

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E812752**

<b>KATHLEEN T. CORDRY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>HEALTHCOR HOLDING, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CONTINENTAL CASUALTY CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 26, 2005**

Hearing before Administrative Law Judge J. Mark White on July 28, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Walter Murray, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On July 28, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on June 27, 2005, and a Prehearing Order was entered that same day. A copy of the June 27, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including November 26, 1997; that on November 26, 1997, the claimant sustained a compensable injury; that the claimant earned sufficient wages to entitle her to the maximum compensation rates; that this claim was previously the subject of an Opinion filed by the Commission on October 18, 2001, and affirmed by the Arkansas Court of Appeals on November 13, 2002; and that this claim was previously the subject of an Opinion filed by an Administrative Law Judge on May 24, 2004, which Opinion is now a final order.

The parties agreed that the issues to be presented were whether additional medical treatment is reasonably necessary in connection with a compensable injury; whether the respondents should be held in contempt for failure to obey the Commission's orders of October 18, 2001, and May 24, 2004; whether penalties should be assessed on the respondents pursuant to Ark. Code Ann. § 11-9-802; and controversion and attorney's fees.

The claimant contends that the respondents have still failed and refused to comply with the Commission's Order entered on October 18, 2001, in that there remain unpaid medical expenses which respondents have still failed to pay for; that the respondents should be held in contempt and that sanctions and/or penalties should be imposed pursuant to Ark. Code Ann. § 11-9-712 and § 11-9-802; that the medical treatment she has had, including her appointment with Dr. Fred Contreras

on August 12, 2004, along with subsequent continuing treatment by Dr. Contreras, has been reasonable, necessary and related to her compensable injuries of November 26, 1997; that in spite of the Order entered on May 24, 2004, the claimant had to pay for the visit with Dr. Contreras on August 12, 2004, out of her own pocket and respondents refused and failed to schedule her an appointment to return to the doctor as ordered and respondents should also be held in contempt with regard to this Order as well; and that additional sanctions and penalties should be imposed.

The respondents contend that any medical treatment provided to the claimant by Dr. Contreras is not reasonably and necessarily related to her compensable injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this

claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that the respondents have refused to comply with a final order of the Commission.
4. The respondents are in contempt of the Commission and are hereby fined ten thousand dollars (\$10,000), with said fine to be held in abeyance contingent upon the respondents complying with both prior orders herein – the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004 – within thirty (30) days of the date this order becomes a final order.
5. The claimant has proven by a preponderance of the evidence that the respondents' failure to pay the award of June 14, 2001, is willful and intentional, and I hereby impose a penalty of thirty-six percent (36%) of the entire unpaid amount, payable to the claimant.
6. The claimant has proven by a preponderance of the evidence that the additional medical treatment provided by and at the referral of Dr. Contreras, including physical therapy and a neck stimulator, was reasonably necessary in connection with the compensable injury, and that additional medical treatment remains reasonably necessary in connection with a

compensable injury.

7. The respondents have controverted all benefits sought herein, including the unpaid benefits previously awarded in the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004.
8. The claimant's attorney is entitled to the maximum attorney's fees on all benefits controverted herein, specifically including a second attorney's fee on the unpaid benefits previously awarded in the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004.

## **DISCUSSION**

### **I. History**

On November 26, 1997, while working for the respondent-employer as a home health nurse, the claimant was injured in an automobile accident. The respondents initially accepted the injury as compensable and paid benefits, but they later controverted further medical treatment. The claimant came under the care of Dr. Freddie Contreras, who eventually performed a fusion surgery. The surgery was paid for by the claimant's group health carrier, but after a hearing a Commission administrative law judge found, in an Opinion filed June 14, 2001, that the surgery and related treatment had been reasonably necessary in connection with the

compensable injury and ordered the respondents to pay all outstanding expenses and to reimburse the claimant and her group health carrier. The Full Commission affirmed and adopted the ALJ's Opinion on October 18, 2001, and the Court of Appeals affirmed the Commission on November 13, 2002.

A second hearing was held in 2004 on the issues of permanent benefits, additional medical treatment, and unpaid medical bills. The claimant was awarded a permanent impairment of 5% to the body as a whole, which rating was later paid by the respondents, as well as additional treatment in the form of a consultation with a neurosurgeon. As for the unpaid bills, the claimant contended, and the respondents did not contest, that the respondents had paid none of the outstanding medical bills. The bills for treatment prior to May 3, 2001, were found to be subject to *res judicata* in that they had already been considered in the Opinion of June 14, 2001. The claimant had not asked that the respondents be penalized or held in contempt for nonpayment, and the ALJ declined to raise those issues *sua sponte*. The bills for treatment after May 3, 2001, were found not to be reasonably necessary.

Even though the respondents had been ordered to pay for the claimant's fusion surgery and related treatment in the June 14, 2001, Opinion, and even though those unpaid bills had been discussed in the 2004 hearing and subsequent Opinion, the respondents still have not paid for the treatment. The claimant has asked that

the respondents be held in contempt and that penalties be awarded for their failure to pay. The claimant also asks for continuing medical treatment as recommended by her neurosurgeon, Dr. Contreras.

## **II. Adjudication**

### **A. Contempt of the Commission**

If any party before the Commission refuses to comply with any final order of an administrative law judge or of the Full Commission, the party may at the Commission's discretion be found to be in contempt of the Commission and subject to a fine not to exceed ten thousand dollars (\$10,000). ARK. CODE ANN. § 11-9-706(b). Contempt can be generally divided into two categories: civil and criminal. Criminal contempt "preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders." *Ivy v. Keith*, 351 Ark. 269, 92 S.W.3d 671 (2002). It carries an unconditional penalty and cannot be purged. *Id.* Civil contempt, on the other hand, protects the rights of private parties by compelling compliance with orders of the court made for the benefit of those parties. *Id.* Civil contemnors "carry the keys of their prison in their own pockets" in that they may avoid the punishment by complying with the original order. *Id.* Before a person may be held in contempt for violating a court order, that order must be in definite terms as to the

duties imposed, and the command must be express rather than implied. *Warren v. Robinson*, 288 Ark. 249, 704 S.W.2d 614 (1986).

As detailed above, the respondents were ordered by the Commission to pay benefits to the claimant. In the June 14, 2001, order affirmed by the Court of Appeals on November 13, 2002, the respondents were ordered to pay for the claimant's fusion surgery and related treatment by Drs. Marrow, DeHaan, Contreras, and Russell, as well as related bills from St. Michael's Hospital and Wadley Regional Hospital. The record contains multiple bills and statements from these providers, along with pharmacy bills for medications prescribed by these doctors, reflecting thousands of dollars of co-payments and deductibles paid by the claimant, as well as outstanding balances apparently not yet paid. There is no evidence that the respondents have paid any of these medical providers, and there is likewise no evidence that the respondents have reimbursed the claimant for her out-of-pocket expenses per A.W.C.C. Rule 30 (J). The claimant testified that the respondents have paid none of these bills and have paid her no reimbursement.

In the Opinion and Award filed May 24, 2004, the respondents were ordered to provide the claimant with a consultation by a neurosurgeon. The respondents failed to arrange this consultation. The claimant went on her own to her treating physician, Dr. Contreras, and the statements in the record reflect she had to tender

a co-payment to see him. There is no evidence that the respondents have reimbursed the claimant for this co-pay, or that they have paid Dr. Contreras' bill.

The time for appealing these awards has passed, and the awards are now final orders. I find that the claimant has proven by a preponderance of the evidence that the respondents have refused to comply with a final order of the Commission. I further find that the respondents are in contempt of the Commission and should be fined ten thousand dollars (\$10,000), with said fine to be held in abeyance contingent upon the respondents complying with both prior orders – the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004 – within thirty (30) days of the date this order becomes a final order.

#### **B. Penalties under § 11-9-802**

Where the Commission finds that a failure to pay “any benefit” is willful and intentional, the Commission may impose upon the carrier a penalty of up to thirty-six percent (36%), payable to the claimant. Ark. Code Ann. § 11-9-802 (e). This penalty applies to payment of both indemnity and medical benefits. *See, Cooper Tire & Rubber Co. v. Angell*, 75 Ark. App. 325, 58 S.W.2d 396 (2001).

The June 24, 2001, order, wherein the respondents were ordered to pay the costs of the claimant's surgery and related treatment, became final by the end of

2002, some three years ago. As discussed above, there is no evidence the respondents have made any effort whatsoever to comply with this order. Notably, the respondents' nonpayment was discussed a year ago at a prior hearing on this claim, held April 8, 2004:

THE COURT: Now, as far as these bills, are the bills for the surgery in [the record]?

MS. HIEBERT: Yes, sir.

THE COURT: Was there not a hearing in 2001 on the reasonableness and necessity of that surgery?

MR. MURRAY: No, sir, there was not. I believe that that hearing was strictly if her neck surgery was the result of the automobile accident. I don't think that the bills had anything to do with it, but I could be wrong.

MS. HIEBERT: It was a compensable injury and ----

MR. MURRY: Compensability was the only sole issue.

THE COURT: Okay. Have the respondents paid those surgery bills?

MR. MURRAY: We haven't reimbursed anyone.

THE COURT: Why not?

MR. MURRAY: Well, this case went to the Court of Appeals and it has been wrestled around a great deal. They never - it was just not an issue.

THE COURT: Well, Mr. Murray, I'll read you the first line of the Court of Appeal's decision and they said it is

appealed from the Workers' Compensation Commission Order which found that Appellee, Kathleen Cordry, had proven by a preponderance of the evidence that her additional medical treatment, including her surgery, was reasonable and necessary medical treatment related to her compensable injury.

MR. MURRY: Yes, sir.

THE COURT: So why have y'all not paid that surgery?

MR. MURRAY: I can't answer that, Judge.

It is plainly obvious that the respondents were obliged under the terms of a final order to pay these surgery expenses nearly three years ago, and that respondents knew as of the 2004 hearing that the bills still had not been paid. The bills were introduced into the record of the 2004 hearing, so the respondents cannot claim they lacked sufficient information to know how much was due. The respondents have been aware of their obligation and these bills for more than a year, and yet they still have not paid.

From these facts, I find that the claimant has proven by a preponderance of the evidence that the respondents' failure to pay the award of June 24, 2001, is willful and intentional, and I hereby impose a penalty of thirty-six percent (36%) of the entire unpaid amount, payable to the claimant.

### C. Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). It is well settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. *Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

As noted above, the respondents were ordered by the Commission to provide the claimant with an evaluation by a neurosurgeon. Though respondents failed to comply, the claimant on her own returned to her treating physician, Dr. Contreras. Dr. Contreras has recommended additional treatment, including diagnostic studies. There is nothing in the record to contradict Dr. Contreras' recommendations. I find that the claimant has proven by a preponderance of the evidence that the additional medical treatment provided by and at the referral of Dr. Contreras, including physical therapy and a neck stimulator, was reasonably necessary in connection with the compensable injury, and that additional medical treatment remains reasonably necessary in connection with a compensable injury.

## AWARD

The claimant has proven by a preponderance of the evidence that additional medical treatment has been and remains reasonably necessary in connection with the compensable injury; that respondents willfully and intentionally failed to pay the award of June 24, 2001; and that the respondents are in contempt of the Commission. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein. The respondents are hereby fined ten thousand dollars (\$10,000), with said fine to be held in abeyance contingent upon the respondents complying with both prior orders – the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004 – within thirty (30) days of the date this order becomes a final order.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on the entire Award pursuant to Ark. Code Ann. § 11-9-715 as it applies to injuries sustained prior to July 1, 2001. Further, the claimant's attorney is specifically awarded a second attorney's fee on the benefits presently unpaid and previously awarded in the Opinion and Award filed June 14, 2001, and the Opinion and Award filed May 24, 2004. *See, Lackey v. Cogswell Motors, A.W.C.C. E121730 (Jan. 7, 1998).*

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 Ark. Code Ann. § 11-9-809. *See, Eureka Log Homes v. Mantonya*, 28 Ark. App. 180, 772 S.W.2d 365 (1989).

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge