

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E603873 & E603874

MARTHA COTHERN LASETER, EMPLOYEE	CLAIMANT
PULASKI COUNTY SPECIAL SCHOOLS, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, INSURANCE CARRIER	RESPONDENT #1
ARKANSAS SCHOOL BOARD ASSOCIATION WORKERS' COMPENSATION TRUST FUND, THIRD-PARTY ADMINISTRATOR, RISK MANAGEMENT RESOURCES	RESPONDENT #2
SECOND INJURY FUND	RESPONDENT #3

OPINION FILED MARCH 31, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on February 23, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Steven McNeely, Attorney-at-Law, Little Rock, Arkansas.

Respondent #1 represented by Mr. Richard S. Smith, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 represented by Mr. Guy Alton Wade, Attorney-at-Law, Little Rock, Arkansas.

Respondent #3 represented by Ms. Judy W. Rudd, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 23, 2004, to determine whether the claimant as entitled to additional workers' compensation benefits.

These two (2) workers' compensation claims have a lengthy and

complicated procedural history. The claims have been assigned on multiple occasions to the Adjudication Division. At least three (3) administrative law judges have been involved in the legal proceedings. The claims have been the subject of numerous prehearing conferences. The pretrial conferences either amicably resolved the issues or a determination was made that a hearing was premature and/or the specific request was withdrawn. The claims have been the subject of two (2) prior hearings. A hearing was conducted before Administrative Law Judge Eugene Mazzanti on November 26, 1996, and an Opinion was filed by said law judge on February 6, 1997. The Opinion was amended on February 18, 1997. Following an appeal by respondents #1, the decision of the administrative law judge was reversed by the Full Workers' Compensation Commission, Opinion filed September 30, 1997. No appeal was taken from the Full Commission Opinion. The primary determination of the Full Commission decision determined that respondent #2 was solely responsible for all medical benefits and temporary total disability as a result of a January 30, 1996, injury when the claimant suffered a compensable aggravation of a pre-existing condition, specifically, an aggravation of a compensable injury on March 7, 1993, at which time respondent #1 was on the risk for the Pulaski County Special School District.

A second hearing was conducted on April 4, 2001, before Administrative Law Judge Karen McKinney. The primary issue at the April 4, 2001, hearing

concerned the extent of claimant's permanent disability, as well as the respective liabilities of the various parties for permanent disability benefits. Judge McKinney issued an Opinion on May 14, 2001. No appeal was taken. The record of the prior proceedings, as well as the Opinions filed of record are hereby incorporated by reference and made a part of the record herein.

The most recent prehearing conference conducted in these claims was on December 30, 2003, in Little Rock, Arkansas, before this administrative law judge. The claimant appeared by and through her attorney, Mr. Zan Davis. Respondents #1 were represented by Mr. Richard S. Smith. Respondents #2 appeared by and through its attorney, Ms. Betty J. Demory. Respondent #3 was represented by Ms. Judy W. Rudd. It was stipulated that the claimant sustained compensable injuries on or about March 7, 1993, and, again, on or about January 30, 1996; that the Opinion and Order filed on May 14, 2001, from which no appeal was taken was a final decision; and that the benefits awarded therein paid by the respective parties. It was further stipulated that all medical treatment beginning May, 2001, had been controverted for purposes of attorney's fees.

By agreement of the parties, the sole issue presented for determination concerned claimant's entitlement to additional medical treatment after May, 2001.

Because the responsibility of respondent #3 was limited to wage-loss

disability, all parties agreed to excuse the Second Injury Fund as a party-respondent to the immediate claim for additional medical treatment.

At the prehearing conference, the claimant contended, in summary, that she required ongoing medical treatment after May, 2001, and continuing through the present which the claimant maintained was directly and causally related to her compensable injuries; that respondents should be held responsible for outstanding medical treatment provided by Dr. Richard Peek and Dr. Robert Valentine, as well as any valid referrals from said physicians; that respondents wrongfully terminated all medical treatment after May, 2001, and that a controverted attorney's fee should attach to any additional medical awarded.

Respondent #1 contended that it had no additional liability in this case, that it went off the risk in July, 1994, and that the claimant sustained a new injury on January 30, 1996, while maintaining that any additional medical treatment was the responsibility of respondent #2.

Respondent #2 contended that any additional medical treatment after May, 2001, was not reasonably necessary or causally related to the January 30, 1996, injury while maintaining that the treatment was related to an independent intervening automobile accident occurring during April, 2000. Following further discussion, both the claimant and respondent #2 agreed that respondent #1 should be dismissed as a party-respondent. Accordingly, by agreement of the parties, respondent #1 was dismissed.

At the February 23, 2004, hearing, the claimant was represented by Mr. Steven McNeely. Respondent #2 was represented by Mr. Guy Alton Wade. At the hearing, claimant's attorney stated that there were actually four (4) separate injuries, including a motor vehicle accident which Mr. McNeely maintained occurred in 1998 rather than April, 2000, while pointing out that another work-related incident occurred while the claimant was breaking up a fight at school in the year 2000. After further discussions, the parties agreed that the issues, as well as their respective contentions remained the same as set out in the Prehearing Order, specifically, claimant's entitlement to continued, reasonably necessary medical treatment for the admitted cervical injury after May, 2001. The claimant reserved any issues concerning the claimant's low back problems. (Tr.5-10)

The claimant was the only witness to testify. The record is composed solely of the transcript of the February 23, 2004, hearing containing a volume of medical notes and records consisting of two hundred ninety-seven (297) pages which were introduced as "Joint Exhibit A," together with the evidentiary deposition of Dr. Richard D. Peek taken prior to the hearing, but submitted subsequent to the hearing and retained in the Commission file in bound form as "Claimant's Exhibit 1."

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. The claimant has proven, by a preponderance of the credible evidence, that her continued cervical problems, as well as her need for continued medical treatment related to her cervical spine after May, 2001, are reasonably necessary, as well as related to her compensable injuries, and remain the responsibility of respondent #2.
4. Respondent #2 remains responsible for all medical treatment provided by Dr. Richard D. Peek, or for any valid referrals made by Dr. Peek to treat the claimant's cervical injury, including, but not limited to, reimbursement to other medical providers and for any co-payments made by the claimant for treatment of her cervical problems, and respondent #2 remains responsible for continued, reasonably necessary medical treatment for claimant's cervical injury.
5. Respondent #2 has controverted all medical treatment beyond the medical treatment previously paid.

6. Issues not addressed herein were specifically reserved for future determination.

DISCUSSION

_____The facts in this case are basically undisputed. The claimant, Martha Rose Cothorn, testified in her own behalf. The claimant was not married at the time of the hearing. At the time of the within hearing, the claimant was employed as a school teacher at Robinson High School where she teaches military history and college level American history. As reflected by the stipulations, the claimant has sustained admitted injuries to her cervical spine on or about March 7, 1993, and again on January 30, 1996, at which time she was teaching at another Pulaski County School, Mills High School. As reflected above, these claims have been the subject of two (2) prior hearings. The first hearing, on October 26, 1996, was to determine whether the Public Employees Claims Division (PECD) or the Arkansas School Board Association Workers' Compensation Trust Fund (Trust Fund) was responsible for benefits after January 30, 1996. An administrative law judge determined that respondents #1 and #2 should bear equal responsibility for all benefits to which the claimant was entitled subsequent to March 31, 1996. At that time, the Trust Fund's third-party administrator was Sedgwick James of Arkansas. Management Claims Services, Inc., is the current third-party administrator. In a decision filed September 30, 1997, the Full Workers' Compensation Commission reversed the

decision of the administrative law judge and held that respondent #2 was solely liable for all medical benefits and temporary total disability which it found to be a consequence of the compensable aggravation of January 30, 1996. No further appeal was taken concerning the respective liabilities of respondents #1 and #2. Thereafter, respondent #2 exercised good faith in meeting its obligations under our workers' compensation laws by paying for the claimant's medical treatment related to her cervical spine. The claimant's primary care physicians included her family physician, Dr. Stephen Tucker and her orthopedic specialist, Dr. Richard David Peek.

A second hearing was conducted on April 4, 2001, to address the issue of claimant's entitlement to permanent disability benefits, as well as to address the respective liabilities of the parties for permanent disability benefits. The record reflects that following the April, 2001, hearing, respondent #2, by letter, advised the claimant that it was no longer going to pay for further medical treatment of any nature or kind. The claimant was advised to obtain further medical treatment from her personal health insurance provider. Respondent #2 apparently terminated all medical treatment after obtaining a consultation for a second opinion from its hand-selected physician, Dr. William E. Ackerman, III. Rather than conduct an exhaustive analysis of Dr. Ackerman's opinion and recommendations, suffice it to say that the purpose of Dr. Ackerman's report, in my opinion, and as reflected by his reports, was to close the case with

respect to a low back injury rather than her ongoing cervical problems. All of Dr. Ackerman's recommendations concerning the claimant's need for medical treatment, as well as his assessment of permanent impairment related to the claimant's low back problems which were not the subject of the immediate proceeding. (Jt. Ex. A, pp.271-276)

The record reflects that the claimant has sustained a number of injuries and has undergone numerous surgeries, three (3) related to her cervical spine and one low back surgery following a motor vehicle accident which occurred during April, 1998. Although at the prehearing conference, respondent #2 contended that claimant's need for treatment was related to an independent intervening automobile accident during April, 2000, at the hearing, it acknowledged that the motor vehicle accident occurred in 1998. The record does reflect that the claimant was involved in a third work-related incident in addition to those stipulated by the parties which apparently aggravated her pre-existing condition when she broke up a fight at school on or about March 14, 2000. The claimant received additional, conservative care following the 2000 incident which respondents apparently paid. In fact, respondents continued to pay related medical treatment until on or about May, 2001, at which time, based upon Dr. Ackerman's findings, it terminated all medical treatment. (Tr.25, 28-30)

A brief history of the claimant's injuries reflects that her initial cervical

injury occurred on or about March 7, 1993. The claimant underwent two (2) cervical surgeries following the initial injury, the second being a discectomy and fusion. The claimant returned to work and continued working while receiving ongoing, conservative treatment until on or about January 30, 1996, at which time claimant was run over by a basketball player, causing additional injury to her cervical spine. The injury, which aggravated the claimant's pre-existing condition, required a third cervical surgery and another fusion of the cervical spine. Thereafter, the claimant continued to receive conservative, as needed, medical treatment. Again, the record reflects that the claimant sustained a low back injury after being rear-ended in a motor vehicle accident during April, 1998. As a result of the claimant's low back injury, she underwent a fourth surgery performed by Dr. Richard Peek, her primary care physician for her cervical injuries. Finally, an incident occurred at the workplace on or about March 14, 2000, when, while breaking up a fight, the claimant aggravated her pre-existing cervical and low back problems.

I feel compelled to point out that neither the April, 1998, injury or the March 14, 2000, injury are subject to the immediate proceeding. Although there was some indication that additional claims may have been filed, I am unaware of any additional claims having been filed against this employer. Further, although claimant's attorney indicated that the low back claim had been filed and was being specifically reserved, I feel compelled to point out that

dictum contained the prior decision of Administrative Law Judge Karen McKinney she indicates that the 1998 motor vehicle accident was unrelated to the claimant's employment. Perhaps, there is a potential claim that the March 14, 2000, work-related incident aggravated the non-work-related low back injury; however, the only issue presented for determination concerned respondents' responsibility for continued treatment of the claimant's cervical injuries, which is clearly related to the claimant's employment. In fact, there is no credible evidence whatsoever of an independent intervening accident related to the claimant's cervical complaints, save the March 14, 2000, work-related incident.

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).

I found the claimant to be an extremely credible witness. The record

reflects a superior work ethic. Clearly despite significant physical injuries and multiple surgeries, she has, at all times remained highly motivated. Although the claimant has been required to modify some of her extracurricular activities, both within and outside the workplace, she has continued to pursue her career objectives and fulfill a most meaningful occupation, that of educating our children. Her testimony is both credible and undisputed. From a review of both the claimant's candid and truthful testimony, together with the medical evidence, I find that respondent #2 was not justified in unilaterally terminating the claimant's medical treatment. Indeed, a review of the medical evidence supports a conclusion that all medical treatment provided, to date, for the claimant's cervical problems was reasonably necessary in order to stabilize and maintain her status following the January 30, 1996, injury and allow her to remain a productive member of our society and the teaching profession.

Dr. Richard D. Peek, a well respected orthopedic surgeon in Little Rock, Arkansas, and one of claimant's primary care physicians, testified by evidentiary deposition. Dr. Peek testified concerning the claimant's need for continued, conservative treatment of her cervical problems following the 1998 motor vehicle accident. Portions of his testimony are set out below:

Q. Okay. Now, following that, coming back up from 1998, what was her main complaints at that point?

A. Well, in 1998 she hurt her back, ultimately she required a left sided L3-4 discectomy where we took out a free fragmented disc.

It resolved her left leg pain. And the motor vehicle accident was related to her back and really her neck wasn't altered significantly by the accident because luckily by that point her fusion had become solid and she didn't have any change in her neck condition. She had already been at maximum medical improvement with her neck since 1997.

Q. Okay. Would you say her condition then is about the same today and what you're treating her for in 2004 as in 1997 when she reached maximum medical improvement?

A. She continues to have neck pain, spasms, similar symptoms and I haven't seen the need to do further surgery on her neck. (Cl. Ex. 1, pp.5-6)

It must be noted that most of respondents' cross-examination concerned ongoing treatment for the claimant's lumbar problems rather than her admitted cervical injury. Again, it must be pointed out that the lumbar injury has not been joined. Respondents did question Dr. Peek concerning the subsequent work-related injury of March 14, 2000, as reflected below:

BY MS. DEMORY:

Q. Okay. Just going back I guess and looking, I guess a little bit about her condition for the lumbar spine. Its [sic] my understanding that you had referred her to Dr. Valentine for consideration of IDET procedure. Is that correct?

A. Yes.

Q. And as I understand the referral for the IDET procedure was for her lumbar spine at the L5-S1 level. Is that correct?

A. Yes.

Q. And the reason that you had referred her to Dr. Valentine for the IDET procedure for the levels of L5-S1 is that she had an

annular tear. Is that correct?

A. Yes. And she also had a small herniation.

Q. As I appreciate the MRI reports, that occurred and was identified by discogram in January of 2000, is that correct?

A. Partially. The discogram in January of 2000 revealed that she had some tightness in her back at the L5-S1 and the 3-4 disc and some tingling of the left leg but no exacerbation [sic] of pain during the examination and you can refer to the document of 1/6/00, Dr. Robert Valentine, the author, made this available to you that revealed that she had no pain at the L5-S1 disc. At the 3-4 was where she had the left leg tingling but no pain. That's where the previous surgery was where she had the extruded fragment of disc we had to remove.

Q. Okay. It looks like also though, on the radiology examination of her lower back during the discogram that she did have a posteria annular tear centrally involving the L5-S1 level?

A. I'm looking at the report and the document is as you stated. Also, the next page in your binder is the one I was quoting.

Q. And it looks like she had another incident at work in March of 2000, specifically March 14, 2000, and as a result you had her undergo a new MRI of the cervical spine and a new MRI of the lumbar spine. Is that correct?

A. Yes.

Q. And as I appreciate your report then of March 24, 2000 and the MRI report, basically her cervical spine, there were no changes or no new findings other than from the previous surgeries that she had had?

A. That was my opinion. (Cl. Ex. 1, pp.6-8)

Respondents further questioned Dr. Peek concerning the lack of objective medical findings, as well as the claimant's complaints of pain:

Q. Other than the fact that she had a discogram in January of 2000 and then she had a second discogram on January 9, 2001, you can't state within a reasonable degree of medical certainty what is causing the pain that was reproduced on July 9, 2001?

A. Sure I can. I examined her before and after her injury. This is what I do, day in and day out, I examine people's backs. I'm a spine surgeon, fellowship trained, board certified, and I examined her, my physical examination on multiple occasions at points after the injury and the period between the injury and the discogram, I know her condition was consistent and I can that within reasonably medical certainty.

Q. Again, its [sic] just her history to you as far as the pain location and the pain level?

A. Well, I do a physical examination when I see the patient.

Q. Right?

A. And that's objective finding.

Q. Okay. And what objective findings did you have in your physical examination other than pain?

A. Pain and tenderness to palpation, sciatic, which is positive straight leg raising, she had things related to her neck too, she had shoulder spasms, she had straight leg raising tests, tenderness to palpation, diminished range of motion, those are physical findings.

Q. Okay. Did you receive a copy of Dr. Valentine's report dated January 19, 2001 talking about her back pain?

A. Okay. Referring to this document, I don't know if I have it or not.

Q. Okay. And it looked like on that report dated January 19, 2001, one of the reasons that she was referred for the IDET procedure because she had a sudden change in her pain sometime around the January 2001 time frame. Are you familiar with what history she may have given you that would have indicated that

she had a sudden change in her back pain?

A. The document speaks for itself. (Cl. Ex. 1, pp.12-13)

Finally, Dr. Peek opined that the medications prescribed, while benefitting the claimant's back, were primarily prescribed to treat her cervical problems as reflected below:

Q. Okay. As far as the medications that you prescribe. Is there some medications you prescribe for her neck and some you prescribe for her back or do the medications you prescribe take care of both the neck and the back?

A. Really, you look at the things we have been treating her for, her major problems has been her neck and I prescribe muscle relaxers, anti-inflammatories, anti-depressants, since she originally hurt her neck and really if you look at it they really hadn't, there have been new brands come out, its been going on for a number of years. I'll try different medicines but they are mainly for her neck condition.

Q. But do they have the spill over effect if she does have problems with her lower back that they take care of that as well?

A. Sure. You take the arthritis medicine, it will help all of your joints.

Q. So there is not any one particular medicine that she would take for her lower back as opposed to her neck?

A. No. You know things that help like joints help your joints in general and muscles in general. (Cl. Ex. 1, pp.15-16)

Although the record reflects that the claimant continues to exhibit objective medical findings of cervical injury, contrary to respondents' contentions, I must point out that a claimant does *not* have to support a

continuing need for medical treatment with objective findings. *Chamber Door Industries, Inc. vs. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

Rather than conduct a further exhaustive analysis of the medical evidence, the only other report which I feel merits discussion is the report of Dr. Winston T. Wilson, a clinical psychologist and PH.D. hired by the respondents to perform an independent psychological evaluation on the claimant. The evaluation was performed on September 23, 1999. Dr. Wilson diagnosed a conversion disorder. He opined that the claimant's work-related injuries caused her condition. (Jt. Ex. A, pp.212-214)

AWARD

Respondent, Risk Management Resources, is hereby directed and ordered to pay and/or reimburse the appropriate medical providers, as well as reimburse to the claimant any out-of-pocket co-payments and co-insurance which she has made for treatment of her cervical injury since May, 2001, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorneys, Mr. Steven McNeely and Mr. Zan Davis, are hereby awarded the maximum statutory attorney's fee pursuant to, and limited by, Ark. Code Ann. §11-9-715; *Coleman vs. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990); and *Chamness vs. Superior Industries and Sedgwick James of Arkansas, Inc.*, Arkansas Workers' Compensation Claim #E019760, (March 5, 1992).

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge