

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E118360**

<b>LANAN L. LORETZ, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>FREDS OF LONOKE, EMPLOYER</b>	<b>RESPONDENT</b>
<b>TRAVELERS, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 29, 2004**

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE DALE GRADY, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

This case was submitted on the record, in lieu of a hearing to determine the claimant's entitlement to payment of additional temporary total disability benefits, continuing medical treatment, loss of earning capacity and attorney's fees.

At issue is the end of the healing period as defined by Ark. Code Ann. §11-9-102; and the extent of wage loss as defined by Ark. Code Ann. §11-9-522.

After review, I find the evidence preponderates in favor of the claimant, who is now permanently and totally disabled.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on October 11, 1991 at which time the claimant sustained compensable injuries to her left hip, knee and back at a compensation rate of \$231.00/\$174.00. Medical expenses, temporary total disability benefits and anatomical impairment ratings (15% to the knee, 9% to the back and 35% to the hip) have been paid. The claimant's health history includes a previous back injury with Fred's predecessor, Young's, rated at 10%, (WCC Claim No. C422747).

This claim has been the subject of a previous hearing with opinions entered by Judge McKinney on May 15, 2000 and the Full Commission on September 21, 2000.

The claimant contends she was physically unable to continue working and resigned her position with Fred's on October 19, 1995. She then began drawing Social Security disability benefits beginning April, 1996. The claimant contends that she is not a candidate for rehabilitation but will cooperate if the respondents pay for an evaluation. The claimant contends she is permanently and totally disabled based on her age 67, (D.O.B. February 15, 1937), education (high school), work experience (33 years with Fred's or their predecessor, Young's, performing jobs as needed, from sales clerk to unloading trucks), and injuries. She remains symptomatic with hip and back pain and under the care of Dr. Hahn.

The respondents contend all appropriate benefits have been paid.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits along with the January 27, 2004 and July 10, 2001 depositions of Dr. Herbert Hahn. Included in the exhibits of record is the April 5, 2000 hearing transcript.

The claimant's history of injury is summarized in Judge McKinney's opinion filed May 15, 2000 and will not be repeated here. Dr. Joe Crow performed arthroscopic surgery to repair a torn medial meniscus of the left knee rated at 15%. Dr. Richard McCarthy performed a lumbar fusion at L4-L5, rated at 9%. Dr. Herbert Hahn performed surgeries for the left hip, rated at 35%.

#### **MEDICAL EVIDENCE**

In his January, 2004 deposition, Dr. Herbert Hahn, orthopaedic surgeon, testified the claimant remains under his care for complaints of pain in her back, both hips and occasionally pain in her left knee. The claimant is being treated with narcotic pain medication and a brace to stabilize her hip.

Dr. Hahn reviewed the claimant's history of surgeries to her left hip. On October 3, 1996 he performed an unsuccessful cord decompression followed by a November 18, 1997 total hip replacement. A revision was performed on August 25, 1999 to address problems with dislocations. He reiterated that the healing period ended April 13, 2000.

Dr. Hahn opined that because of her back, leg and left hip injuries, the mechanics of the claimant's gait were altered, causing trochanteric bursitis in the right hip as a compensable consequence, (Depo. p. 16-17). Dr. Hahn explained that bursitis comes and goes and cannot be treated surgically. He assessed 0% impairment for the bursitis in the right hip, (Depo. p. 22).

Dr. Hahn stated that although no testing was needed currently, it could become necessary in the future. A referral to a pain management specialist might also be an option in the future. It's possible the claimant could benefit from a localized injection into the sacroiliac joint, but for that procedure, he would prefer more diagnostic testing with a CT scan of the hip (Depo. p. 25-28).

### **FINDINGS AND CONCLUSIONS**

The claimant's injury occurred in 1991, prior to the enactment of Act 796 of 1993.

Where a primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from the injury, and the basic test is whether there is a causal connection between the two episodes. Wackenhut Corporation, supra; Jeter v. B.R. McGinty Mech, 62 Ark. App. 53, 968 S.W.2d 645 (1998). According to the claimant's treating and operating physician, Dr. Hahn, the claimant's right hip problems are a result of her compensable injury, necessary surgeries and resulting altered gait.

The healing period is defined as that period for healing of the injury that continues until the employee is as far restored as the permanent character of the injury will permit. Arkansas Highway & Transportation Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Id.; Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The determination of when the healing period ends is a factual determination to be made by the Commission. Arkansas Highway & Transportation Dept. v. McWilliams, supra; Mad Butcher, Inc. v. Parker, supra. In Pallozollo v. Nelms Chevrolet, 46 Ark. App. 130, 877 S.W.2d 938 (1994),

the court explained that in order to be entitled to temporary total disability compensation, a claimant must prove that he remained within his healing period and that he suffered a total incapacity to earn wages (city Arkansas State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981)).

According to the claimant's treating and operating physician, Dr. Hahn, the claimant's healing period ended April 13, 2000. She will need treatment for chronic pain but no specific treatment is planned that will improve her condition.

Disability is defined under Arkansas law as the "incapacity because of compensable injury to earn, in the same or other employment, the wages which the employee was receiving at the time of the compensable injury." Ark. Code Ann. §11-9-102(9). The wage-loss factor is the extent to which a compensable injury affects a person's ability to earn a livelihood. Grimes v. North American Foundry, 42 Ark. App. 137, 856 S.W.2d 309 (1993). Wage-loss disability is to be determined from a consideration of the medical evidence, together with other elements such as the injured worker's age, education, experience, and other matters affecting wage loss, including the claimant's motivation to return to work. Weyerhaeuser Co. v. McGinnis, 37 Ark. App. 91, 824 S.W.2d 406 (1992); Mann v. Potlatch Forests, Inc., 237 Ark. 8, 371 S.W.2d 9 (1963).

Considering the claimant's age, education, work experience, significant impairment, chronic pain and need for narcotic medications, I find the claimant is permanently and totally disabled.

1. The Workers' Compensation Commission has jurisdiction of this claim in which an employer-employee-carrier relationship existed among the parties on October 11, 1991 at which time the claimant sustained compensable injuries to her left hip, knee and back at a compensation rate of \$231.00/\$174.00. Medical expenses, temporary total disability benefits and anatomical impairment ratings (15% to the knee, 9% to the back and 35 % to the hip) have been paid.
2. Unpaid medical expenses are currently being audited by the Medical Cost Containment Division.
3. The condition of the right hip is a compensable consequence of the original injury. Respondents are

liable for all reasonable and necessary medical treatment to the back, left knee, left hip and right hip.

4. The claimant's healing period ended April 13, 2000. She has not worked since October 19, 1995. Accordingly, I find she is entitled to temporary total disability benefits from October 20, 1995 to April 13, 2000.
5. After considering the claimant's age, education, work experience and impairment, I find the claimant is permanently and totally disabled.
6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-716, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

7. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

#### **AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge