daily chores?

A Then?

Q Your laundry and your dishes and cook for yourself and all those sorts of things before this accident –

A Talking about –

Q – took place.

A I was able to do everything by myself, everything, but now, doing dishes, it's hard for me to wash dishes. I can't wash. I don't drive anymore.

Q How long is it that you've not been driving?

A I haven't driven since I got hurt, since October.

Q Now, there are also in the medical reports, it reflects that you have had some trembling?

A Yes.

Q Tell us about that.

A Well, I can't hardly hold anything in my right hand. It's hard for me to hold anything, and my right hand sweats a lot, and most of the time –

Q You shake like –

A Yeah, yeah.

Q – a palsy?

A Yeah, yeah.

Q You know know [sic] what I'm talking about?

A Right, right.

Q How were you before this incident took place? Did you have a tremor?

A I didn't have anything. Nothing was wrong with me.

Q I noticed that you are using a cane –

A Right.

Q – today.

A Before, I never had a cane before.

Q Why are you using a cane now?

A To help steady myself so I won't fall, because when I first got hurt, I was falling a lot and then my daughter bought me a cane. So, now, in order when I get up and down, I have to make sure I got this cane close by. (Tr.8-14)

This claim has been the subject of previous proceedings. As reflected by the stipulations, aforementioned, the claimant has received a one-time only change of treating physicians to Dr. Charles Schultz. An Opinion and Order

was filed by another administrative law judge on June 10, 2003, granting the requested change. Thereafter, a second change of physician order was filed by the Commission's Medical Cost Containment Department granting a change of physicians from Dr. Michael Deshazo to Dr. Charles Schultz, at Jacksonville Neurology in Jacksonville, Arkansas. Apparently, respondents initially accepted and paid for the initial evaluation by Dr. Schultz. In addition, it appears respondents paid for the prescription medications prescribed by Dr. Schultz, as well as several refills prior to terminating all medical treatment, including prescription medications which prompted the request for the immediate hearing.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant's course of medical treatment is, likewise, undisputed. The claimant was initially examined and treated in the emergency room. She

received follow-up treatment from her general practitioner, Dr. David Webber, who in turn referred the claimant to Dr. Sudhir Kumar. Dr. Kumar evaluated the claimant on October 8, 2002, at which time he diagnosed thermal injury caused by high voltage, post-traumatic stress, as well as a great deal of anxiety. (Jt. Ex. A, p.5)

The claimant was then referred to Dr. Michael H. Deshazo, a neurologist at the Semmes Murphy Clinic in Memphis, Tennessee. Dr. Deshazo evaluated the claimant on October 31, 2002. He indicated that the claimant may have sustained a concussion, as well as a lumbar strain as the result of falling from the electrical shock. Dr. Deshazo recommended an MRI scan of the head and lumbar spine, but did not feel additional testing was necessary. Following the MRI scan, he recommended a course of physical therapy without further recommendations. (Jt. Ex. A, pp.10, 14)

The claimant returned to her primary care physician. Dr. Webber continued to keep the claimant off work while recommending further evaluation from a neurologist. The claimant next petitioned and received a change of treating physicians from Dr. Deshazo to Dr. Charles Schultz with Jacksonville Neurology. Dr. Schultz is board certified in both psychiatry and neurology, having obtained thirty percent (30%) of his training in psychiatry and seventy percent (70%) in neurology. Dr. Schultz evaluated the claimant on December 2, 2003. Dr. Schultz has treated the claimant primarily with medications. In

addition to the prior diagnostic studies, Dr. Schultz conducted additional diagnostic studies involving the claimant's peripheral nervous system and central nervous system which was an "evoke potential test" which is more extensive than a standard EMG which demonstrated a delayed response in the claimant's peripheral nervous system. Said test, in part, demonstrated objectively, delays in the claimant's responses which explained, in part, her continued symptoms. Dr. Schultz has also requested additional opinions from electric shock injury experts, as well as an MRI which had not been conducted as of the date of his evidentiary deposition on April 15, 2004. Rather than conduct an exhaustive analysis of Dr. Schultz's deposition, suffice it to say that he continued to recommend treating the claimant's symptoms with medications previously prescribed. In fact, a preponderance of the credible evidence supports the claimant's claim for additional medical treatment and medications.

Charlotte Gibson, a witness called by the respondents, is the plant nurse at Sanyo Manufacturing. On cross-examination, Ms. Gibson acknowledged that the claimant was in good health prior to the October, 2002, admitted injury and that based upon her personal observations, the claimant's physical condition had substantially deteriorated since her injury.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d

964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that based upon the claimant's credible testimony, together with that of her treating physician, Dr. Schutlz, the claimant has shown, by a preponderance of the evidence, that she is entitled to continued, reasonably necessary medical treatment including, but not limited to, medications prescribed by her primary treating physician, Dr. Charles Schutlz.

I feel compelled to point out that this claim occurred after July 1, 2001, and that despite controverting all additional medical treatment, respondents are not liable for attorney's fees for legal services pursuant to A.C.A. §11-9-715 as

amended. Fortunately, the claimant's attorney has continued to diligently represent his client without regard to his fee for legal services which is commendable. It is the fervent hope of this administrative law judge that respondents do not abuse the process by continuing to refuse payment of related medical treatment. The only disincentive for such action on its part, would be a request for contempt for willfully refusing to pay related medical expenses within forty-five (45) days after the respondent has received the statement for related expenses pursuant to A.C.A. §11-9-706 (Repl. 2002)

AWARD

Respondent, Great American Insurance Company of New York, and its third-party administrator, GAB Robins North America, Inc., is hereby directed and ordered to pay all outstanding medical and related treatment provided by Dr. Charles Schultz, including, but not limited to payment of prescription medications, together with continued, reasonably necessary medical treatment.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge