

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F304364**

**DEBORAH J. GREEN,  
EMPLOYEE**

**CLAIMANT**

**NOVASYS HEALTH  
NETWORK, LLC,  
EMPLOYER**

**RESPONDENT**

**WESTPORT INS. CORP.;  
GALLAGHER BASSETT  
SERVICES, INC.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JUNE 7, 2004**

Hearing conducted June 2, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Steven R. McNeely, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for additional medical benefits for her admittedly compensable neck injury.

The claimant contended that she should be awarded additional benefits for unpaid medical bills for her treatment by Dr. Diane France and Dr. Edward H. Saer, as well as additional treatment by Dr. Saer. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that they have accepted the claim as compensable and have paid for medical expenses through September 18, 2002, but thereafter the claimant did not require medical attention for several months until April, 2003, when she returned to the doctor, and that such

additional medical care is not reasonably necessary in connection with her compensable injury, which was minor and had resolved. As to the treatment of Dr. France, the respondents contended that such care was not authorized, in addition to being not reasonably necessary. They further contended that the claimant's treatment by Dr. Saer resulted from a change of physician and that the initial office visit had been paid.

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 and the claimant suffered a compensable neck injury September 11, 2002.

3. The preponderance of the evidence shows that the MRI scan and the claimant's proposed treatment by Dr. Edward H. Saer are reasonably necessary in connection with her compensable injury and should be considered the responsibility of the respondents, but fails to do so as to the claimant's treatment by Dr. Diane France.

### **DISCUSSION**

The claimant injured her neck September 11, 2002, when she was struck on the back of her head by another employee as the claimant was leaning over the arm of her chair to get envelopes from a drawer in a file cabinet. She testified that she felt stinging and burning in her neck and, although she reported the incident to her supervisor and then to the head of human resources, she was

not offered medical attention and no paperwork was completed at that time. She stated that that night her symptoms interfered with her sleep and when she woke up she felt burning in her neck and shoulder.

Accordingly, she sought treatment from her family physician and then approached the employer about helping with her insurance co-payment. After consultation with the CEO, the employer's representative decided to accept the claim as compensable and then referred the claimant to the company physician at Concentra Medical Centers, Dr. Cynthia Almond.

On September 13, 2002, the claimant was examined by Dr. Almond, who noted cervical spine muscle spasm and diagnosed her condition as cervical strain and face/scalp contusion for which she recommended medication and physical therapy and that she modify her activity as to lifting, pushing, pulling, bending, and reaching above her shoulders and that she restrict her use of the right arm. The claimant also began to receive physical therapy from Shannon Ayers. By September 18, 2002, Dr. Almond discontinued previous medication, gave the claimant a regular activity release from care, and advised that she continue a home exercise program as instructed, although the claimant could return to the clinic as needed.

The claimant testified that her symptoms improved with Dr. Almond's treatment and she continued her work, which was clerical and not physically demanding as to her neck. During this time, she occasionally took medication for her neck discomfort which she attributed to stress related to personal difficulties, including a death in her family and the termination of a long-term relationship. However, by March, 2003, she felt it necessary to return to the doctor. When she asked the employer, she was advised that no further medical care would be allowed. Accordingly, she went to Dr. Diane France, her personal physician, who referred her for an MRI scan which was read as

revealing a left paracentral protrusion of the C5-6 intervertebral disc which narrowed the left intervertebral foramen and which could cause symptoms in the distribution of the left C6 nerve root if of clinical significance. Thereafter, at the claimant's request, a Change of Physician Order was entered December 31, 2003, changing the claimant's physician from Dr. Almond to Dr. Edward Saer, III, and granting one appointment which the respondents have acknowledged as compensable. Dr. Saer's report of January 2, 2004, indicated that he reviewed the MRI film done April 4, 2003, and the claimant had a small left-sided disc herniation at C5-6 and that her symptoms are pretty much always on the left side with occasional symptoms on the right. He noted that the claimant had alternated use of ice and heat which seemed to help, and that taking Aleve helps too. He recommended physical therapy, epidural steroid injection, and Vioxx.

The respondents offered the testimony of three witnesses, one by deposition, all of which tended to suggest that the claimant's injury was minor. For example, co-employee Donna Dingler, who struck the claimant on the head, testified that she was merely trying to get the claimant's attention and made only insignificant contact. Another co-worker testified that she was across the room and saw the incident and did not think it was particularly forceful, although the blow did cause some movement by the claimant. All witnesses indicated that it was not unusual for physical contact to occur between employees at this workplace.

However, the claimant testified that she was older and had pre-existing back problems and had previously asked management for protection from shoving and other physical contact by Donna Dingler prior to the incident where her neck was injured. Moreover, while it is puzzling that, under these circumstances, the same co-employee would once again strike the claimant in order to get her attention instead of merely speaking to her, it is clear from the record and from watching the co-

employee move about the courtroom that she is more physically robust than the claimant and may not have been fully aware of the effect of her striking the back of the claimant's head. Moreover, the company physician diagnosed a contusion and muscle spasm, symptoms more consistent with the claimant's description of the incident than that of her co-workers.

The record also fails to show that the claimant has had any subsequent or prior incidents of injury involving her neck. Additionally, the findings by the MRI scan and Dr. Saer's examination are consistent with the previous findings of the company physician and the claimant's testimony concerning her symptoms. On the other hand, the exact nature of Dr. France's treatment was not shown by medical records. Thus, while the preponderance of the evidence shows that the MRI scan and the claimant's continued care by Dr. Saer is reasonably necessary for her compensable injury, it but fails to do so as to the treatment by Dr. France, absent speculation or conjecture on behalf of the claimant.

### **AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge