

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214212

DELOIS LEE, EMPLOYEE

CLAIMANT

ADVANCE AUTO PARTS, EMPLOYER

RESPONDENT

**ROYAL INDEMNITY COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 13, 2004

Submitted on the record before Administrative Law Judge Cynthia Estes Rogers.

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

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

A hearing was held on April 1, 2004, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury arising out of and during the course and scope of her employment on December 5, 2002.

It was stipulated that the claimant's temporary total disability rate is \$188.00 weekly and that respondents accepted the claim as compensable and have paid appropriate benefits, including temporary total disability benefits through May 22, 2003.

Claimant contends that she is entitled to a reinstatement of temporary total disability benefits commencing May 23, 2003, and continuing through December 5, 2003. Claimant contends that she is entitled to ongoing medical benefits, including but not limited to a cane prescribed by Dr. Harold Chakales, related expenses, and attorney's fees.

Respondents controvert any additional temporary total disability benefits, contending that claimant's healing period ended on or before May 22, 2003. Respondents controvert the prescription of a cane by Dr. Chakales, contending that prescribing a cane constitutes unreasonable and unnecessary medical expenditures.

STATEMENT OF THE CASE

Claimant was a victim of an armed robbery and assault while working for the respondent employer on December 5, 2002.

Two men came in at approximately closing time with the intent to rob the premises. The claimant was grabbed around the neck and dragged by one of the assailants, while the assailant held a gun to claimant's head. The other assailant shot the claimant's supervisor multiple times, causing his death. Claimant witnessed her supervisor being shot to death, with a gun still held to her head.

FINDINGS OF FACT

1. The claimant is entitled to reinstatement of temporary total disability benefits commencing May 23, 2003, and continuing until December 5, 2003.
2. The claimant is entitled to ongoing medical benefits, including a cane prescribed by Dr. Harold Chakales.
3. Respondents have controverted this additional period of temporary total disability benefits, as well as the prescription of the cane.

DISCUSSION

An injured employee is entitled to temporary total disability compensation during the period of time that he is within his healing period and totally incapacitated to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(13)(Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

In this case, claimant suffered both physical and psychological injuries, as a victim of a crime of violence. Dr. Harold Chakales has treated the claimant from the outset for her physical injuries to her neck and back and continued to find in his reports through late

October of 2003 that claimant was symptomatic, unable to work, and “still temporarily disabled.” In his report dated October 27, 2003, he noted that claimant “walks with an antalgic gait because of low back pain.”

Claimant asserts that Dr. Chakales had prescribed a cane for her use but that she was unable to obtain authorization for the cane from respondents. Respondents assert that the prescription of a cane constitutes unreasonable and unnecessary medical expenditures. However, the Court of Appeals has held that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. *See generally, Georgia-Pacific Corp. v. Dickens*, 58 Ark. App. 266, 950 S.W.2d 463 (1997); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983); *Tiner v. Total Petroleum*, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). (“Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.”) As such, respondents’ argument that the prescription of a cane constitutes an unreasonable and unnecessary medical expenditure, when the cane would obviously serve to reduce claimant’s pain while assisting her in walking, is without merit.

In his deposition, taken on October 29, 2003, Dr. Chakales opined that claimant “probably would have reached maximum healing orthopedically – usually within a year following the injury.” He further opined that if she had any anatomical impairment, it would be “anywhere between 5 and 10 percent, no more,” and that “she needs to be evaluated neuropsychiatrically to see whether or not she indeed is a suitable candidate to be rehabilitated to go back to work”; he stated that he would defer to a psychiatrist on that issue. He went on to state that he would “probably totally release her in December [2003].” He

further noted that although she probably would have reached maximum healing in July of 2003, he did not feel comfortable releasing her from his care at that time, due to the large neuropsychiatric and functional overlay from her traumatic episode.

Based on the medical records and testimony, the claimant in this case has met her burden of proving by a preponderance of the evidence that she is entitled to a reinstatement of temporary total disability benefits commencing May 23, 2003, and continuing until December 5, 2003, as well as continued medical treatment, including the prescription of a cane.

AWARD

Respondents are directed to pay the claimant temporary total disability benefits as outlined in the findings of fact above.

Respondents are directed to pay all reasonable, necessary, and related medical expenses which have been incurred by the claimant and which may be incurred in the future as a result of her compensable injury of December 5, 2002, including a cane prescribed by Dr. Harold Chakales.

Respondents are directed to pay the claimant's attorney, Mr. Gary Davis, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge