

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303957

CAROL SCHILLING

CLAIMANT

EXCEL CORPORATION, SELF INSURED

RESPONDENT

OPINION FILED OCTOBER 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondent represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 7, 2004, in Fort Smith , Arkansas. The deposition of the claimant was taken on June 9, 2004, and has been admitted as Respondent's Exhibit No. 2.

A pre-hearing order was entered in this case on May 20, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and hereby accepted:

1. On April 8, 2003, the relationship of employee-self insured employer existed between the parties.
2. On April 8, 2003, the appropriate weekly compensation rates were \$283.00 for total disability and \$212.00 for permanent partial disability.
3. On April 8, 2003, the claimant sustained a compensable injury to her right elbow.
4. There is no dispute at present over the payment of temporary total disability benefits.
5. The respondent has paid all medical expenses incurred through October 21, 2003.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

- I. The claimant's entitlement to additional medical services, in the form of testing recommended by Dr. Daniel.

In regard to these issues, the claimant contends:

"The claimant is entitled to nerve conduction tests, as recommended by her treating physician, Dr. William Daniel."

In regard to these issues, the respondent contends:

"The respondent contends that the claimant sustained a compensable injury to her right elbow on or about April 8, 2003. The respondent contends that all medical benefits and all indemnity benefits to which the claimant is entitled have been paid. The respondent further contends that the claimant was released from treatment by Dr. Claude L. Martimbeau on or about October 21, 2003, with no physical restrictions and no permanent disability rating. Additionally, the respondent states that no compensable event is the major cause of the claimant's current need for medical treatment and that any additional medical treatment sought by the claimant is not reasonable or necessary as a result of the compensable injury. The respondent further contends that the medical treatment sought by the claimant is not authorized, reasonable or necessary as a result of a work related injury."

DISCUSSION

_____The sole issue presented for resolution concerns the claimant's entitlement to additional medical services at the respondent's expense. The particular services in question are those recommended by Dr. William Daniel, in his progress notation of February 28, 2004. These recommended services consist of an evaluation of the claimant by a "new" orthopaedic surgeon, other than Dr. Martimbeau, and the conducting of a nerve conduction study on her right upper extremity.

In order to be entitled to these recommended medical services, the claimant must prove that these medical services represent "reasonably necessary medical services" for her compensable injury. Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing their intended

purpose or goal.

In his report of February 26, 2004, Dr. Daniel gives his reason for recommending an evaluation by another orthopaedist, other than Dr. Martimbeau. He states:

“I think another orthopaedist needs to see the patient in consultation and we need another opinion regarding the chronic tenosynovitis that she has in the elbow and possibly an early right sided carpal tunnel syndrome in her right hand.”

The obvious purpose for the recommended nerve conduction study is to investigate Dr. Daniel's tentative diagnosis that the claimant may have early right carpal tunnel syndrome.

The provisions of the Arkansas Workers' Compensation Act do not entitle the claimant to second opinion, as a matter of right. Instead, the claimant is only entitled to a “second opinion,” if it is shown to be reasonable or medically appropriate.

In the present case, the claimant has been evaluated and treated for her compensable elbow injury by Dr. Claude Martimbeau. Dr. Martimbeau is a board certified and competent orthopaedic specialist. Dr. Martimbeau diagnosed the claimant's difficulties with her right arm as tendinitis of the right elbow. This is essentially the same diagnosis as that previously reached by Dr. Terry Clark of the Cooper Clinic Occupational Medicine Department. This diagnosis also coincides with the diagnosis originally made by Dr. Von Phomakay, a general practitioner with the Sparks Preferred Medical Clinic. Finally, Dr. Martimbeau's diagnosis of the etiology of the claimant's right elbow and arm difficulties also coincides with the diagnosis reached by Dr. Daniel. There is simply no evidence to indicate that Dr. Martimbeau has not adequately evaluated or accurately diagnosed the etiology of the claimant's compensable right elbow or arm difficulties.

The medical record further shows that Dr. Martimbeau has provided the claimant with every type of conservative modality employed by the medical community in this area for the treatment of epicondylitis or tendinitis involving the elbow. This treatment included direct injections, oral anti-inflammatories, oral pain medications, electrostimulation, and immobilization or rest of the joint. There is simply no evidence presented to indicate that there is any other available treatment modality, which would offer a reasonable expectation of success in resolving the

claimant's complaints.

While Dr. Martimbeau has mentioned more invasive treatment, in the form of surgical intervention, he has not recommended or offered this course of treatment. The obvious reason for his action is that the claimant has continuously failed to show, on clinical examination, any objective findings of epicondylitis or tendinitis to the degree that surgical intervention would become medically appropriate. His repeated physical examinations have failed to show the presence of edema or swelling, induration, warmth, redness, spasm or contracture of the musculature of her right upper extremity, or any muscle atrophy from disuse. Even the subjective symptoms exhibited by the claimant on her numerous physical examinations have been essentially normal, or at most, minor. In fact, the only continuing finding has been that of complaints of severe pain. Such drastic treatment, as surgical intervention, is not generally considered as medically appropriate under these circumstances.

It appears that the actual reason for Dr. Daniel's recommendation of a second opinion by another orthopaedic surgeon is the claimant's dissatisfaction with Dr. Martimbeau, a fact which she freely admits. Apparently, her difficulties with Dr. Martimbeau arose when he initially took her off work entirely, on June 29, 2003, and subsequently returned her to limited duty with no use of her right upper extremity.

Dr. Martimbeau's office notation of July 29, 2003, indicates that as part of the claimant's treatment she was restricted from any movement of her right elbow and was placed in a sling. In this report he states:

"She should stay off work since there is no one handed job available."

Apparently, Dr. Martimbeau was advised by the claimant that no one handed duty was available. When he was subsequently informed by the respondent that they would provide the claimant with a one handed position, he released her to return to such limited employment. However, as the claimant testified, she persisted in her belief that there was no such thing as a one handed job for the respondent. Therefore, she simply quit before actually seeing what position would be offered

her.

It appears that the claimant had a similar disagreement with Dr. Clark, her previous physician when he attempted to return her to limited or light duty work. This brought about her change of physicians to Dr. Martimbeau.

If it actually was the claimant's belief that the only way her right elbow injury would get better was to take off work from her position with the respondent indefinitely, then she was clearly mistaken. The record shows that the claimant has not worked for the respondent since June 29, 2003. However, according to her testimony, she has not experienced any improvement in her right elbow or arm difficulties. She stated that her right arm, at the time of the hearing was still the same as it was at any point since the onset of her difficulties.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that any evaluation and possible treatment by another orthopaedic surgeon (other than Dr. Martimbeau) would have any reasonable expectation of more accurately diagnosing the nature and extent of the claimant's injury or effectively treating this injury. Therefore, such an evaluation and treatment by another orthopaedic specialist would not constitute "reasonably necessary medical services" within the meaning of Ark. Code Ann. § 11-9-508.

As previously indicated, Dr. Daniel's recommendation of the nerve conduction study is directed toward the confirmation or elimination of his diagnosis of possible early carpal tunnel syndrome. This condition would result from an injury in the area of the claimant's right wrist and would be totally separate and distinct from any injury to her elbow. The respondent in this case has conceded that the claimant sustained a compensable injury to her right elbow and adjacent portions of her right arm. The respondent has not conceded a compensable injury, to the claimant's right wrist, in the form of right carpal tunnel syndrome.

Clearly, this recommended nerve conduction study would not be necessitated by or connected with the claimant's compensable right elbow injury. Thus, the recommended testing and

any evaluation of this condition by an orthopaedic specialist would not constitute “reasonably necessary medical expenses” for her admittedly compensable right elbow injury. As a result, the respondent cannot, at this time, be held liable for this expense.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including April 8, 2003, the relationship of employee-self insured employer existed between the parties.
3. On all relevant dates, including April 8, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$283.00 for total disability and \$212.00 for permanent partial disability.
4. On or about April 8, 2003, the claimant sustained a compensable injury to her right elbow.
5. There is no dispute, at the present time, over the payment of temporary total disability benefits.
6. There is no dispute, at the present time, over the payment of accrued authorized medical expenses.
7. The claimant has failed to prove by the greater weight of the credible evidence that she is entitled to the additional medical services recommended by Dr. William Daniel, in the form of an evaluation by another orthopedic surgeon and the performance of nerve conduction studies on her right upper extremity. Specifically, she has failed to prove that these recommended medical services would constitute “reasonable necessary medical services” for her admittedly compensable right elbow injury.
8. The respondent has controverted the claimant’s entitlement to the additional medical services recommended by Dr. Daniel.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny the claimant's request for additional medical services, at the respondent's expense, in the form of an evaluation by another orthopedic specialist (other than Dr. Claude Martimbeau) and the performance of nerve conduction studies on her right upper extremity.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge