

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410220

WINNIE ALLEN

CLAIMANT

WAL MART ASSOCIATES, INC.  
SELF INSURED

RESPONDENT

CLAIMS MANAGEMENT, INC.  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 26, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in  
Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville,  
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 8, 2005, in Springdale, Arkansas. A pre-hearing order was entered in this case on May 19, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Certain corrections were made to the stipulations and issues, prior to the commencement of the hearing. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On July 16, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$181.00 for

total disability and \$154.00 for permanent partial disability.

3. On July 16, 2004, the claimant sustained a compensable injury to her right little finger.
4. There is no dispute over the payment of medical expenses incurred through February 22, 2005 including the claimant's initial visit with Dr. Heinzelmann, except for expenses incurred for services provided by Northwest Medical Center ER on July 17, 2004.
5. There is no dispute over the payment of temporary total disability accruing through February 22, 2005.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to the additional medical services recommended by Dr. Heinzelmann.
2. The claimant's entitlement to the payment of the expenses incurred for services provided at the Northwest Medical Center ER on July 17, 2004.

In regard to these issues, the claimant contends:

"Claimant was injured on July 16, 2004. Claimant injured a finger on her right hand while attempting to move a large table and her finger became caught in between two tables."

In regard to these issues, the respondents contend:

"The respondents contend that they have paid all benefits to which the claimant is currently due and owing based on the current medical evidence. The respondents contend that the claimant is not entitled to receive reimbursement for treatment incurred at the Northwest Arkansas Medical Clinic on the basis

that it is unauthorized. Among other things, the claimant had her wound treated at the time the accident occurred and worked her entire shift. The claimant then went to the clinic without giving proper notice or making a request for treatment.”

### DISCUSSION

#### I. EMERGENCY ROOM EXPENSES

The first issue to be addressed concerns the claimant's entitlement to the payment of expenses incurred for medical services provided her by and at the direction of physicians at the emergency room of Northwest Medical Center of Washington County, on July 17, 2004. The evidence shows that on July 16, 2004, the claimant injured the fifth or “little finger” on her right hand, when it became “caught” between the edges of two tables. This accident produced a laceration on the back or dorsal side of the finger. The claimant describes this laceration as a “cut to the bone” at approximately the level of the first knuckle. The claimant stated that she immediately reported this injury to the assistant manager, Janet Barnes, and that Ms. Barnes (together with an individual named Rhonda from personnel) put ointment, gauze, and a bandage on her finger. The claimant further testified that no one ever offered to have her seen or evaluated by a physician. According to the claimant's testimony, her finger kept bleeding and hurting during the remainder of that day and that night. On the following day, Saturday, July 17, 2004, she sought medical services for her injury at the emergency room of Northwest Medical Center of Washington County.

The emergency room records of Northwest Medical Center of

washington County show that the claimant appeared for evaluation at approximately 2:25 p.m. on July 17, 2004. She gave a history of an employment related injury that was similar to the one described in her testimony. She further complained that the laceration had continued to bleed. The records show that the physical examination revealed a laceration to the distal phalanx of the claimant's fifth finger that was approximately 1 ½ centimeters. X-rays taken of the finger were interpreted as normal. The claimant's laceration appears to have been treated appropriately, and the claimant was discharged with instructions to follow up with her regular physician in three to five days.

After consideration of the evidence presented, it was my opinion that the greater weight of the credible evidence shows that the medical services provided to the claimant by and at the direction of the physicians at the Northwest Medical Center of Washington County were necessitated by and medically appropriate for the compensable laceration to the fifth finger of her right hand. As such, these services represent "reasonably necessary medical services" under Ark. Code Ann. §11-9-508.

It is my further opinion that the greater weight of the credible evidence fails to show that these medical services represent "unauthorized" medical services, within the meaning of Ark. Code Ann. §11-9-514. The record reveals that the claimant immediately reported her injury to the respondents and afforded the respondents the opportunity to provide her with appropriate medical evaluation and care. In the present case, the respondents

elected to have the claimant's compensable injury treated by the assistant manager and an employee from the personnel section rather than having her evaluated or treated by some one with some apparent degree of medical knowledge or training. Although the claimant's injury would not appear life threatening or even severe, I do not believe that the claimant was unreasonable for her desire to have her injury seen or evaluated and treated by someone with established medical training. Particularly in light of her credible testimony that the laceration continued to bleed, the claimant was justified in seeking these services at the emergency room of her local hospital. Based upon the evidence presented. I find these disputed medical services to represent "emergency treatment", as that term is used in Ark. Code Ann. §11-9-514(b). Thus, the "unauthorized" provisions of this subsection would be inapplicable to these expenses.

Further, at the time the claimant obtained these services, the respondents had failed to provide the claimant with an "authorized" physician to provide appropriate evaluation and care of her compensable injury, as required by Ark. Code Ann. §11-9-508. Thus, the claimant was free to seek these services on her own. As there was no authorized provider, the medical services provided the claimant at the Northwest Medical Center of Washington County can not represent "unauthorized" medical services under Ark. Code Ann. §11-9-514.

Pursuant to Ark. Code Ann. §11-9-508, the expense of these services is the liability of the respondent herein. This liability

is subject to the Commission's medical fee schedule.

II. MEDICAL SERVICES RECOMMENDED BY DR. HEINZELMANN

The final issue concerns the claimant's entitlement to additional medical services as recommended by Dr. Peter R. Heinzelmann. Again, the burden rests upon the claimant to prove that these medical services represent "reasonably necessary medical services" within the meaning of the Act.

The record reveals that the claimant applied for and was granted a change of physicians to Dr. Heinzelmann by Order dated February 8, 2005. The claimant initially saw Dr. Heinzelmann on February 22, 2005.

At that time, the claimant was complaining of pain involving both the dorsal and palmar aspects of her fifth or "little" finger. The claimant's credible testimony indicates that these difficulties have remained essentially the same, since the employment related incident on July 16, 2004.

Dr. Heinzelmann opined that x-rays that were taken at the emergency room of Northwest Medical Center on July 16, 2004, coincided with those taken by his office on February 22, 2005. He interpreted both of these x-rays as showing no traumatic abnormality. On clinical examination, he noted a well healed non inflamed scar over the dorsal aspect of the distal joint of the fifth finger. Opposite this scar, on the palmar side of the finger, Dr. Heinzelmann observed a palpable tender nodule at the base of the distal phalanx.

\_\_\_\_Based upon the claimant's history and his clinical

examination, Dr. Heinzelmann made the following statement:

“IMPRESSION: Tender right little finger at the distal joint level following a dorsal laceration and probable contusion of the finger in July of last year with a possible small nodule at the flexor tendon insertion at the base of the distal phalanx.”

Based upon this diagnosis, it was his expert opinion that further services, in the form of a surgical exploration of the palmar aspect of the finger at the insertion of the profundus tendon was medically reasonable and appropriate. It is this medical treatment that the respondents now refuse to provide.

Clearly, the medical services recommended by Dr. Heinzelmann appear to be necessitated by and connected with not only the objective abnormality noted on his physical examination (a nodule on the palmar aspect of the claimant's fifth finger), but are also connected with and are necessitated with the claimant's continuing complaints of pain involving her fifth finger. The claimant's testimony, which I find to be credible, shows that these symptoms initially began with the employment related accident of July 16, 2004 and have persisted thereafter. The fact that the claimant was not seen for these continued difficulties and the defect on the palmar surface of her finger was not detected, until Dr. Heinzelmann's examination on February 22, 2005, is adequately explained by the respondents' failure to provide the claimant with any actual medical services during this period of time.

Although Dr. Heinzelmann, in his report of March 30, 2005, stated that he did not know what relationship the nodule on the palmar surface of the claimant's little finger has with the

laceration of the dorsal aspect of this finger does not, in and of itself, destroy the required connection between the compensable injury and the additional medical services recommended. The same is true for his statement where he states that he does not know the exact cause of the observed nodule.

In his subsequent report of August 3, 2005, Dr. Heinzelmann indicated that the nodule on the palmar aspect of the claimant's right finger could have been caused "if her finger had been caught between two tables." From the claimant's credible testimony, this is exactly what transpired in the accident on July 16, 2004. Thus, in the expert opinion of Dr. Heinzelmann, the nodule itself could have reasonably been caused by this accident. There is also no evidence of any other reasonable explanation to account for its existence, and it has been shown to have appeared within a reasonable time after the accident.

Clearly, the additional medical services recommended by Dr. Heinzelmann have a two-fold purpose of being both diagnostic and potentially therapeutic. It must also be noted (as previously stated), that the actual reason that this treatment has been recommended is not the mere presence of the nodule, but is rather the claimant's continuing symptoms that began and have persisted since her compensable injury. As such, these medical services are clearly necessary to accurately ascertain the nature and extent of the compensable injury, as well as potentially correcting any damage it may have caused and alleviating the claimant's continuing symptoms.

Dr. Heinzelmann is a highly qualified and competent medical specialist with particular expertise in the area of medicine associated with the claimant's current difficulties. It is obviously his expert medical opinion that these services are appropriate and have a reasonable expectation of accomplishing their intended purpose.

After consideration of all the evidence presented, it is my opinion that the additional medical services recommended by Dr. Heinzelmann also represent "reasonably necessary medical services" for the claimant's compensable injury of July 16, 2004. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services. However, this liability is subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 16, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On July 16, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$181.00 for total disability and \$154.00 for permanent partial disability, when and if such benefits should become appropriate.
4. On July 16, 2004, the claimant sustained a compensable injury to her right fifth or "little" finger.

5. There is no dispute over the payment of medical expenses incurred through February 22, 2005, including the claimant's initial visit with Dr. Heinzelmann, with the exception of the expenses incurred for medical services provided her by the Northwest Medical Center emergency room on July 17, 2004.
6. The medical services provided the claimant by and at the direction of physicians at the Northwest Medical Center emergency room on July 17, 2004, represents reasonably necessary medical services for her compensable injury of July 16, 2005. These medical services do not represent "unauthorized" medical services, within the meaning of Ark. Code Ann. §11-9-514. Specifically, these medical services represent "emergency treatment" under Ark. Code Ann. §11-9-514(b). Further, at the time these medical services were obtained, the respondents after appropriate notice was given them, failed to provide the claimant with appropriate medical services or "authorized" any physician or medical personnel to provide appropriate medical services, as required by Ark. Code Ann. §11-9-508. Thus, any appropriate medical services obtained by the claimant would not constitute "unauthorized" medical services under Ark. Code Ann. §11-9-514.
7. The additional medical services recommended by Dr. Peter Heinzelmann also represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. These

recommended services are necessitated by or connected with the claimant's compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services. This liability is subject to the medical fee schedule established by this Commission.

8. The respondents have controverted the claimant's entitlement to the initial medical services provided at the Northwest Medical Center emergency room and the additional medical services recommended by Dr. Peter R. Heinzelmann.
9. As the respondents have not controverted any indemnity benefits or other benefits payable to the claimant, the claimant's attorney cannot be awarded a controverted attorney's fee.

#### ORDER

The respondents shall be liable for the expense incurred by the claimant as a result of medical services provided her at the Northwest Medical Center emergency room on July 17, 2004, and shall further be liable for the additional medical services recommended to the claimant by Dr. Peter R. Heinzelmann. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

F410220-Allen

12

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge