

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310616

DEBORAH L. HOLDEN, EMPLOYEE	CLAIMANT
MASTER PRINTING COMPANY, INC., EMPLOYER	RESPONDENT
COMPANION PROPERTY & CASUALTY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 18, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on October 8, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by Mr. Andy L. Caldwell, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 8, 2004, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this case on September 29, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties agreed that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to further clarification concerning respondents' contentions as set out below.

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including September 19, 2003; that the claimant sustained a compensable injury on said date; that respondents have paid various medical

and related expenses, as well as temporary total disability benefits at the rate of \$275.00 per week through March 16, 2004; and that respondents had controverted claimant's entitlement to additional benefits.

By agreement of the parties, the following issues were presented for determination:

- 1) The applicable compensation rate.
- 2) The date claimant's healing period ended, as well as claimant's entitlement to additional temporary total disability, if any.
- 3) Respondents' responsibility for outstanding medical expenses.

Claimant contended, in summary, that she earned \$11.00 per hour at the time of her admitted injury and was, therefore, entitled to a compensation rate of \$293.00 per week for temporary total disability; that she was entitled to additional temporary total disability for the period beginning March 17, 2004, and continuing through May 10, 2004; that, in addition, respondents should be held responsible for the outstanding medical bills incurred to Dr. Dennis Parten and Dr. Terence Braden, together with continued medical treatment, if warranted.

The respondents contended that it had paid all appropriate benefits to which the claimant was entitled. At the hearing, respondents, again acknowledged that the claimant sustained a compensable aggravation of a pre-existing cervical injury on September 19, 2003; that all reasonable, necessary,

and authorized medical had been paid; that the claimant had received appropriate, temporary total disability and other benefits to which she was entitled. Respondents pointed out that Dr. Gera found the claimant had reached maximum medical improvement on March 17, 2004, and that she was subsequently assessed a zero percent (0%) impairment in May, 2004, while maintaining that the law did not provide for additional temporary total disability following the end of the healing period.

The claimant was the only witness to testify. The record is composed solely of the transcript of the October 8, 2004, hearing containing numerous exhibits.

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 claimant and to observe her 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. At the time of claimant's admitted injury, she was earning \$11.00 per hour or \$440.00 per week which entitles her to a compensation rate of

\$293.00 per week for temporary total disability.

4. The claimant's healing period ended March 17, 2004.
5. The claimant has proven that she is entitled to an additional \$18.00 per week for the period beginning September 20, 2003, and continuing through March 17, 2004, when her healing period ended. The claimant has failed to prove entitlement to temporary total disability after March 17, 2004.
6. Respondents are responsible for all outstanding medical and related expenses provided by the claimant's primary treating physician, Dr. Dennis D. Parten so long as said treatment is related to the September 19, 2003, compensable injury, including, but not limited to reasonably necessary diagnostic testing ordered by Dr. Parten, as well as any valid referrals made by Dr. Parten to determine the exact nature and extent of claimant's admitted injury.
7. Claimant's entitlement to additional medical treatment, if any, requires further development of the medical evidence and is by necessity reserved.
8. Any additional issues are also reserved.

#### DISCUSSION

Many of the relevant facts are undisputed. The claimant, Deborah Holden, is fifty (50) years old. She did not complete high school; however, did

obtain a G.E.D. In addition, the claimant has obtained vocational training in offset printing. She was employed by the respondent, Master Printing, for approximately seven (7) years prior to sustaining an admitted injury on September 19, 2003. The record reflects that the claimant sustained a prior non-work related injury in April, 2003, when she fell in her yard at home, sustaining a cervical injury which ultimately required surgery, specifically a discectomy and fusion performed by Dr. Kenneth Toneymon in July, 2003. The record reflects that the claimant had only recently returned to work for the employer herein when she sustained an admitted aggravation of her pre-existing condition while picking up paper and placing it into a paper cutter at which time she felt a burning sensation in her neck. The claimant promptly reported the injury to both Mary Ellen Wilbanks and John Wilbanks, the owners of Master Printing. Respondents exercised good faith in meeting its obligations under our workers' compensation laws by allowing the claimant to obtain medical treatment from her family physician, Dr. Dennis Parten, a general practitioner in Monette, Arkansas. Dr. Parten has remained the claimant's primary treating physician. Dr. Parten initially prescribed physical therapy which did not benefit the claimant. He subsequently referred the claimant to Dr. Sunil Gera, a pain management specialist in Jonesboro, Arkansas. The claimant was initially seen by Dr. Gera on November 14, 2003. He treated the claimant with various medications, as well as epidural steroid injections beginning November 14,

2003, and continuing through March 17, 2004, at which time he opined that the claimant had reached maximum medical improvement. The claimant was returned to the care of Dr. Parten. Dr. Gera did place restrictions on the claimant's work activities; however, the record is silent as to what permanent restrictions were imposed on the claimant following her surgical laminectomy and fusion. (Resp. Ex. A, pp.26-36)

The claimant's employment was terminated by the employer in November, 2003. Accordingly, when the claimant was released by Dr. Gera on March 17, 2004, she did not have a job. She acknowledged working at a convenience store for approximately one month, as well as drawing some limited unemployment benefits in 2004. The claimant requested temporary total disability through May 10, 2004, which was the date she was evaluated by another physician, Dr. Terence Braden at the request of the respondents who opined that the claimant had not sustained any permanent impairment. The claimant also requested payment of various medical expenses. Respondents acknowledged that it was responsible for any medicals incurred prior to March 17, 2004, while indicating that some of the bills might be an attempt at balance billing while disputing any medical incurred after March 17, 2004, save responsibility for the evaluation by Dr. Braden on May 10, 2004, which was at respondents' insistence. (Tr.23-28)(Resp. Ex. A, pp.37-41)

Following her release by Dr. Gera, the claimant returned to Dr. Parten for

follow-up care. She stated that Dr. Parten subsequently referred her to Dr. Braden who ran some additional diagnostic testing which was performed before the respondent/insurance carrier referred her to Dr. Braden for an evaluation of permanent impairment, if any. It is unclear whether the additional diagnostic studies were recommended by Dr. Parten or by Dr. Braden upon referral by Dr. Parten which, in my opinion, in either case would be the responsibility of the respondents. A portion of this confusing testimony is set out below:

Q How much are your outstanding medical?

A Probably close to \$5,000. These I thought –

Q Well, you can't guess at it.

A Well, there's one for a thousand. There's one for \$650.

Q A thousand from who?

A Dr. Braden.

Q And this is based on the referral from Dr. –

A Parten.

Q – Parten?

A Yes, sir.

Q Okay.

A That was the May 5<sup>th</sup> before I saw him for workmen's comp. It is my understanding that workmen's comp paid \$750, and then Dr. Braden charged me for the same test \$1,000.

Q Charged you for the same thing he charged the insurance company for?

A Correct, that's my understanding. I saw him on May 5<sup>th</sup>. He did these tests on May 5<sup>th</sup>. He charged me a thousand dollars for these tests.

Q Okay. Are you saying workers' comp paid for them, and he's trying to charge you again for them?

A No, workmen's comp – then he turned around and gave workmen's comp an evaluation based upon these tests that he just charged me a thousand dollars for.

MR. CALDWELL: I think I can clear it up, Judge. I think what happened was after she saw Dr. Gera and Dr. Gera placed her MMI in March, she then went back to Dr. Parten, who is her family treating physician. Dr. Parten then, on his own, referred her to Dr. Braden. He ran this test. A week later my clients had sent her there for the IME. I think that's probably what she's referring to.

BY JUDGE GREENBAUM:

Q You have a bill from Dr. Braden. What else do you have?

A I have this one that I got turned over to a collection agency because workmen's comp hasn't paid it yet, for the steroid injections, to Regional Medical Center of Northeast Arkansas. I received this letter September 30<sup>th</sup>.

Q And who did those injections?

A Dr. Gera.

Q When were the injections?

A I think the last one was November of 2003, and I was under the impression these had already been paid.

MR. CALDWELL: As far as I know Judge, all of those injections that were ordered by Dr. Gera have been paid. I am not aware of any that have not been paid.

BY JUDGE GREENBAUM:

Q Did you recently receive some bills for the same injections?

A Yes, sir, and –

Q Go ahead and show those to Mr. Caldwell.

A I called the lady and she said that – this is the same one you saw a while ago. I called the lady and told her it was workmen's comp related, and she said that she tried to talk to Ms. White. Ms. White told her that we had a lawsuit against them and they weren't allowed to talk to this –

MR. CALDWELL: What she's shown me here, Judge, is a letter from Healthcare Business Services that's dated September 30<sup>th</sup>. It just says provider, Regional Medical Center of Northeast Arkansas, and has a balance. It doesn't refer to what those charges are from, what they pertain to, or anything of the sort. So, obviously, I'm going to object to those bills. I'm not aware of any outstanding medical. If there is outstanding medical that is pertaining to those injections that were ordered by Dr. Gera before March 17<sup>th</sup>, I believe is the appropriate date, obviously my clients, I think they owe them. I don't know if there's some attempt at balance billing or what's going on. This is the first I've heard –

BY JUDGE GREENBAUM:

Q Are you telling me these are from bills from some injections in '03?

A Yes, sir. That was my understanding when I called the lady. There's a number on here to call if you had any questions, and I don't go to Regional Medical. I go to St. Bernards, because my insurance wouldn't pay Regional. I had to go to St. Bernards. So I knew it was odd, and when I called her, she said it was the injections that Dr. Gera had gave me at their facility. This is all I've gotten from them, too. I haven't seen an actual bill either.

Q Okay. Any other bills?

A I have some St. Bernards bills, \$1,344, \$690 –

Q I don't have a clue what you're talking about and what they're for, ma'am.

A For an MRI. This \$1,344 is this that was done in June of 2004.

Q June 2004, ordered by who?

A Dr. Parten. (Tr.23-27)

There is no evidence of an MRI performed in June, 2004. The claimant did introduce an exhibit reflecting that she was referred to St. Bernards Medical Center for EMG studies which revealed moderately severe carpal tunnel syndrome of the left upper extremity and mild carpal tunnel syndrome of the right which maybe the source of some of the claimant's continuing complaints; however, to date, there has been no claim for any alleged carpal tunnel injury.

(Cl. Ex. A)

#### APPLICABLE COMPENSATION RATE

The undisputed evidence reflects that the claimant was earning \$11.00 per hour at the time of her admitted injury. It appears that respondents simply averaged the claimant's weekly wages to include time taken off for personal leave and sick leave rather than a full-time work week in the employment which is contrary to the provisions of Ark. Code Ann. §11-9-518(a)(1).

Accordingly, I find that the claimant's average weekly wage was \$440.00 at the time of her injury, entitling her to a compensation rate of \$293.00 per week for temporary total disability. Since respondents paid benefits at the rate of \$275.00 per week, the claimant is entitled to an additional \$18.00 per week during the period of claimant's entitlement to temporary total disability.

#### TEMPORARY TOTAL DISABILITY

Temporary total disability is determined by the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. It is that period in which an employee is within the healing period and totally incapacitated to earn wages. *Arkansas State Highway Dept. vs. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *J.A. Riggs Tractor Co. vs. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Stafford vs. Arkmo Lumber Co.*, 54 Ark. App. 286, 925 S.W.2d 170 (1996). The healing period is that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of the injury will permit, and if the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods vs. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996); *Carroll General Hospital vs. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Mad Butcher vs. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities

and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. see, *Palazolo vs. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

The record reflects that the claimant's healing period ended on March 17, 2004, when she was released by Dr. Gera.

The only remaining issue concerns respondents' responsibility for outstanding and continued medical treatment.

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).

Dr. Dennis Parten has been accepted and recognized as the claimant's primary treating physician. Although claimant's healing period ended March 17,

2004, it is well established under our laws that the end of claimant's healing period does not end her entitlement to continued, reasonably necessary medical treatment. Respondents are responsible for all treatment provided by Dr. Parten, as well as any valid referrals from Dr. Parten to other providers, together with reasonably necessary diagnostic testing required to determine the nature and extent of claimant's injury. Unfortunately, any such determination has been frustrated, in part, because the claimant was acting pro se, but, also in part, because the claims adjustor that was handling this claim has since left the employment of the insurance carrier and was unavailable to offer any testimony concerning why respondents unilaterally terminated all benefits on March 17, 2004. Accordingly, this issue requires further development of the medical evidence and is, by necessity, reserved.

#### AWARD

\_\_\_\_\_ Respondent, Companion Property & Casualty Insurance Company, is hereby directed and ordered to pay, to the claimant, additional disability benefits at the rate of \$18.00 per week for the period beginning September 20, 2003, and continuing through March 17, 2004, as the result of underpaying temporary total disability for said period.

All benefits having accrued, respondents are to pay same in lump sum and without discount.

Claimant's request for temporary total disability after March 17, 2004,

is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge