

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400087

KATHLEEN A. TERRILL	CLAIMANT
AMISH CONNECTION	RESPONDENT
ARKANSAS P & C GUARANTY FUND INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 23, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by MATTHEW MAULDIN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 22, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 15, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 1, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her left shoulder on January 1, 2002.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on January 1, 2002, when she was doing inventory. She stepped up on a stool attempting to move a piece of furniture and injured her left shoulder. She has been under treatment from Dr. Chris Arnold and Dr. Tom Atkinson.

In regard to the foregoing issues the respondents contend that additional medical treatment is not reasonably necessary in connection with claimant's compensable left shoulder strain. Respondents reserve the right to raise additional defenses as discovery develops. Respondents are unaware of the dates for which claimant seeks TTD benefits, and until she states same, respondents cannot state a position regarding claimant's entitlement to TTD benefits. Respondents respectfully reserve the right to supplement this pre-hearing questionnaire at a later date.

The documentary evidence submitted in this matter consists of the Commission's Prehearing Order, marked Commission's Exhibit No. 1. The claimant submitted a packet of documentary evidence, marked Claimant's Exhibit No. 1. The respondent submitted a report from Dr. Christopher Arnold, marked Respondent's Exhibit No. 1, and the claimant's W-2 forms, marked Respondent's Exhibit No. 2. The parties submitted the deposition of the claimant taken on May 27, 2004 and it was marked as Joint Exhibit No. 1. All of these exhibits were admitted without objection.

DISCUSSION

_____It has been stipulated by the parties that the claimant sustained a compensable injury to her left shoulder on January 1, 2002.

The claimant testified that she first began receiving medical treatment on September 24, 2002 for her compensable injury. The claimant stated that she was referred to Dr. Chris Arnold by Dr. Atkinson for her shoulder problem. The

claimant testified that she currently is ready to go forward with the treatment recommended by Dr. Arnold and that she cannot afford this treatment personally.

On cross examination, the claimant agreed that it was possible that on April 1, 2003, she reported to Dr. Arnold that her shoulder felt better and that two and a half months later, she again reported that her shoulder and neck were better.

The claimant testified that she continued to work for the respondent between January 2000 and September 24, 2002. The claimant testified that her job required her to do lots of lifting out from her body as well as above her head and this lifting is of various weight. The claimant testified that from September 24, 2002, to present, she has had to restrict her lifting. The claimant testified that there are days when her shoulder is better and there are days when her shoulder is worse. When asked if she was ready to follow the recommendation of Dr. Chris Arnold the claimant responded, "Yes."

The medical report sets forth that the claimant was seen at Integrated Health on September 24, 2002, for an injury to her left shoulder at work in January of that year and it has been getting worse when lifting furniture. The claimant was seen by Dr. Christopher Arnold on November 19, 2002 for her left shoulder pain where it is noted that her problems began in January 2002 and have persisted despite anti-inflammatory as well as some muscle relaxants. Dr. Arnold notes that the claimant complains of pain in her left shoulder which radiates down the arm region. After examination, the claimant was diagnosed with left shoulder pain secondary to a work related injury (repetitive motion) with symptoms secondary to rotator cuff tendinosis but cannot rule out a tear. Physical therapy was recommended and if there is no improvement then an MRI or injections will be administered. The medical record sets forth that the claimant underwent physical therapy at the Eureka Springs Hospital during the month of November. Dr. Arnold

writes on December 31, 2002 that the claimant's symptoms are much improved but she is still having some pain in the shoulder as well as the rhomboid region. Dr. Arnold recommended a continued conservative treatment plan and gave her work restrictions consisting of no lifting, pushing or pulling greater than 10 pounds, no overhead lifting, and no repetitive motion. The doctor recommended that she continue her physical therapy. Dr. Arnold notes that if her weakness persists they will obtain an MRI. On February 18, 2003, Dr. Arnold writes that the claimant's condition has taken a step backward and that she has developed some neck pain. Dr. Arnold notes that since her pain has persisted, he would recommend an MRI for her shoulder and continued physical therapy for her neck pain. The claimant underwent an MRI on February 21, 2003 which revealed that she has tendinosis versus partial interstitial tear of the distal supraspinatus tendon. Mild subacromial/subdeltoid bursa edema. It is also noted that she has a Type III acromion. On March 4, 2003, Dr. Arnold writes that a review of the claimant's MRI revealed that she has supraspinatus tendinosis as well as mild edema in the subacromial/subdeltoid bursa and possible interstitial cuff tear. Dr. Arnold administered an injection to the claimant's shoulder and recommended that she continue with her current treatment regime. On April 1, 2003, Dr. Arnold examined the claimant noting that her left shoulder feels better and her neck pain is the same. Dr. Arnold recommended that she continue with her physical therapy as well as her work restrictions. Dr. Arnold continued the same recommendations after a visit with the claimant on June 17, 2003. On December 8, 2003, Dr. Arnold writes that the claimant's shoulder is not much better and again offered her an injection which she underwent. It is noted that the claimant has continued to have neck pain for which an MRI was recommended. Dr. Arnold notes that if her shoulder does not improve with the injection, her condition might warrant a

diagnostic arthroscopy. The doctor also recommended that she continue with her work restrictions. In Dr. Arnold's note dated April 20, 2004, he outlines the claimant's treatment program for her shoulder problems and notes that she has been very compliant with the treatment regime. Dr. Arnold also writes that it is his opinion that her problems are work related and needs continued treatment. Dr. Arnold recommended a Nerve Conduction Velocity test to make sure there was no neurological involvement and that if this is normal, they may need to undergo a diagnostic arthroscopy.

In the claimant's deposition, she testified that the store manager at the time, Marisa Johnson, asked her to come in and help with the inventory on January 1, 2002. The claimant testified that as a result of her work that day, she injured her left shoulder. The claimant testified that as result of her compensable injury, Dr. Arnold put her on restrictions of no lifting over 15 pounds, no pushing, shoving, or lifting over her head. The claimant testified that Dr. Arnold was the first physician to put her into physical therapy for her shoulder problems. The claimant testified that following the respondent's Labor Day sale in 2003, she did not sustain a new injury but, due to the sale, worked longer hours causing her symptoms to be more noticeable. The claimant testified that she did not violate her restrictions but was just involved in doing more activities which she normally did each day during this annual sale. The claimant testified that her physical therapy, in her opinion, did help improve her strength but that her shoulder has never been well since her date of injury. The claimant testified that Dr. Arnold has recommended surgery which she is agreeable to undergo if she can get it authorized.

After a review of this entire record, I find that the claimant has proven by preponderance of the evidence that she is entitled to additional medical treatment

for her compensable left shoulder injury. The claimant has testified that immediately following her injury on January 1, 2002, she had hoped that her symptoms would resolve but in fact they worsened and have continued pretty much the same to the date of this hearing. The claimant testified that Dr. Arnold placed her on restrictions which she has complied with but even with these limitations, her shoulder problems have persisted. The medical reports set forth that the claimant has had some improvement in strength but that her continued work has prolonged her symptoms. Conservative treatment has been administered with little or no relief for the claimant's left shoulder problems and Dr. Arnold has recommended arthroscopic surgery for the claimant's compensable injury. I find that the recommendations of Dr. Arnold are reasonable and necessary for the treatment of this claimant's left shoulder problems.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 1, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her left shoulder on January 1, 2002.
4. Claimant has proved by preponderance of the evidence that she has is entitled to additional medical treatment for her compensable left shoulder problems. See Discussion above.

ORDER

The claimant has proved by preponderance of the evidence that she is entitled to additional medical treatment for her compensable left shoulder

problems. Therefore, the respondent should pay for the cost of this claimant's authorized treating physician's recommended treatment for her compensable injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE