

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201388

TAMMY LEATHERS, EMPLOYEE	CLAIMANT
ARKANSAS PIZZA, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 27, 2004

Hearing before Administrative Law Judge J. Mark White on May 4, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 4, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on March 22, 2004, and a Prehearing Order was entered that same day. A copy of the March 22, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including December 24, 2001; that on December 24, 2001, the claimant sustained a compensable injury to her cervical spine; that respondents accepted the December 24, 2001, injury as compensable and paid benefits; that the respondents accepted and paid a 10% permanent anatomical impairment rating; and that the claimant earned sufficient wages to be entitled to a compensation rate of \$160 for temporary total disability benefits and \$154 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether additional medical treatment remains reasonably necessary in connection with the compensable injury; and controversion and attorney's fees.

The claimant contends that she is entitled to continue to see Dr. James M. Arthur and to be seen on a referral basis by any physician to which Dr. Arthur refers her, specifically Dr. Kevin Rudder; and that additional medical treatment remains reasonably necessary in connection with the compensable injury.

Respondents contend that all appropriate benefits have been paid with regard to this claim; that the claimant is seeking treatment for conditions unrelated to her workers' compensation injury; that the cyst for which the claimant seeks treatment is neither an accidental injury nor a compensable consequence; and that the respondents are not liable for those benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that additional medical treatment, specifically treatment for the right shoulder by Dr. Kevin Rudder, remains reasonably necessary in connection with the compensable injury.
4. The respondents have controverted this claim for additional medical treatment in its entirety.

DISCUSSION

I. History

On December 24, 2001, the claimant sustained a compensable injury when she slipped on some degreaser and fell. She sought treatment in the emergency room of DeQueen Regional Medical Center on December 26. The notes from that ER visit reflect that she complained of “neck pain in cervical spine area” down “the entire spine.” It also states that she complained of numbness in her right shoulder. She eventually came under the care of Dr. Michael Standefer, who performed surgery on her cervical spine. The surgery resulted in a 10% anatomical impairment rating which the respondents accepted and paid. Dr. Standefer released her from his care as of July 5, 2002.

The claimant testified that the surgery did not alleviate her pain. She sought and was granted a change of physician to Dr. James Arthur. Dr. Arthur noted that the claimant continued to have pain in her right shoulder. He ordered an MRI of the right shoulder, performed November 14, 2003, which revealed a cyst and chronic tendonopathy. Dr. Arthur recommended that the claimant be seen by Dr. Kevin Rudder for these shoulder problems, but the respondents controverted further treatment. This claim followed.

II. Adjudication

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). The claimant bears the burden of proof in establishing her entitlement to benefits under the Workers' Compensation Act. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

The emergency room records show that the claimant complained of numbness in her right shoulder at the time of her injury. Dr. Standefer's note of June 18, 2002, records complaints of "focal parascapular pain on the right side and difficulty using the right upper extremity on account of increasing pain." Later in that note he writes, "There is tenderness to palpation in the right parascapular region." *Dorland's Illustrated Medical Dictionary*, 26th Edition, defines "parascapular" as, "near the scapula." The "scapula" is defined as, "the flat, triangular bone in the back of the shoulder; the shoulder blade." *Id.*

Dr. Standefer recommended x-rays of the right scapula, but the reports of any such x-rays are not contained within the record. He added, "At present I do not see any evidence of any complication *referrable to her cervical disc surgery*. ... I am inclined

to think that the bulk of her symptoms are *predominantly musculoskeletal* in nature” (emphasis added). Even though Dr. Standefer released the claimant from his care, there is no evidence that he ruled out the possibility of a shoulder injury related to the compensable injury. Rather, he released her from care for her cervical spine, which had been the focus of his treatment.

Dr. Arthur has opined that the claimant is in need of treatment for the cyst and tendonopathy in her right shoulder. Dr. Standefer has not contradicted this opinion, and his notes corroborate that the claimant was having problems with her right shoulder at the time of his treatment. The record shows that the claimant has had problems with her right shoulder from the time of her compensable injury. The claimant credibly testified that her upper spine and right shoulder problems began with the compensable injury and have continued since that time. I found her testimony to be credible in that it was internally consistent, consistent with the medical evidence, and plausible.

In short, the record is plain that the claimant’s right shoulder problems began with her compensable injury and are continuing. There is no evidence in the record of any pre-existing shoulder problems. There is no medical opinion in the record to contradict Dr. Arthur’s recommendation of additional treatment. Therefore, I find that the claimant has proven by a preponderance of the evidence that additional

medical treatment, specifically treatment for her right shoulder by Dr. Kevin Rudder, remains reasonably necessary in connection with the compensable injury.

AWARD

The claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with the compensable injury. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. ARK. CODE ANN. § 11-9-715. Therefore, no attorney's fees are awarded herein.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge