

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310477

ROSEMARY CARR, EMPLOYEE	CLAIMANT
CENTRIA, INC., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED MAY 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 11, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE SHEILA F. CAMPBELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

ISSUES

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

At issue is the authorization of Dr. Hefley and the reasonable necessity of his treatment pursuant to Ark. Code Ann. §11-9-508. All other issues are reserved.

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 preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on August 27, 2003 at which time the claimant sustained compensable injuries to her legs at a compensation rate of \$241.00/\$181.00. Medical expenses and temporary total disability benefits (nine weeks) have been paid.

The claimant was injured when she was pinned against the assembly line by a forklift driver moving panels. Dr. Pruitt released the claimant on November 19, 2003, with no impairment. The claimant was granted a change of physician to Dr. Sonia Williams. Dr. Williams referred the claimant to Dr. Hefley who performed surgery on June 29, 2004. The claimant seeks payment of

medical expenses incurred with Dr. Hefley, temporary total disability from August 28, 2003 to August 30, 2004, and attorney's fees.

The respondents contend the diagnostic studies performed by Dr. Pruitt were normal and her symptoms could not be correlated to the MRI scan. An MMPI with Dr. Winston Wilson indicated conversion disorder. Neither Dr. Pruitt nor Dr. Williams found any evidence of disability. Dr. Hefley diagnosed patellofemoral chondromalacia. The respondents contend these are degenerative changes and Dr. Hefley's treatment is unreasonable, unnecessary and unrelated to the minor compensable injury, a knee contusion.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript along with the depositions of Dr. William Hefley (taken January 26, 2005) and Dr. Tad Pruitt (taken December 16, 2004) which are incorporated by reference.

The claimant, age 53 (D.O.B. January 21, 1952) testified she had a high school education (though some medical records indicate an eleventh grade education) and had worked for the respondent-employer for three years at the time of the accident. Her health history includes a thyroid condition and left knee pain with occasional swelling (Tr. p. 9). She was involved in a motor vehicle accident in 1999 (when she hit a deer) and was treated for back and neck symptoms. The claimant is currently being treated by Dr. Bryant for left heel pain.

The claimant's work history includes jobs as a police dispatcher, secretary, and clerk.

The claimant sustained compensable injuries to her legs on August 27, 2003 when panels were knocked over by a forklift pushing her from the back. She fell to her knees, striking the concrete floor. She came under the care of Dr. Pruitt who treated her conservatively with physical therapy after an MRI scan (conducted November 3, 2003) showed degenerative changes in her knees. Dr. Pruitt referred her to Dr. Winston Wilson. The claimant told her doctor in October, about one month after the injury that she was unable to return to work. Dr. Pruitt released her on November 19, 2003 with no objective findings, no work restrictions or impairment. He suggested she seek help

for depression.

The claimant received a change of physician to Dr. Williams but her recommended aquatic therapy was not authorized.

The claimant then came under the care of Dr. Hefley in June, 2004 and he performed surgery on the right knee. She stated she remains symptomatic with stiffness and pain in her knee, sleep disturbance and she is unable to sit or stand for any length of time (Tr. p. 33-36). Dr. Hefley assessed a 2% rating.

The claimant was provided light duty (filing papers and using a golfcart for transportation around the plant) until September 17, 2003, but she stated she was physically unable to perform even sedentary work. She chose not to return to work after Dr. Pruitt's release.

The claimant testified her back became symptomatic a few weeks after the compensable incident, around September or October, 2003. However, there is no mention of a back injury in the medical records as a result of the compensable injury. She does not feel she can work and applied for Social Security Disability benefits based on her back and knees. She also blames the knee injury for causing other health problems (headache, fatigue, chest pain, sleeping and eating disorders).

MEDICAL EVIDENCE

The claimant was treated by general practitioner, Dr. Quadri immediately after the accident. Dr. Pruitt saw the claimant on September 5, 2003. He noted a bruise on the right knee only but later in the same report he diagnosed bilateral knee contusion. He noted full range of motion in both knees with "tenderness" in the left knee. He prescribed medication, physical therapy and light duty. The claimant remained symptomatic and Dr. Pruitt recommended an MRI scan. The test revealed a meniscal tear and cyst in the right knee with arthritis. The left knee showed degeneration and chondromalacia. Despite these findings, Dr. Pruitt felt the claimant's symptoms were out of proportion to the injury sustained. He injected the knees and recommended physical therapy, light duty, and a psychological evaluation.

The claimant saw Dr. Winston Wilson on November 11, 2003. He diagnosed conversion disorder and recommended conservative medical management of her symptoms.

Dr. Pruitt released the claimant on November 19, 2003 with no work restrictions or impairment. In a follow-up report, dated December 12, 2003, Dr. Pruitt advised the claimant to pursue treatment for depression through her family physician.

The claimant saw Dr. Sonia Williams on March 31, 2004 and May 5, 2004. She reviewed the claimant's course of treatment and recommended aquatic therapy and weight loss. Dr. Williams diagnosed knee joint bony contusion with questionable bursitis, abnormality of gait, depression and anxiety. Dr. Williams declined to sign a total disability form requested by the claimant.

The claimant sought treatment from a therapist at S.E. Arkansas Behavioral Healthcare beginning in May, 2004. According to the notes, the therapist was under the impression that the workers' compensation injury included her back and right shoulder as well as her knees. The claimant disclosed that she had experienced auditory hallucinations and developed a fear of driving. The claimant was afraid of logs from trucks rolling over her and feared "the images of the panels falling on her." She was diagnosed with post-traumatic stress disorder.

The claimant saw Dr. Hefley in June, 2004, based on a referral from the claimant's family physician (Tr. p. 29). He diagnosed a torn right knee lateral meniscus with a cyst and chondromalacia in both knees based on x-rays and an MRI scan. He recommended surgery but warned her that because of the chondromalacia she would still have symptoms after the arthroscopic debridement and meniscectomy. He also recommended bracing, exercise and weight loss. Dr. Hefley performed surgery on June 29, 2004.

In his deposition, Dr. Pruitt testified the only objective finding from the physical exam was a bruise on the right knee near the pes anserine area (inner side of the upper part of the shinbone). Dr. Pruitt felt the claimant's injury was minor, her MRI findings and symptoms were inconsistent with her history of injury, and surgery was unreasonable and unnecessary (Depo. p. 22, 24, 28, 30-

31).

On cross-examination, Dr. Pruitt conceded that it was possible for the meniscus tear to worsen over time if not repaired. He also thought it was possible that the accident aggravated her preexisting degenerative changes (Depo. p. 24, 30). Certainly, the chondromalacia (softening or degeneration of cartilage) would lengthen her recovery (Depo. p. 24-25). However, Dr. Pruitt also opined that surgery was not beneficial for degenerative conditions in general and he would have expected the claimant to respond to some of the conservative treatment they tried, (Depo. p. 25-27). But in the claimant's case, her recovery was also complicated by the somatization disorder. He estimated the usual recovery time between six weeks and three months.

In his deposition, Dr. Hefley testified the claimant saw him based on a referral from her husband and her family physician, Dr. Quadri. Dr. Hefley explained that the meniscal tear in the claimant's right knee could have been degenerative or post-traumatic in origin. The left knee showed only degeneration. Dr. Hefley explained that an meniscal tear can cause a cyst to develop over time. Dr. Hefley also felt the claimant's symptoms were consistent with the history of injury (Depo. p. 17). He estimated recovery time at two to three months and commented that the claimant's recovery time was slower than most (Depo. p. 21). Dr. Hefley felt the surgery was reasonable and necessary and related to her compensable injury. Objectively, he noted the claimant no longer had effusion and crepitation after surgery (Depo. p. 24-26).

It should be noted that both physicians adequately justified their decision to operate or not operate.

FINDINGS AND CONCLUSIONS

The evidence of record shows the respondents chose Dr. Pruitt as the claimant's treating physician. The claimant sought Commission approval to see Dr. Williams, but Dr. Hefley's involvement came about from a referral by the claimant's family doctor. Accordingly, I find Dr. Hefley was unauthorized.

In accordance with Ark. Code Ann. §11-9-514(b):

Treatment or services furnished or prescribed by an physician other than the ones selected according to the foregoing (change of physician procedure) except emergency treatment, shall be at the claimant's expense.

Accordingly, I find the respondents are not liable for expenses associated with Dr. Hefley's treatment.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission, February 17, 1989 (Claim No. D612291). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

Even though a physician is unauthorized, his opinion can still be considered by the Commission in assessing the claimant's injury. There is evidence from both physicians that although the claimant had preexisting arthritis, the fall to her knees aggravated that condition, Williams v. L & M Janitorial, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The surgery was successful to the extent that crepitation and swelling improved. Accordingly, I find the respondents are liable for temporary total disability benefits and attorney's fees.

There is also ample evidence that the claimant is unmotivated to physically rehabilitate herself or return to work, despite the fact that her employer was willing to accommodate her restrictions and she has had sedentary jobs with other employers in the past. Therefore, the claimant's attitude has been taken into account in assessing disability.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on August 27, 2003 at which time the claimant sustained compensable leg injuries at a compensation rate of \$241.00/\$181.00. Medical expenses and temporary total disability benefits (nine weeks) have been paid.
2. Dr. Hefley's treatment was unauthorized and respondents are not liable for his expenses.
3. The claimant sustained a compensable aggravation of a preexisting degenerative condition.
4. The respondents are directed to pay temporary total disability benefits to the claimant from June 29, 2004 to August 30, 2004.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge