

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213378 & F214251

WANDA LOWE, EMPLOYEE	CLAIMANT
KOHLER COMPANY, EMPLOYER	RESPONDENT
CRAWFORD & COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 13, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on April 1, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE RALPH THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to additional medical treatment and attorney's fees.

At issue is whether or not additional treatment for her back injury is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on November 8, 2002 at which time the claimant sustained compensable injuries to her back and right shoulder at a compensation rate of \$260.00/\$195.00. Medical expenses and temporary total disability benefits (from March 18, 2003 to April 28, 2003 and from July 7, 2003 to August 14, 2003 and from September 12, 2003 to January 7, 2003) have been paid.

The claimant contends she remains symptomatic and wishes to continue treatment for her back as recommended by Dr. Rosenzweig.

The respondents contend all appropriate benefits have been paid. Further treatment is unreasonable and unnecessary.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant, age 46 (D.O.B. June 11, 1957) was the only witness to testify at the hearing. Since she began work for the respondent-employer in March, 2002, the claimant has sustained injuries to her right wrist on August 18 and left wrist on October 15. Dr. Yocum performed surgery for these injuries in March 2003 (right) and November 2003 (left) and she was released without impairment, see Dr. Clark's report of February 9, 2004.

Dr. Yocum's reports were not introduced into evidence; the parties did not stipulate to the dates of surgery; and the claimant was unsure of the dates. The dates for the surgeries were obtained from Dr. Rosenzweig's report of March 20, 2003 and Dr. Clark's report of October 22, 2003. The claimant stated the surgeries took place in September or October 2002 and June 2003. However, the November 11, 2002 ER report states she is waiting for approval of CTS surgery. Dr. Clark's report of June 26, 2003 indicates surgery was scheduled on the right for July 7. Dr. Clark's reports of October 22, 2003 and November 12, 2003 indicate CTS surgery was scheduled in October and November. Dr. Rosenzweig's report of October 15, 2003 shows CTS surgery was scheduled for the next week.

The claimant also injured her back and shoulder on November 8, 2002 when she was struck by a pallet. Dr. Rosenzweig treated her back injury conservatively with therapy and injections and released her with no impairment rating on October 15, 2003. The claimant's shoulder was treated surgically by Dr. Clark on September 12, 2003. The claimant fractured her ankle in February 2003, and was treated by Dr. Nix.

On direct examination the claimant testified that her treatment with Dr. Rosenzweig was interrupted by her wrist and shoulder surgeries. After her recovery, she tried to return to Dr.

Rosenzweig but the carrier controverted any further treatment.

On cross-examination, Attorney Matthews pointed out that according to the medical records, the claimant had seen Dr. Rosenzweig on a number of occasions after her surgeries and Dr. Rosenzweig released her with no recommendation for additional treatment.

The claimant was initially seen at the emergency room on November 8, 2002 by Dr. Frank Ma. She complained of back pain and was prescribed medication. X-rays were taken showing no fractures or dislocation. Dr. Ma recorded tenderness in the lumbar region with no bruising or abrasions. Inexplicably, the Fitness for Duty Form dated November 8, 2002 shows a diagnosis of contusion. In a return visit dated November 11, 2002, Dr. Ma recorded exaggerated responses to his examination of the claimant. The claimant was instructed to perform home exercises.

The claimant came under Dr. Rosenzweig's care in January, 2003. A whole-body bone scan showed no fractures or inflammatory changes. An MRI scan taken February 20, 2003 showed mild hypertrophic changes of the facet joints at L4-5. There was no evidence of disc herniation or bulging and no evidence of stenosis. Dr. Rosenzweig diagnosed "mechanical back pain with facetogenic changes." He remarked that her symptoms had not responded to medication, physical therapy or time along with modified activities, so he referred her to Dr. Ackerman in a report dated April 10, 2003. Facet block injections were not helpful. Dr. Rosenzweig suggested that the claimant return to Dr. Ackerman for assessment of a medial branch rhizotomy.

Dr. Ackerman's Report of 5-13-03:

Injection of lumbar spine, as suggested by Dr. Rosenzweig. Whether or not the patient would have a facet joint or median nerve branch block would depend upon whether or not the patient had a positive or negative Ackerman's sign. Should this be positive, the patient would have a median nerve branch block. Otherwise, she would have a facet joint injection.

The claimant returned to Dr. Rosenzweig in July for follow-up with continuing complaints of pain. In response to questions from the carrier, Dr. Rosenzweig opined that the only objective findings to support her symptoms and ongoing treatment were degenerative changes at L4-5. However, the carrier is reminded that objective findings are necessary only to establish

compensability--not entitlement to treatment, Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997), Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

Dr. Rosenzweig opined that the claimant suffered a strain or an aggravation of a preexisting arthritic condition, in response to a question about whether or not her injury was the major cause of her symptoms. The carrier is reminded that the “major cause” analysis does not apply to specific injuries, Eastridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000), General Electric Railcar Repair Service v. Hardin, 62 Ark. App. 120, 969 S.W.2d 667 (1998), and the doctor had not yet released her or assessed permanent impairment at the time of this injury.

Dr. Rosenzweig’s Report of 7-31-03:

Ms. Lowe returns for follow-up of her low back pain. She maintains continued discomfort and has not done well. She has had several falls due to pain and weakness in her back, including an ankle fracture. Her disease appears to be limited to the L4-5 facets. It is recommended to consider facet block, branch block, or possible rhizotomy for her ongoing treatment.

She recalls that she did improve (This statement appears to conflict with Dr. Rosenzweig’s report of June 12, 2003), with facet injections, but there has been no recall follow up since then. It is again encouraged for Ms. Lowe to visit back with Dr. Ackerman regarding further treatment for her facetogenic pain.

(Her) examination... (is) consistent with facetogenic difficulty. Her diagnostics do not suggest the need for decompression and, therefore, she may respond favorably to further pain treatment modalities.

She is encouraged with the approval of her comp carrier to visit back with Dr. Ackerman regarding further options for what appears to be primarily facetogenic pain at the L4-5 facets, and it appears to have been aggravated by her work-related injury; although it clearly was a pre-existing condition.

Dr. Rosenzweig’s Letter of September 2, 2003:

Ms. Lowe returns for follow-up... It was recommended that she be reevaluated for further injection for her L4-5 facetogenic osteoarthritis, and she had another block about a month ago (8-7-03) but she reports that she is not any better: If anything, she is worse. She is not benefitting from any treatment at this time. She has filed for Social Security Disability...

Dr. Rosenszweig reiterated that the claimant was not a surgical candidate. Even though she had not responded to conservative care, he assessed maximum medical improvement as there was nothing further he could offer her to improve her condition. He recommended weight loss, exercising, and ibuprofen. She was advised to avoid activities that might aggravate her back (lifting, pushing, pulling, stooping and bending). Dr. Rosenszweig did not recommend further pain management, stating, "if she had responded favorably to the facet blocks and branch blocks, then rhizotomy might be an option. Otherwise, it is unclear what further options are available to Ms. Lowe to further advance her recovery."

The claimant returned to Dr. Rosenszweig in October, 2003 and he again considered returning her to Dr. Ackerman or starting therapy but recommended they wait due to her recent shoulder surgery and her carpal tunnel release scheduled for the next week. Dr. Rosenszweig commented that the claimant had not responded to treatment and her condition was stable. He assessed a 0% rating.

On December 22, 2003 the claimant went to the ER on the advice of her attorney after she could not get an appointment with her primary doctor (the report mentions Dr. Highsmith and Dr. Rozwick). Some lumbar tenderness was recorded but there was no sign of muscle spasm. She was diagnosed with a mild exacerbation of chronic back pain. Her medications were reviewed and determined to be adequate. The claimant was instructed to return to her primary care physician. In one part of the report, her condition is described as chronic, not acute, however, the final diagnosis is listed as "acute exacerbation of chronic low back pain."

FINDINGS AND CONCLUSIONS

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers'

Compensation Commission, February 17, 1989 (Claim No. D612291). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

The evidence of record shows the claimant has had the benefit of diagnostic testing, treatment and consultation with specialist for her back injury. It has been determined that her injury aggravated a preexisting degenerative condition. The claimant is not considered a surgical candidate. She has not had any lasting response to conservative treatment (medication, TENS unit, physical therapy) or pain management (facet and branch blocks), or time (it's been over one year since the injury, she's had time off from work and restricted her activities). Dr. Rosenzweig has assessed 0% impairment, advised her to lose weight, perform home exercises and take over-the-counter medication for pain.

After review, I find the respondents have provided adequate medical care and further treatment is not reasonable and necessary. The December 2003 trip to the ER was not an emergency situation.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on November 8, 2002 at which time the claimant sustained a compensable back injury. Medical expenses and temporary total disability benefits have been paid.
2. The respondents have provided adequate medical care and further treatment is unreasonable and unnecessary. All appropriate benefits for the back injury have been paid.

This claim for additional medical treatment is hereby denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge