

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311109

|                                                       |            |
|-------------------------------------------------------|------------|
| LOIS ACUFF                                            | CLAIMANT   |
| GUARANTEED AUTO FINANCE, INC.                         | RESPONDENT |
| GALLAGHER BASSETT SERVICES, INC.<br>INSURANCE CARRIER | RESPONDENT |

OPINION FILED OCTOBER 26, 2005

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 16, 2005, 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 June 22, 2005. 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. The claimant sustained compensable injuries to her neck, face, back and shoulder.

3. The claimant is entitled to a compensation rate of \$200.00 for temporary total disability and \$154.00 for permanent partial disability.

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

1. Additional medical.
2. The claimant's entitlement to a change of physician to a neurologist.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on October 8, 2003, when she was involved in a car accident on Hwy. 412 in Tontitown, Arkansas. She injured her head, face, ribs, neck, foot, lungs, shoulder and brain. She is still affected by these injuries, and is entitled to additional TTD and medical treatment.

In regard to the foregoing issues the respondents contend that the claimant in this matter was involved in a motor vehicle accident on October 10, 2003. This claim was accepted as compensable and appropriate benefits were paid. The claimant received a 2 percent impairment rating for a rotator cuff tear, a 7 percent to the foot due to an ankle fracture, a 1 percent rating to the shoulder for loss abduction and a 5 percent rating to the cervical area for a possible fracture. The claimant was released at maximum medical improvement and returned to work. In January 2004, the claimant was seeing Dr. Skoch for significant scarring. He noted swelling over the orbit and did a CT scan that showed a mass around the orbit rim. Because of that, he removed some glass from that area in March 2004. The claimant returned to the doctor in March 2005 with complaints of hearing loss and migraine

headaches. The claimant was given Valium and an MRI was done with no significant findings. Respondents contend that they are not responsible for the 5 percent rating to the cervical spine.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted joint medical information marked Joint Exhibit No. 1. The respondents submitted a report from Dr. David Brown marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she was forty-two years old, married and had three children. The parties have stipulated and the claimant testified that in October 2003 she was involved in a motor vehicle accident while working for the respondent. The claimant testified that as a result of her motor vehicle accident she hurt her head, neck, face, shoulder, ribs, leg and foot. The claimant testified that she had treatment for all of these injuries and was in the hospital for several days.

The parties stipulated that the claimant has been given and the respondents have accepted a 1 percent impairment to the claimant's shoulder, a 5 percent rating to the claimant's neck and a 7 percent for the claimant's lower extremity or foot. The claimant testified that as a result of her compensable injury she has undergone at least five surgeries on her face. The claimant testified that the first surgery was to stitch her up and that she had another surgery due to infections and to remove glass from

around her eyes. The claimant stated that she has had laser surgeries to try and minimize the scarring. The claimant testified that she did not have any scarring on her face nor was she plagued with migraine headaches prior to these injuries. The claimant testified that she does not know when her migraine headaches began because she has been on so much medication. The claimant testified that she knows she began complaining about headaches before she began to have problems with vertigo. The claimant explained that her headaches are so severe she sometimes gets nauseated and throws up plus she is very light sensitive and sensitive to loud noise. The claimant testified that sometimes she just has to go to bed and stay in a dark place in hopes of getting relief from her headache. The claimant testified that she does take medication for her migraine headaches. The claimant testified that she is still seeing Dr. Greenberg.

The claimant testified that the treatment for her foot involved a boot like cast for a long period of time and then she had physical therapy. The claimant testified that she is still having problems with her foot in that it hurts and she cannot jump or run on her foot. The claimant testified that she is still having problems with her ribs. The claimant described this discomfort as if someone has kicked her in the ribs and then when she moves a certain way there is a sharp pain through her left side. The claimant testified that she continues to have problems with her left shoulder and she cannot raise it up over her head, stretch it out in front of her or lift things with it. The

claimant testified that she continues to have problems with her neck and she cannot tilt it back and hold her head back and there are days when she cannot turn her neck and look down. The claimant testified that she did undergo some physical therapy for her back doing some stretching exercises but she had problems with this treatment.

The claimant testified that she has problems with her memory noting that if she is told or asked to do something, if she does not write it down and keep a notebook of what she is suppose to do, she forgets. The claimant testified that about a year after her accident she tried to return to work but because of the problems with her foot and her inability to turn her neck she was unable to drive safely and her job required driving. The claimant testified that the respondent put her in the detail area. The claimant testified that she had problems with this job because it was difficult for her to get down under the seats and do the bending and twisting required to do a thorough detail job on an automobile. The claimant testified that she had problems with lifting and pulling as well which the detail job required. The claimant testified that she asked the respondent for a lot of help and was getting into trouble because of not being able to do the things she was suppose to do on her job. The claimant testified that she quit her employment about a month prior to this hearing.

On cross examination, the claimant testified that currently she is living with her husband, her daughter and her daughter's two children who are three months and sixteen months. The claimant

testified that she was aware that she has had several CT scans and MRIs of her brain since her accident. The claimant agreed that she filled out paperwork on October 13 after her accident which indicated that she had high blood pressure, thyroid problems and two to three headaches a week. The claimant agreed that in April 2004 she was being seen by Dr. Skoch who is a dentist who did some of her facial surgery. The claimant agreed that these surgeries were to remove glass from around her eye and another was to help remove part of a scar from around her eyebrow. The claimant testified that she did not remember seeing Dr. Greenberg in November 2003 nor does she remember whether or not she complained to any of her physicians in November and December 2003 that she was having headaches. The claimant testified that she does not remember whether she complained about headaches and dizziness to Dr. Kufdak, Dr. Foster and Dr. Pleimann. The claimant testified that she does remember that Dr. Foster did release her to return to work. The claimant testified that she has had headaches and dizziness for quite a while but does not remember when they started. The claimant was asked if it was possible she was not having headaches and she responded, "No. I know I've had headaches for a long time. I am sure if I told him, I was probably having them." The claimant testified that the injections which were administered by Dr. Cannon as recommended by Dr. Greenberg in actuality made her problems worse. The claimant stated that she was aware that Dr. Greenberg had released her to work without restrictions. The claimant testified that when she saw Dr.

Greenberg in March 2005, she remembers being very dizzy and having a very bad headache. The claimant agreed that it was about a year and a half from the date of her accident that she started experiencing spinning or dizziness. The claimant was asked when the ringing in her right ear started and she responded, "I had that for quite a while." The claimant testified that at the time she saw Dr. Greenberg in March 2005 her neck had been hurting for a long time. The claimant testified that there are days when her neck does not hurt her and there are days when it does. The claimant testified that she takes medication for her headaches all the time and she also has medication to help with her dizziness. The claimant testified that she did not know what the doctor was talking about when they wrote on June 24, 2005, that she had a previous history of vertiginous migraine headaches. The claimant agreed that she had been treated for depression back in the year 2000 but does not recall the physician's name. The claimant agreed that Dr. Greenberg released her on July 7, 2004, without restrictions. The claimant testified that over the past nine months her symptoms have remained about the same and that none of her medical treatment has improved her status. The claimant testified that none of her doctors have her off work.

On redirect examination, the claimant testified that prior to her automobile accident she never was treated for headaches nor did she take medication for headaches.

The medical records set forth that the claimant underwent a CT of her head on October 9, 2003, which was a normal study. A MRI of

the cervical spine done on October 11, 2003, revealed a non displaced lateral mass fracture on the right at C2, noting that there may be avulsed nerve roots at this level given the prominent nerve root sleeves and soft tissue signal intensity at the C1-2 level. It is further noted that there is no damage to the cord seen and no disc herniation. On October 13 Dr. Stephen Skoch writes that he has seen the claimant for an evaluation of her lacerations over her left and right eye which were closed in the operating room. The doctor notes that the claimant is in no acute stress and there is no evidence of infection and she was given home care instructions. On November 13, 2003, the claimant filled out a form for Dr. Skoch indicating that she has high blood pressure, thyroid problems, problems grinding or clenching her teeth, wakes up with sore jaws, headaches two to three times a week and tenderness or stiffness of her jaw, neck or back. The medical records set forth the extensive treatment of the claimant concerning the lacerations of her face and problems which developed due to an abscess in the injured areas. Dr. Skoch treated the claimant as well as performed various surgeries to remove foreign matter and infected teeth. Dr. Martin Greenberg writes on November 14 that he has seen the claimant for her one month post op check, noting that there is intermittent posterior C2 pain, recent left eye infection post surgery and that she is continuing physical therapy. X-rays taken that day of the claimant's cervical spine show no obvious lateral mass fracture on the right at C2, no

movement on flexation and extension, normal pedestal space, no tumor metastatic cancer, traumatic fracture or osteomyelitis.

On January 15, 2004, Dr. James Kufdakis writes that the claimant is seen for follow up, noting that she is trying to stop smoking but having difficulty. The doctor notes that the claimant's active problems are migraine headaches, hypertension (high blood pressure), depression, hyperthyroidism, tobacco dependancy and menapausal syndrome. Dr. Kufdakis notes that from the internal medical point of view, in regard to atelectasis and rib fractures, it is his best medical opinion that the claimant had reached the point of maximum medical improvement and that there should be no permanent disability as a result of these conditions. Dr. Foster returned the claimant to work with no restrictions on January 15, 2004. The claimant underwent an MRI of her left shoulder on February 9, 2004, which revealed mild supraspinatus tendinitis, with no evidence of a full thickness rotator cuff tear, no evidence of labral tear, relative mild degenerative change noted at the left acromioclavicular joint and a small osteophyte emanates from the under surface of the lateral most aspect of the acromion. The claimant underwent an operative procedure to remove glass from her left orb and check as well as removal of five teeth. There was also performed a skin graph to the claimant's left upper eye lid. The claimant underwent an MRI of her right ankle on March 29, 2004, which revealed a trace amount of fluid which was identified at the ankle mortise and subtalar joints. Dr. Scott Bolding writes on April 1, 2004, that the claimant's surgical sites look very good

and he removed the sutures from her cheek. Dr. Bolding notes that the claimant's eye looks good and she is able to close her eye much better. Dr. Jason Pleimann reviewed the claimant's MRI of her right ankle, noting that it was unremarkable and upon request of Dr. Foster, evaluated the claimant as to her shoulder and ankle problems, noting that he had no further ideas for her and encouraged her to continue with physical therapy on her shoulder. On April 28, 2004, Dr. Doug Foster rated the claimant's left shoulder and ankle with permanent impairment ratings and released her to full duty without restrictions. Dr. Martin Greenberg writes on May 5, 2004, that the claimant has persistent focal right C1-C2 tenderness with suboccipital headaches. The doctor notes that the claimant's pain radiates to vertex of head, right C2-C3 distribution. An examination of the claimant's neck area indicates that at the right lateral C1-C2 they are tender with spasm. Dr. Greenberg assesses the claimant with traumatic right C2 lateral mass fracture which was unsurgical and persistent headaches suboccipital with right C2, C3 radicular pain to the vertex of the head. Dr. Greenberg notes that a C spine film shows a right lateral C2 fracture but no evidence of instability, noting that it is clearly the pain generator today. Medications were prescribed, the claimant was returned to work with no restrictions and the claimant was scheduled for injections by Dr. Cannon. Dr. Greenberg writes on August 27, 2004, that he has seen the claimant following her C1-C2 facet injections with no response to this treatment. It is noted that the claimant has persistent post traumatic migraine

headaches with photo phobia and nausea. Dr. Greenberg writes that the claimant has reached maximum medical improvement and assessed her with a 5 percent whole body impairment as it regarded her cervical spine. He further notes that the patient has an additional impairment secondary to post traumatic headaches which are migraines and this would be an additional 5 percent referable to her brain. Dr. Greenberg prescribed medications for the claimant. On January 21, 2005, Dr. Scott Bolding performed a cicatrial scar removal or reduction on the claimant's left eye area. Dr. Greenberg writes on March 3, 2005, that the claimant has a new onset of vertiginous migraines with spinning to the left side. The doctor also notes that she has hearing loss since her accident on the right side with tinnitus in the right ear. After examination, the doctor evaluates the claimant with having post traumatic migraine headaches, vertiginous. Noting that her traumatic C2 lateral mass fracture is stable and that she has minimal neck pain today. An MRI of the claimant's brain was recommended. Dr. Greenberg continued to see the claimant for her ongoing complaints of headaches throughout March and June 2005. On July 1, 2005, the claimant was seen by Dr. Greenberg for her continuing complaints of headaches at which time the doctor notes that the MRI of the claimant's brain showed no evidence of post traumatic contusion. Dr. Greenberg released the claimant to return to work with no restrictions as of July 18, 2005. Dr. Greenberg notes that she had a neurological evaluation as well and she is neurologically intact. The MRI conducted by Dr. David Brown on

March 11, 2005, indicates that this test demonstrates no abnormalities to explain the dizziness, headaches and right ear tinnitus.

After a complete review of the case, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to a change of physician to a neurologist. The claimant has had at least two MRIs of her head or brain and these tests have shown to be normal. On July 18, 2005, Dr. Greenberg notes that the claimant has had a neurological evaluation and she is neurologically intact. I find nothing in this record, therefore, to substantiate or necessitate the ordering of a neurological evaluation for this claimant. I do find, however, that the claimant is entitled to additional medical treatment for her various compensable injuries as recommended by her treating physicians. This treatment may include treatment for the symptom of headaches if recommended by her doctors. The claimant has had a traumatic injury to her upper body which has required numerous surgeries and even sustained a crush fracture to her cervical spine which was inoperable. It is not unreasonable that the claimant would be experiencing headaches or pain in her upper body which, if recommended by her treating physicians, should be addressed medically. The respondents, therefore, should pay for additional medical treatment as recommended by the claimant's various treating physicians for her compensable injuries.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The claimant sustained compensable injuries to her neck, face, back and shoulder.

3. The claimant is entitled to a compensation rate of \$200.00 for temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has failed to prove her entitlement to an evaluation by a neurologist. See discussion above.

5. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her various compensable injuries. This treatment may include treatment for headaches if recommended by her treating physicians. See discussion above.

ORDER

The claimant has failed to prove that she is entitled to an evaluation by a neurologist.

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment if recommended by her treating physicians for her various compensable injuries. This treatment may include treatment for headaches if recommended by her treating physicians. This treatment should be at the expense of the respondents.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE