

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F008194**

**EMMA YOUNG, EMPLOYEE**

**CLAIMANT**

**INTERNATIONAL WIRE GROUP, INC.,  
EMPLOYER**

**RESPONDENT**

**ONEBEACON INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED DECEMBER 30, 2004**

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 1, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Michael W. Boyd, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 1, 2004, to determine claimant's entitlement to additional benefits in the form of additional treatment by Dr. Thomas Hart.

The parties stipulated to the existence of the employee-employer relationship on March 28, 2000. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$394.00 for temporary total disability and \$296.00 for permanent partial disability benefits. It was stipulated that respondents accepted and paid benefits for claimant's injury, including a 10 percent impairment rating to the whole body, issued on January 7, 2002.

Claimant contends that she is entitled to continuing treatment with Dr. Hart.

Respondents contend that continuing treatment is unreasonable, unnecessary, and unrelated to the claimant's compensable injury of March 28, 2000.

### **STATEMENT OF THE CASE**

Claimant was indisputably injured while employed with respondent-employer on March 28, 2000. She sustained an L5-S1 disc herniation. Since the time of claimant's injury, respondent-employer has closed its business, and claimant now works for a different employer. Notwithstanding, the injury that occurred on March 28, 2000, was accepted as compensable, and claimant's medical expenses were paid for by the workers' compensation carrier, as well as indemnity benefits and a 10 percent impairment rating.

Claimant testified that respondent-employer sent her to Dr. Anthony Russell, a neurosurgeon, for treatment. She testified that Dr. Russell performed surgery and that she followed Dr. Russell's instructions, including his referral for her to see Dr. Thomas Hart, a pain specialist. Claimant testified that she followed Dr. Hart's instructions for treatment, which included receiving radio frequency injections (RFIs) in her spine. Claimant testified that these injections produced a very good result for her level of pain; in fact, the injections decreased her pain to the point where she required less pain medication. Claimant testified that she was experiencing drowsiness from taking so much pain medication, and the effect of the injections

decreased her need for pain medication, thereby making her mobility better and making it easier for her to function efficiently and work productively.

At some point around September of 2003, during claimant's treatment with Dr. Hart, respondent-carrier changed adjusters to Ms. Diane Hicks. Claimant testified that several different adjusters had handled her claim, but once Ms. Hicks became the adjuster, her treatment with Dr. Hart and prescription coverage ceased being paid for by respondents. Claimant testified that her condition has worsened since she was denied the treatment from Dr. Hart.

Claimant testified that she became aware of the denial of her treatment and prescription coverage only by attempting to fill a prescription at Wal-Mart. Wal-Mart told claimant that they could not fill the prescription because workers' compensation had denied paying for it. She testified that she went home and called the adjuster, Ms. Hicks, who told her that they were no longer going to pay for her treatments or her medication.

Claimant testified that Ms. Hicks had contacted her prior to her attempt to fill the prescription at Wal-Mart and told her that her claim had been open too long and should have been settled. Ms. Hicks offered claimant a settlement of the 10 percent rating only. Claimant testified that she told Ms. Hicks that that would not be enough to pay for her treatment. Ms. Hicks told claimant that she did not feel claimant needed to continue her treatment with Dr. Hart but that she would not deny her claim

at that time; claimant should just think about the settlement she was offering and get back with her. It was after that conversation with Ms. Hicks that claimant attempted to fill her prescriptions and realized that it was being denied.

Claimant testified that the only explanation Ms. Hicks gave her for the denial was that workers' compensation was "just not going to pay for any more of her treatments." When claimant asked her why, Ms. Hicks stated that she did not feel claimant needed the treatment. She again offered the same settlement, and claimant told Ms. Hicks that she would have to "talk with somebody" about it and let her know. Claimant then filed this claim for additional benefits to be able to continue her treatment with Dr. Hart.

When asked why claimant believes she needs the treatment from Dr. Hart, as opposed to simply continuing to take pain medication, claimant testified as follows:

Because with the treatment I'm able to function better; I'm able to do my job. And yes, I work because I have to work. And I have to go to work hurting all the time. The pain wouldn't be there, my mobility would be a lot better, I'd have a better attitude, I wouldn't be so drowsy all the time, because that's what the medicine does to me. But I've got to take it in order for me to function.

Claimant testified that Dr. Russell had performed back surgery and that the surgery did help some. However, the doctors indicated to claimant, and the medical records reflect, that there is no "cure" for her back problems – only management of

the pain. Claimant was, therefore, referred first to Dr. Rutherford, a pain specialist, who advised claimant to simply take medication for her pain. Dr. Rutherford moved to a different city, and claimant was then referred to another pain specialist, Dr. Hart, whom she saw until her treatment was denied by respondents.

She testified that she received four to six RFIs from Dr. Hart before her treatment was denied by the respondents. Claimant admitted that the positive effects from the RFIs only last about six to eight months, but she testified that the effects are so positive that she feels that she does need to continue them. The medical records reflect that since claimant's injury, she has been diagnosed with spondylosis and degenerative disc disease. However, the medical reports from Dr. Hart indicate that he believes her present problems are interrelated to her work injury of March 28, 2000.

Dr. Hart's report of February 16, 2004, clearly states that there is no "cure" for claimant's problem, only management. He states in his report that the treatment he has given her, and recommends that she continue, is "medically necessary to a degree of medical certainty and probability."

Dr. Hart's report states that he was informed in a letter from Ms. Hicks that the carrier would "no longer pay for treatment at the 3-4 and 4-5 levels. We will only pay for the treatment at the 5-S1 level. This is the only level related to the worker's comp injury." Dr. Hart states in his report:

As I indicated to Ms. Young[,] that is fine but if Ms. Hicks would have opened up an anatomy and physiology book and would have read[,] the distribution to the 5-S1 facets are from 3-4 and 4-5. It is from that level, possibly two above, as well as that level. This is basic anatomy and physiology. So when on[e] (sic) denervates the nerve for the 5-S1 fact, one does 3-4, 4-5, 5-S1[,] as well as S1.

Claimant admitted on cross-examination that in her present job there is some lifting and climbing stairs required and mobility of going from “point A to point B.” However, she testified that she is in pain when she is not working, as well, and that the pain is not really worse while she is at work. She testified, “Whether my new job aggravates my back or not, I’ve got to work. And whether I work there or work at Wal-Mart, I’ve got to work, and I’m going to have pain because my back is messed up.”

Medical records indicate that the last RFI claimant had before her treatment was denied by respondents was in April of 2003. Respondents had paid for each of the prior RFIs performed by Dr. Hart, as well as the April 2003 RFI. Claimant testified that she is asking respondents to pay for her continuing treatment with Dr. Hart, to include payment of the RFIs every eight months, if necessary. Claimant was the only witness called to testify.

### **FINDINGS OF FACT**

1. Claimant is entitled to additional medical treatment with Dr. Thomas Hart.
2. Respondents have controverted this additional medical treatment.

## DISCUSSION

Claimant contends that she is entitled to continuing treatment with Dr. Hart. Respondents contend that continuing treatment is unreasonable, unnecessary, and unrelated to the claimant's compensable injury of March 28, 2000. The Arkansas Court of Appeals has held that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. *See generally, Georgia-Pacific Corp. v. Dickens*, 58 Ark. App. 266, 950 S.W.2d 463 (1997); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983); *Tiner v. Total Petroleum*, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). ("Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.")

In this case, claimant testified that the treatment she was receiving through Dr. Hart was helpful in reducing her level of pain and enabling her to cope with the chronic pain she now has and did not have prior to her compensable injury of March 28, 2000. Claimant testified that her condition has worsened since she was denied the treatment from Dr. Hart. She admitted that she has never stopped working as a result

of the pain, but she forthrightly testified that she works because she *has* to work, despite the pain. Dr. Hart opined that the problems claimant now has are interrelated to her compensable injury and that the treatment he recommends she continue is “medically necessary to a degree of medical certainty and probability.”

The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis

for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra; Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this examiner's opinion, the claimant has established by a preponderance of the credible evidence that continuing treatment with Dr. Hart is reasonable, necessary, and related to her compensable injury. Therefore, she is entitled to continued treatment with Dr. Hart, to include coverage for the medication he prescribes.

**AWARD**

Respondents are directed to pay all reasonable, necessary, and related medical expenses which have been incurred by the claimant and which may be incurred in the future as a result of her compensable injury of March 28, 2000, to include additional treatment with and prescriptions from Dr. Thomas Hart.

Respondents are directed to pay claimant's attorney, Mr. Michael W. Boyd, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

---

CYNTHIA ESTES ROGERS  
Administrative Law Judge