

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313597

RITA R. SMITH, EMPLOYEE	CLAIMANT
COUNSELING SERVICES OF EASTERN ARKANSAS, EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 8, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on August 13, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Carol Lockard Worley, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 13, 2004, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on July 7, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to certain amendments set out below. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" without objection and made a part of the record.

It was stipulated that the employment relationship existed at all relevant

times, including December 18, 2003 and that the claim had been controverted in its entirety. At the hearing, the parties agreed that the claimant's average weekly wage was \$346.63, which would entitle her to compensation rates of \$231.00 per week for temporary total disability and \$173.00 per week for permanent partial disability in the event the claim was found compensable.

By agreement of the parties, the primary issue presented for determination was whether the claimant sustained a compensable injury arising out of and during the course of her employment with Counseling Services of Eastern Arkansas. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that she sustained compensable injuries to her back and left shoulder as the result of a specific incident identifiable in time and place of occurrence on December 18, 2003; that she was entitled to temporary total disability through January 28, 2004, at which point she was released by her treating physicians; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment.

The respondents contended that the claimant did not sustain a compensable injury on December 18, 2003, maintaining that the claimant was not performing employment related services at the time of the alleged injury. Respondents further contend that there are no objective findings to support a

compensable injury as required by the Workers' Compensation Act. In addition, at the hearing, respondents further contended that medical records failed to support entitlement to indemnity benefits, either temporary total disability or permanent partial disability.

As will be discussed further below, the medical evidence in this claim has been poorly developed. The reason, in part, is that the claimant elected to proceed *pro se* despite being advised on several occasions concerning her right to legal representation. I feel compelled to point out that in prehearing filings, the claimant reported an injury to her left shoulder and low back, as well as a re-injury to her left knee; however, at both the prehearing conference, as well as at the hearing, the claimant requested benefits related to her back and left shoulder. The record does reflect that on the same day that the prehearing conference was conducted, the claimant underwent a MRI of the left knee which reflected a complete ACL tear of the left knee, as well as additional findings. This report was introduced by the claimant in support of her claim. The record reflects that the claimant sustained a prior injury involving the same left knee. Because the medical evidence related to the prior injury was for some unexplained reason not developed by either party, and because this claim also includes an aggravation or re-injury of the left knee, the nature and extent of the knee injury requires further development of the medical evidence and must, by necessity, be reserved. (Com. Ex. 1)(Cl. Ex. A)

The claimant was the only witness to testify. The record is composed solely of the transcript of the August 13, 2004, hearing containing numerous exhibits including medical reports and non-medical documents, some of which were introduced over respondents' objections, which must also be discussed.

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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations of the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence that she sustained compensable injuries arising out of and during the course of her employment with Counseling Services of Eastern Arkansas, specifically, an injury to her low back and left shoulder, and, at the very least, a temporary aggravation of a pre-existing left knee injury as the result of a specific incident identifiable in time and place of occurrence on December 18, 2003, which has been confirmed by medical evidence supported by objective findings, entitling her to appropriate workers'

compensation benefits.

4. The claimant has proven, by a preponderance of the credible evidence, that she is entitled to temporary total disability benefits beginning December 19, 2003, and continuing through, at least, February 5, 2004.
5. The claimant's healing period related to her left shoulder and low back ended on or before February 5, 2004.
6. The nature and extent of claimant's left knee injury, as well as claimant's entitlement to indemnity benefits, if any, related to the left knee injury requires further development of the medical evidence and is, by necessity, specifically, reserved.
7. Respondents have controverted this claim in its entirety.

DISCUSSION

This is an extremely troubling case. Many of the relevant facts surrounding the claim are undisputed. Although it appears that the claim was controverted in whole or in part because the claimant had sustained a prior non-work related injury to her left knee, which was also part of the within claim, the record reflects that respondents were not justified in controverting the claim in its entirety. In my opinion, respondents failed to exercise good faith in meeting its obligations under our workers' compensation laws by refusing to provide the claimant with reasonably necessary medical and related treatment, including, but not limited to, diagnostic testing to determine the exact nature and extent

of claimant's injuries.

Despite respondents' assertion that the claimant was not performing employment related services at the time of her alleged injury, respondents offered no evidence whatsoever to support this contention. The claimant was the only witness to testify. Although respondents identified numerous witnesses to refute the claim, none were called to support its position. The claimant's testimony is undisputed. Respondents further contended that there was no objective findings to support a compensable injury as required to the Workers' Compensation Act. As reflected by the medical evidence, set out further below, this contention is, likewise, without merit.

The claimant, Rita R. Smith, testified in her own behalf. The claimant is thirty-four (34) years old. She completed high school, as well as one year of college. She denied any additional vocational training beyond her formal schooling. The claimant first went to work for the respondent in 1999. She stated that she left respondent's employment after six (6) months because a contract that the employer had with another company ran out. She stated that she was rehired in February, 2001, and that she continued working for the employer until her injury on December 18, 2003. The claimant's description of the injury, how it occurred, as well as claimant's course of treatment, including an explanation of her pre-existing left knee problems, is set out, in part, below:

Q Tell me in your own words what happened to cause your injury.

A I tripped over a rug. I was walking in the door with my paperwork. I tripped over a doormat rug that was at the door, and I fell into some chairs. Over to my left there was some chairs. I fell into some chairs and I hit the floor and I couldn't get back up.

Q Well, was this incident witnessed by any co-workers?

A Yes, sir, Jimmy Fowler, he was sitting in the day room and he heard me hollering – holler, and he came in there and he tried to help me get up and I couldn't get up.

Q What part of your body do you claim to have injured?

A My left shoulder and my lower back, and I reinjured my left knee.

Q When you say reinjured it, had you sustained a prior injury?

A I had –

Q Which knee?

A Left. Last July I had some problems with my left knee with degenerative arthritis.

Q You mean in July of 2003?

A 2003, yes, sir.

Q And you had gone – did you go to a doctor for that?

A I went to see Dr. L'Heureux from my primary doctor, which was Dr. Pierce. He sent me to see Dr. L'Heureux, and Dr. L'Heureux sent me to see Dr. Lynch.

Q Okay. And did you miss any work for your left knee problems?

A Yes, sir, three –

Q But those were unrelated to any job incident, right?

A Right.

Q And how long were you off work for that?

A Three months.

Q Three months. Did you receive any treatment for your left knee?

A Well, no, sir. That first day I went to see Dr. Lynch he gave me a cortisone shot.

Q Well, let's not get – when you say the first day, you are talking about the first day after December 18th, or are you talking about back in July?

A No, sir, prior. Prior, in July.

Q He gave you a what, now?

A A cortisone shot and a steroid shot.

Q And took you off work?

A And took me off work for three months, until October the 7th.

Q So you returned to work on October – what date?

A I returned – he didn't release me, Your Honor. My job called me and told me that the doctor had released me, and that if I didn't return to work by Monday, I would be terminated.

Q Well, what kind of income did you have from July to October?

A Short-term disability.

Q From your employer?

A Yes, sir.

Q Okay. And who called you?

A Cecil Treece.

Q And he told you that your short-term disability had run out?

A He said – no, he didn't say it had run out. He said that the doctor released me, and that if I didn't come back to work by Monday, that he would recommend that I resign, my resignation.

Q But in any event, you went back to work in October, right?

A I had no other choice, yes, sir.

Q Well, then did you work from October through this alleged incident on December 18?

A Yes, sir.

Q Then again, when you tripped, fell over these – was it chairs?

A Rug, over a rug.

Q Rug. And you claim you hurt your left shoulder, your low back, and reinjured that left knee, is that right?

A Yes, sir.

Q And did you report that immediately to your supervisor?

A Yes. Yes, sir.

Q Who was your supervisor?

A My supervisor at that time was Josephine Flowers. Well, my direct supervisor was Ms. Joyce Jones.

Q Who did you report the injury to?

A I reported the injury to Lanny Charles.

Q Lanny?

A Yes.

Q Charles?

A Yes.

Q Who else?

A And Cecil Treece.

Q And did they send you to the doctor?

A No, sir. I was carried to the doctor that day by ambulance.

Q So your employer provided you with emergency treatment, is that right?

A Yes, sir.

Q So was it your employer that sent you by ambulance to the hospital?

A Yes, sir.

Q And what hospital were you taken to?

A Crittenden Memorial.

Q And who were you seen at Crittenden Memorial by?

A Dr. Westmoreland.

Q And what complaints did you make to Dr. Westmoreland?

A My left knee and my back and my shoulder.

Q So you complained about all those problems?

A Yes, sir.

Q And did Dr. Westmoreland refer you to any other doctor?

A Yes, sir, my primary care physician.

Q And who was your primary care physician?

A Dr. Trent Pierce.

Q Dr. Trent –

A Trent Pierce.

Q Pierce?

A Yes, sir.

Q Did Dr. Pierce refer you to any other doctors?

A He referred me to Dr. L'Heureux, which then Dr. L'Heureux was seeing me for my back and my shoulder, and he said that he would –

Q I can't – we've got his reports, I assume.

A Okay.

Q I'm just trying – without getting to what the doctor said, because it would be very difficult to cross-examine those doctors as to what they said if they are not here, so we're going to have to go by what their reports say, but you said Dr. Pierce referred you to Dr. L'Heureux?

A Yes, sir.

Q And Dr. L'Heureux then refer you to any other doctors?

A Dr. Lynch.

Q Dr. Lynch. Any other doctors that you've seen for your injury other than Dr. Westmoreland, Pierce, L'Heureux or Lynch?

A Dr. Pierce, Joe Pierce, Joseph Pierce.

Q A different Pierce?

A Yes, sir.

Q And how did you get to him?

A This has been since my employer fired me.

Q Well, who sent you to Dr. – did you go to him on your own?

A Yes, sir, because I was still in pain.

Q And when did you go to Dr. Joseph Pierce?

A I went to Dr. Joseph Pierce in April of this year. I mean, not April, I'm sorry, in June of this year.

Q Do I have any reports from Dr. Joseph Pierce?

A Yes, sir, those are the reports from that.

Q Are they part of that multipage deal there?

A Yes, sir.

Q Any other doctors that you've seen that we haven't talked about?

A Yes, sir. I just saw a Dr. Tuckerman, Jim Tuckerman in Little Rock, and he in turn referred me to Dr. Newbern for a total knee replacement.

Q We don't have any of those doctor's reports, do we?

A You don't have Dr. Tuckerman or Newbern, no.

Q Is this something you recently –

A Yes, sir.

Q And you are telling us somebody recommended a total knee replacement?

A Dr. Jimmy Tuckerman –

Q Now, –

A – in Little Rock. (Tr.12-18)

The claimant was immediately taken by ambulance to the Crittenden Memorial Hospital. The EMT report contains a history of tripping over a rug and

falling with complaints of knee injury, as well as back pain. Again, the claimant was taken to the Crittenden Memorial Hospital where the only diagnostic study taken was x-ray of the left knee, as well as the lumbar spine. The studies revealed minimal fluid in the suprapatellar bursa of the left knee with degenerative osteoarthritic changes in the medial compartment without fracture or dislocative injuries and no structural lumbar pathology identified. (Cl. Ex. B, pp.1-4)

The claimant was next examined by her primary care physician, Dr. Trent P. Pierce, on December 19, 2003. Dr. Pierce's report reflects the immediate claim, as well as notes the claimant's prior history of knee injury as set out below:

S – This is a Workman's Comp injury, but it is kind of complicated because she is one of our patients. This individual evidently stumbled yesterday and fell. She struck her left shoulder, her left side and perhaps the left side of her knee. Patient has a previous history of significant knee injury. She has been seen by an orthopedist, Dr. Thrasher, who has recommended joint replacement surgery. She has actually been in his system to start receiving injections into the right knee. These were actually to be started on Tuesday. This dates back to visits occurring in October and November. At any rate, after her injury yesterday, she went to the Emergency Room and was prescribed medications, which she hasn't gotten filled yet. At this time, it was recommended that she be seen in follow-up in our office. Past history is mentioned. Past social history – history is important in noting that she was off work with her last knee injury for three months and has been told that she has total disability in relationship to her knee.

O – The examination reveals no effusion involving the left knee. There is limited flexion and extension. There is no ligamentous laxity. Patient also has limited range of motion of the left shoulder without redness, erythema or bruising. There is also pain to palpation over the left SI joint, but not over the left hip itself.

A – Musculoskeletal injury secondary to fall.

P – She is asked to take her medications, which were prescribed through the Emergency Room in addition to Bextra, which she has at home. She will be followed up on Monday. She perhaps was given a referral to see Dr. Thrasher for the knee injections, but this was on her regular insurance and not on this Workman's Comp injury. Return PRN. (CI. Ex. B, p.16)

The claimant returned to Dr. Pierce on December 22, 2003, requesting that she be allowed to see an orthopedist for her shoulder and lumbar discomfort. Dr. Pierce apparently obtained approval from the employer to allow the claimant to be evaluated by Dr. Guy L'Heureux, a medical orthopedic, that same day. The claimant was in fact examined and evaluated by Dr. L'Heureux on December 22, 2003. Dr. L'Heureux treated the claimant primarily for her left shoulder and low back complaints beginning December 22, 2003, through January 22, 2004. Dr. L'Heureux released the claimant to restricted work duty on January 22, 2004, and to full work two (2) weeks thereafter, related to the shoulder and low back, while, at the same time, deferring any opinion concerning the claimant's left knee to Dr. Michael Lynch, pointing out that the claimant was already receiving treatment by Dr. Lynch for the left knee at the time the claimant was referred to Dr. L'Heureux for evaluation. I feel compelled to point out that respondents objected to the introduction of medical records from Dr. L'Heureux because they were obtained by respondents rather than the claimant. The claimant testified that she attempted, unsuccessfully, to get the medical reports from Dr. L'Heureux which were sent to her prior to the hearing

by respondents. The claimant requested that the reports be introduced. They were allowed over respondents' objection, as "Claimant's Exhibit C." (Tr.27-30)(Cl. Ex. C, pp.1-9)

It is understandable why respondents would object to the introduction of medical evidence which it submitted prior to the hearing, but elected not to introduce into evidence. In addition to its contention that the claimant was not performing employment related services at the time of the alleged injury, which is inconsistent with the record as a whole, respondents further contended that there were no objective findings to support a compensable injury. Clearly, as reflected by Dr. L'Heureux's initial evaluation on December 22, 2003, the claim is supported by objective medical findings as defined as Ark. Code Ann. §11-9-102(16).

Specifically, in his December 22, 2003, narrative report, Dr. L'Heureux observed significant muscle spasms on both the left low back area, as well as the right low back area. In addition, Dr. L'Heureux x-rayed the claimant's left shoulder which demonstrated a very slight narrowing of the AC joint without evidence of fracture or dislocation. Dr. L'Heureux's final diagnosis was contusion of the left shoulder, lumbar strain, and fairly severe degenerative arthritis of the left knee, medial compartment. Again, he recommended that the claimant receive follow-up treatment from Dr. Lynch for the left knee because she was already scheduled for treatment with supartz injections at the time of

his evaluation on December 22, 2003. (Cl. Ex. C, pp.5-7)

The claimant returned to Dr. L'Heureux on January 6, 2004, with continued complaints of low back pain and left shoulder pain. Although Dr. L'Heureux found that the claimant's physical condition had improved, he continued to keep her off work with exercise and medication and to be reevaluated on January 22, 2004, while remaining under the care of Dr. Lynch for the left knee injury. The claimant last saw Dr. L'Heureux on January 22, 2004. His narrative report on said date is set out in its entirety below:

Ms. Smith was seen January 6. Since then she has had an injection by Dr. Lynch and she is supposed to return next week for the last injection of Supartz. The patient says that she has not improved as far as her left knee is concerned.

As far as her left shoulder and lumbar strain she says she has not improved and that she is in pain most of the time. She described the pain and the left shoulder as stiffness and says that she cannot use that shoulder because she does not have the full range of motion.

As far as the lower back is concerned she says she is having some sharp-like burning fairly often and she relates that to muscle spasm. She says the pain is not constant, but fairly often and sometimes when those sharp pains are present they are very severe. She says she cannot do much and she is restricted to nearly nothing as far as activity. The patient says that she had been given some muscle relaxant at the emergency room and that it does help sometimes, but she is out of it and has felt more tightness in her back since she has been without those muscle relaxants.

At physical evaluation the patient is walking slowly. She is moving very slowly. She appears to be in a state like she is overmedicated this morning just as she did when I last saw her on January 6. She is alert and oriented. Her blood pressure is 140/70, pulse 78 and respiration 14. The patient doesn't appear to have any spasm in the left shoulder area and is complaining of pain when I barely touch the skin around the left shoulder. As far as range of motion she is still having the ratchet type of motion, but just by putting my finger under her

elbow I can get her to get to full range of motion, anterior flexion, abduction, external rotation and internal rotation. There is full range of motion of the elbow, wrist and hand. Grip in her hand appears to be me [sic] about normal for her size and strength. There is good circulation and good sensitivity.

As far as the low back is concerned, I purposely go and touch the right side nearly in the flank and she immediately kind of pushes sideways and then slightly toward extension saying this is very painful. I then tell her that it is my understanding that it is the left side that bothers her. She says yes but the right side is painful also. On the left side she barely lets me touch the skin. She doesn't have any spasm of the lumbar spine. As far as the range of motion of the lumbar spine she is limited by about 50% and doesn't want to go any more than slight flexion and extension.

It is evident to me that Ms. Smith is having symptom magnification and that in my opinion her left shoulder and back are not giving her that much problem. She may have some discomfort, but definitely not at the level that she is describing. As far as the knee is concerned I have told her that I would leave that to Dr. Lynch since he is taking care of her and it is possible that the left knee pain if the injection has not improved her condition may have some effect on the rest of her body.

From my point of view with a contusion of the left shoulder and slight lumbar strain I think she should be able to go back to at least light duty work meaning no lifting more than 10 pounds and this for the next 2 weeks. If Dr. Lynch wants to keep her off work that will be up to him. After 2 weeks the patient should be able to return to full work as far as shoulder and low back area is concerned. I will give her a prescription of Soma #18 this morning 1 b.i.d. if spasm and she will continue off and on her Darvocet as needed. I will not give her any specific appointment. (Cl. Ex. C, pp.2-3) (Emphasis supplied)

As previously reflected by both the claimant's testimony, as well as the December 19, 2003, report from Dr. Pierce, the claimant had a pre-existing physical problem involving her left knee for which she was treated primarily by Dr. Michael H. Lynch. Indeed, the record also reflects that Dr. Lynch treated the claimant primarily with supartz injections at least through the end of

January, 2004; however, the record is devoid of any narrative reports from Dr. Lynch and/or other medical providers who have apparently recommended a total knee replacement. (Cl. Ex. B, pp.12-16)

The claimant did introduce, without objection, the results of a MRI taken by Dr. Joseph B. Pierce on July 7, 2004, which happened to be the same day as the prehearing conference conducted in this claim. Clearly, said diagnostic study revealed multiple problems involving the claimant's left knee including a complete ACL tear. (Cl. Ex. A)

The claimant has proven, by a preponderance of the credible evidence, that she sustained compensable injuries to her left shoulder, low back, as well as, at the very least, a temporary aggravation of her pre-existing left knee injury as the result of a specific incident at the workplace on December 18, 2003. The medical evidence reflects that the healing period for the claimant's left shoulder and low back problems ended on or before February 5, 2004, at which time the claimant was released to full duty without restrictions for said injuries. However, the nature and extent of claimant's left knee problems, as well as their causal connection to the December 18, 2003, compensable injury requires further development of the medical evidence and is, by necessity, specifically reserved.

I feel compelled to point out that the claimant's left knee injury is a scheduled injury under our Workers' Compensation Act. Consequently, in the

event that the claimant's continued knee problems are the result of a compensable aggravation of a pre-existing condition, respondents would be responsible for temporary total disability within the claimant's healing period and during the period of her unemployment. Again, at the hearing, the claimant only requested indemnity benefits related to the back and shoulder which have been addressed. Neither party developed the knee injury which has, by necessity, been reserved. Because any delays in fully developing the medical evidence and determining the nature and extent of claimant's left knee injury could result in adverse consequences to both parties, the parties are encouraged to amicably resolve their differences related to the immediate dispute rather than pursue protracted litigation and appeals which would not appear to benefit either party.

In view of the foregoing, I hereby make the following:

AWARD

Respondent, AIG Claim Services, Inc., is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$231.00 per week beginning December 19, 2003, and continuing through February 5, 2004.

All benefits having accrued, respondents are to pay same in lump sum and without discount.

Respondents are further directed and ordered to pay all outstanding

hospital, medical, and related expenses as the result of claimant's December 18, 2003, compensable injury, and respondents remain responsible for continued, reasonably necessary medical treatment.

Issues not addressed herein are specifically reserved for future determination.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge