

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202082

LOIS WASHINGTON, EMPLOYEE	CLAIMANT
UNIVERSITY OF ARKANSAS, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 24, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 12, 2004 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of additional temporary total disability benefits, medical expenses and attorney's fees.

At issue is whether or not Dr. Ward's treatment is authorized, unreasonable and unnecessary as defined by Ark. Code Ann. §11-9-508 and whether or not a motor vehicle accident five months after the compensable injury constitutes an independent intervening cause breaking the chain of liability, as defined by Ark. Code Ann. §11-9-102.

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 February 15, 2002, at which time the claimant sustained a compensable injury at a compensation rate of

\$154.00/\$154.00. Medical expenses and temporary total disability benefits were paid until Dr. Safman released the claimant on August 12, 2002 with a 0% anatomical impairment rating.

The claimant was involved in a motor vehicle accident (MVA) on July 26, 2002.

Some benefits have been paid by the claimant's group insurance carrier, Qual-Choice. They were placed on notice of these proceedings but chose not to file a lien.

The claimant contends she injured her neck and back in a fall down a flight of stairs on February 15, 2002. After her release from Dr. Safman, she returned to work for a couple of months, but remained symptomatic. Her general practitioner, Dr. Maxwell, referred her to Dr. Ward for pain management. The claimant seeks payment for continuing medical treatment with Dr. Ward and payment of his expenses, additional temporary total disability benefits from July 8, 2002 to August 21, 2002 and from October 21, 2002 to December 12, 2003, and attorney's fees.

The respondents contend the claimant was released by Dr. Safman and all appropriate benefits have been paid. Additionally, further medical treatment by Dr. Ward is unauthorized, unreasonable and unnecessary. Alternatively, the claimant was involved in a MVA on July 26, 2002, which was an independent intervening cause breaking the chain of liability.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript. Post-hearing correspondence (the claimant's letters of August 12 and August 25 and the respondents' letter of August 16) are incorporated by reference.

The claimant and the claims adjuster, Harriet Upshaw were the only witnesses to testify at the hearing. The parties stipulated that if called to testify, the claimant's husband would corroborate her testimony.

The claimant, age 58 (D.O.B. November 18, 1945), had worked for the respondent-employer about a year when she was injured in a fall on February 15, 2002. She was carrying a vacuum cleaner up and down the stairs when she tripped over the cord and fell down 10 or 12 steps. The claimant developed pain in her neck, shoulders, back and legs with headaches.

She went to the emergency room before coming under the care of Drs. Maxwell, Simpson, Safman and Ward. Dr. Maxwell made the referral to Dr. Ward, and the respondents have controverted his treatment.

The claimant tried to return to work at light duty from June to July, and from mid August to October 21 before she was laid off.

The claimant was involved in a MVA on July 26, 2002 and was treated by Dr. Maxwell, however, she stated she wasn't hurt. She doesn't recall mentioning the MVA to either Dr. Safman or Dr. Ward.

The claimant has not worked since October 2002 and remains symptomatic with pain in her shoulders and lower back.

Harriet Upshaw testified regarding the payment of indemnity benefits:

TTD paid 2-16-02 to 5-5-02
RTW lt duty from 5-6-02 to 7-2-02
TTD pd 7-3-02 (resumed because employer had no
light duty)
Holiday 7-4-02 to 7-5-02
TTD pd 7-6-02 to 7-15-02, - 8-15-02 (last payment of
TTD)
RTW full duty 8-19-02

MEDICAL EVIDENCE

Some of the respondents' exhibits predate the injuries in question or involve other medical

conditions that have no bearing on this claim. The relevance of pages 1-7, 18-21, 38-48 is unknown.

Diagnostic testing was performed on February 15, 2002 after the claimant fell down the stairs at work. CT scans (which had to be repeated due to poor quality), x-rays and MRI scans showed only degenerative changes in the cervical, thoracic and lumbar spines.

The claimant saw Dr. P. B. Simpson on February 16, 2002 and reported back and shoulder pain with numbness in her right hand and arm after falling downstairs at work. He diagnosed musculoskeletal neck pain after a negative physical examination and review of the diagnostic testing. Dr. Simpson prescribed pain medication and released her to return to Dr. Maxwell.

Dr. Maxwell seemed to be under the impression that the claimant suffered from a “cracked vertebrae,” (see his report of March 5, 2002) as well as multiple contusions. Dr. Maxwell recorded paravertebral muscle spasms and DJD (degenerative joint disease) of the left knee (see his report of April 2, 2002). She was released for light duty on May 2, 2002 despite her complaints of back, shoulder, chest and left arm pain. She was then evaluated by a cardiologist.

The claimant returned to Dr. Maxwell on May 30, 2002 complaining of back and shoulder pain. He continued her on light duty and referred her to Dr. Safman for pain management.

Dr. Safman examined the claimant on June 26, 2002 and diagnosed “bilateral piriformis syndrome, bilateral trochanteric bursitis, upper trapezius strain and left carpal tunnel syndrome (CTS).” He continued her on light duty and prescribed medication and injections.

The claimant returned to Dr. Maxwell on July 3, 2002, and he noted no improvement despite medication, light duty and two months of physical therapy.

Dr. Safman’s report of July 10, 2002 shows the carrier denied his request to test the claimant for CTS. Dr. Safman prescribed more injections and a change in medication. In a follow-up report

dated July 24, 2002 Dr. Safman opined “no objective pathology is evident.”

The claimant saw Dr. Maxwell on July 26, 2002 for a headache and neck pain following an MVA. He diagnosed a cervical and thoracic strain. The claimant returned on August 2, 2002 with the same complaints.

The claimant saw Dr. Safman on August 12, 2002 with complaints of tenderness in the cervical, thoracic and lumbar spine. She did not feel capable of working. Dr. Safman found no evidence of objective pathology although he did continue her medication. He released her to return to full duty with no permanent impairment rating.

The claimant returned to Dr. Maxwell on August 16, 2002 and August 30, 2002 with neck and back complaints. He referred her to Dr. Ward.

The claimant saw Dr. Ward on October 21, 2002 for complaints of pain in her neck and shoulders, lower back, right leg and foot, numbness in her arms and hands, knee pain, involuntary contractures of muscles in her hands, neck, arms and legs, tremors in her hands, a tilting or leaning posture of her head and an unpleasant sensation in her leg at night.

Dr. Ward performed an EMG/NCV study which was positive for an abnormality of the right median nerve suggesting the need to correlate this finding with a cervical disc herniation. Dr. Ward diagnosed “post traumatic syndrome compatible with cervical brachial and cervical thoracic syndromes, as well as lumbar sacral destabilization.” Dr. Ward opined she was unable to work and prescribed narcotics after a physical examination positive for muscle spasm. The claimant informed Dr. Ward about her fall at work but not about the MVA.

The claimant saw Dr. Ward again on December 18, 2002. He described his treatment plan for the next three months and continued to excuse the claimant from work. He diagnosed

“symptomatic torsional dystoria as a direct complication in the aftermath of her February 15, 2002 falling injury.” Physical therapy was repeated for three weeks along with botulism toxin injections for the claimant’s neck pain. Dr. Ward recorded improvement in the claimant’s condition however, at the hearing she testified the benefits from treatment were only temporary and she remains symptomatic. Dr. Ward mentioned an increase in her pain medication on April 14, 2003, with continuing back and neck pain in reports dated May 22, 2003 and July 7, 2003.

In a report dated August 7, 2003 Dr. Ward discussed a second round of diagnostic testing which uncovered spondylolisthesis at L4-5. He also commented, “the success of our management with her was less than she and I had both hoped for.” Dr. Ward assessed a 14% impairment rating in a report dated December 21, 2003 for the cervical and lumbar spine based on multilevel degenerative arthritis and spondylolisthesis.

FINDINGS AND CONCLUSIONS

As this case arose after July 1, 1993, this claim is governed by Act 796 of 1993 which must be strictly construed Ark. Code Ann. §11-9-704, §11-9-717.

Benefits are not payable for a condition which results from a non work-related independent intervening cause following a compensable injury which causes or prolongs disability or the need for treatment. Ark. Code Ann. §11-9-102. Whether there is a causal connection between an injury and a disability and whether there is an independent intervening cause are questions of fact for the Commission to determine. Jeter v. BR McGinty, 62 Ark. App. 53, 968 S.W.2d 645 (1998), Oak Grove Lumber Co. v. Highfill, 62 Ark. App. 42, 968 S.W.2d 637 (1998).

The claimant must prove a causal connection between the compensable injury and the subsequent disability, or else the subsequent disability is non-compensable. Crudup v. Regal Ware,

Inc., 69 Ark. App. 206, 11 S.W.3d 567 (2000).

The Commission also has the duty to assess the credibility of lay and expert testimony, rejecting medical opinions based on inaccurate information provided by the claimant. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995).

In summary, the evidence of record shows the claimant was provided with appropriate medical care following her compensable injury. She was provided with diagnostic testing, treatment and consultation with specialists. With the exception of tenderness and bruising, testing (x-rays, CT scans and an MRI scan) disclosed only degenerative changes. The claimant was also able to return to work.

After the MVA, the claimant's symptoms worsened to include tremors, leg pain, involuntary muscle contractures, postural changes and an inability to work. Repeat diagnostic testing showed a worsening of her degenerative condition. Therefore, I find the MVA was an independent intervening cause severing the chain of liability to the respondents.

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed among the parties on February 15, 2002 when the claimant sustained compensable injuries in a fall at work, at a compensation rate of \$154.00. Medical expenses and temporary total disability benefits were paid.
2. After conservative treatment and diagnostic testing showing only degenerative changes, the claimant was released to return to work with no impairment. Therefore, I find respondents paid all appropriate benefits.
3. Two days after her release, the claimant was involved in a motor vehicle accident. When she returned to the doctor her symptoms were worse, she was unable to

work and repeat diagnostic testing showed a change in her condition. Therefore, I find the motor vehicle accident was an independent intervening cause breaking the chain of liability.

4. Dr. Ward was a valid referral from an authorized physician, Dr. Maxwell.
5. Dr. Ward's treatment was unrelated to the compensable injury and ineffective. Therefore, I find his treatment was unreasonable and unnecessary.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge