

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E902769

SHARLES MCCARTY, Employee	CLAIMANT
MARSHALLTOWN TROWEL CO., Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 12, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 25, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 5, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury on January 25, 1999.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Unpaid medical from Dr. Tomlinson in excess of \$17,000.00.
2. Temporary total disability.
3. Attorney fee.

At the time of the hearing claimant chose to reserve as an issue her entitlement to temporary total disability benefits. Therefore, the only issues to be litigated are unpaid

medical expenses as well as a controverted attorney fee.

The claimant contends the respondent is liable for unpaid medical from Dr. Tomlinson in excess of \$17,000.00, and an attorney fee.

The respondents contend it has paid appropriate benefits for the claimant's compensable injury. The claimant reached maximum medical improvement on June 23, 1999 and was released from Dr. Mitchell's care with a 0% impairment rating.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 5, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that medical treatment provided by Dr. Tomlinson and at his direction is reasonable and necessary and causally related to her original compensable injury. Therefore, respondent is liable for payment of unpaid medical treatment.

3. Respondent has controverted claimant's entitlement to unpaid medical treatment.

FACTUAL BACKGROUND

The claimant is a 48-year-old woman with an eleventh grade education who has worked for the respondent almost nine years. The respondent manufactures small hand tools. The parties have stipulated that claimant suffered a compensable injury to her left

shoulder area while working in respondent's shipping and receiving department on January 25, 1999.

As a result of her injury claimant was initially sent to Dr. Gary Moffitt who diagnosed the claimant as suffering from rhomboidal strain. Dr. Moffitt prescribed heat, massage, ultrasound, and exercise. Dr. Moffitt also ordered some physical therapy and allowed claimant to return to work with limitations. In a report dated March 18, 1999, Dr. Moffitt indicated that he advised claimant that her problem was muscular in nature.

Claimant was not satisfied with Dr. Moffitt's medical treatment and requested a change of physician which was granted to Dr. Mitchell. Although claimant complained to Dr. Mitchell of problems with her shoulder, Dr. Mitchell's medical reports indicate that his focus of attention was the claimant's cervical and thoracic spine. In fact, Dr. Mitchell ordered an MRI of claimant's cervical and thoracic spine which revealed no evidence of disc herniation. Instead, in a report dated May 14, 1999, Dr. Mitchell stated that claimant had a bony osteophytosis which he believed was related to the degenerative process and claimant's age. In an addendum to a report of May 19, 1999, Dr. Mitchell also indicated that claimant's pain was muscular in nature.

According to claimant's testimony she was last seen by Dr. Mitchell in the summer of 1999. Throughout the period of her treatment with Drs. Moffitt and Mitchell the claimant continued to work for respondent with some physical limitations; including a 20-pound lifting restriction. Claimant testified that while she continued to work for the respondent she continued to have additional problems with her left shoulder even after she last saw Dr. Mitchell in 1999.

While claimant was undergoing treatment by Dr. Mitchell and continuing until she sought medical treatment from Dr. Tomlinson in February 2003, the claimant sought treatment from a massage therapist for her left shoulder pain. Claimant testified that she initially sought this therapy two times per week before reducing it to once per week and

finally once every two weeks. Claimant testified that she was forced to reduce her therapy because she was unable to afford more treatment. Claimant testified that the massage therapy was necessary in order for her to continue performing her job duties. Claimant also testified that during this period of time she sought medical treatment from her family physician, Dr. Tuttle, who prescribed her pain medication for her shoulder condition.

In February 2003 the claimant sought medical treatment from Dr. Tomlinson. Dr. Tomlinson initially treated claimant conservatively with an injection and physical therapy. Due to continued pain in her left shoulder he performed surgery on July 7, 2003 and ordered post-operative physical therapy. Dr. Tomlinson released claimant to return to work without restrictions on November 19, 2003.

Respondent accepted claimant's injury as compensable and paid some compensation benefits including medical treatment for Drs. Moffitt and Mitchell. However, respondent has not paid for medical treatment from Dr. Tomlinson, including the surgery or physical therapy. As a result, claimant has filed this claim contending that respondent is liable for payment of unpaid medical treatment from Dr. Tomlinson.

ADJUDICATION

Respondent does not allege that the medical treatment from Dr. Tomlinson is unauthorized, but instead contends that claimant was released by Dr. Mitchell in June 1999 as having reached maximum medical improvement with a 0 percent impairment rating. Initially, with respect to this contention, I note that the documentary evidence does not contain a medical report from Dr. Mitchell in June 1999. Nevertheless, given respondent's contention that claimant had reached maximum medical improvement and was not entitled to additional medical treatment subsequent to that date, the issue is whether the treatment provided by Dr. Tomlinson is reasonable and necessary and causally related to her compensable injury.

A claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof. The evidence indicates that this claimant suffered a compensable injury to her shoulder and upper back area on January 25, 1999. For that compensable injury the claimant was initially evaluated by both Dr. Moffitt and Dr. Mitchell. A review of their medical reports indicates that they primarily focused upon the claimant's cervical and thoracic spine as being the source of claimant's injury. Indeed, Dr. Moffitt took x-rays of the claimant's thoracic spine and Dr. Mitchell ordered an MRI scan of the claimant's cervical and thoracic spine. Apparently, no testing was performed by either of these physicians on the claimant's shoulder. As a result, both physicians opined that claimant's condition was muscular in nature and released her to return to work with restrictions. Claimant did return to work for the respondent with physical limitations. However, according to her testimony which I find to be credible and entitled to great weight, she continued to have problems with her shoulder. As a result, claimant sought massage therapy from a therapist and received medication from her family physician, Dr. Tuttle. It was not until claimant sought medical treatment from Dr. Tomlinson that a physician focused on the claimant's shoulder as opposed to her cervical and thoracic spine.

Dr. Tomlinson's report of February 24, 2004, is significant. In his report of that date the claimant notes that claimant had presented to him with a three-year history of bilateral shoulder girdle pain. He further notes that he treated claimant conservatively but that due to persistent pain in her left shoulder he eventually performed a left shoulder subacromial decompression distal claviclectomy on July 7, 2003. Dr. Tomlinson went on to state that he believed the claimant's treatment was directly related to her work-related injury. He

stated that his opinion was within a reasonable degree of medical certainty and that this type of treatment was necessary with patients who have chronic shoulder problems such as the claimant.

In summary, claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Here, claimant suffered a compensable injury to her left shoulder on January 25, 1999. Although claimant received medical treatment from Drs. Moffitt and Mitchell, their focus was primarily upon the claimant's cervical and thoracic spine, not her shoulder. In the summer of 1999 claimant was apparently released from Dr. Mitchell's care to return to work for respondent with physical limitations. Claimant had a lifting restriction of 20 pounds. Claimant testified that she continued working for respondent but was able to do so only because she continued to pay for massage therapy and because she received medication from her family physician. When claimant's pain became unbearable she sought medical treatment from Dr. Tomlinson who initially treated claimant conservatively before performing surgery. The surgery has been successful in alleviating 90 percent of claimant's shoulder problems according to her testimony. I find that the medical treatment provided by Dr. Tomlinson and his physical therapy and surgery is reasonable and necessary and causally related to the claimant's original compensable injury. Therefore, I find that respondent is liable for payment of this unpaid medical treatment.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that the unpaid medical treatment provided by Dr. Tomlinson, including surgery and physical therapy, is reasonable and necessary and causally related to her original compensable injury. Therefore, respondent is liable for payment of this unpaid medical treatment. Respondent has controverted claimant's entitlement to all unpaid medical benefits.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half to be paid by the respondents but with no fee forthcoming from the claimant since no benefits are being paid directly to the claimant.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE