

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309041

MARILYN J. COTTRELL

CLAIMANT

3 M COMPANY

RESPONDENT EMPLOYER

OLD REPUBLIC INSURANCE

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 25, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on December 7, 2004. A prehearing conference was held on October 19, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was introduced into evidence as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed that there was a compensable injury on August 4, 2003.

The claimant contends that she is entitled to continued medical treatment related to her compensable injury and that respondents are responsible for payment of such.

Respondents contend the claimant sustained a compensable right shoulder injury and that all benefits have been paid. Respondents contend the claimant was released and returned to regular duty with no impairment for her right shoulder injury.

Respondents further contend the claimant developed problems with her neck, which it contends is not related to the initial compensable injury. Respondents also contend the claimant developed left shoulder problems; however, there are no objective medical evidence nor major cause to indicate this problem is work related. Respondents basically contend all benefits to which the claimant is entitled for her right shoulder have been paid and the neck and left shoulder are not work related. Respondents did pay some initial medical benefits for the claimant's neck but that condition was later controverted.

ISSUES TO BE LITIGATED

1. Additional medical treatment for the neck and right shoulder.

From a review of 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a compensable injury on August 4, 2003.
2. The claimant has proven by a preponderance of the evidence that the additional medical treatment she has pursued for her right shoulder and neck is reasonable and necessary and related to her compensable August 4, 2003, injury.

3. Respondents remain liable for reasonable and necessary medical treatment for both the neck and right shoulder.

DISCUSSION

The claimant, 45 years old, worked for the respondent employer for 19 years. On August 4, 2003, the claimant was working as a bin tender and she was cleaning a tank. The claimant dropped an air hose that got hung up on a belt and, as she was pulling the air hose back, her arm, shoulder and neck were jerked and began to hurt. The injury was immediately reported and medical treatment began. The company nurse sent the claimant to Dr. Barry Baskin and he prescribed medication and sent the claimant to therapy for about six weeks. The claimant's pain initially was the right shoulder and neck beginning with a sharp pain and then becoming aching pain. The claimant underwent physical therapy and had two MRIs ordered by Dr. Baskin. The claimant also saw Dr. Charles Pearce on two occasions. The insurance company controverted the claim after Dr. Pearce indicated the claimant had no permanent impairment on her shoulder.

The claimant has seen Dr. Jack Somers, Dr. Harold Betton, Dr. Eric Akin and Dr. Thomas Hart after the insurance company denied the claim. The claimant's group health insurance (Blue Cross Blue Shield) has paid on these bills. The claimant has had three steroid injections ordered by Dr. Hart. The claimant testified that she continues to have problems turning her head to the right or using her right shoulder. According to the claimant, her problems today are in the same part of her body as immediately following her August 4, 2003, injury. The claimant stated that the

treatments help her as she can now sleep on her right side and she takes less prescription medication.

Under cross examination, the claimant verified that she felt a pop in either her right shoulder or neck when she sustained her injury. The claimant verified that her right shoulder hurt worse than her neck. The claimant stated that her right shoulder and neck were not hurting until she pulled the air hose on August 4, 2003. The claimant verified that she has had treatment following the August 4, 2003, injury for her neck and right shoulder but not her left shoulder.

According to the claimant, she worked light duty at her job following the injury for about a year. The claimant ultimately quit her job because of difficulty in performing her job with her problems.

The claimant verified that when she was seeing Dr. Baskin in September 2003, his records noted that she was having numbness in her hand and he was not sure if it was coming from her cervical spine or shoulder but he did order a MRI of the neck.

Respondents contend some medical diagnostic testing was paid for the neck until Dr. Baskin's December 1, 2003, report and the shoulder treatment was stopped at the end of December 2003, even though Dr. Pearce's December 30, 2003, report indicated Celebrex is still recommended.

The claimant is contending that additional medical is reasonable and necessary for treatment of her neck and right shoulder.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of

the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy.

Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also 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).

In the present case, the claimant has proven by a preponderance of the evidence that additional medical treatment for her right shoulder and her neck is reasonable and necessary and related to her compensable August 4, 2003, injury. Dr. Baskin, the company-directed doctor, has treated the claimant shortly after the incident and, on September 25, 2003, indicated that the claimant had pain up in the trapezius and pain in the neck in the right cervical paraspinals. He further opined that the pain could be coming from the cervical spine and ordered a MRI of the cervical spine. The

MRI revealed disc extrusion at C5-6 with cord effacement and mild foraminal compromise and disc protrusion at C4-5 with a left posterior lateral disc bulge at C6-7.

Dr. Baskin opined on December 1, 2003, that the claimant's shoulder MRI revealed no tear but did show rotator cuff tendonosis and he diagnosed her with degenerative disc disease in the neck. Dr. Baskin further opined in his report of the difficulty in stating how much of the claimant's problems were an exacerbation of pre-existing injury or illness.

It is well settled that an employer takes an employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). In the present case, even if the claimant's August 4, 2003, incident did not actually cause her neck problems, it is clear that the injury aggravated her pre-existing condition of degenerative disk disease. The claimant was a credible witness who testified to being an 18-year employee of the respondent with no neck or shoulder problems until the August 4, 2003, jerking incident. There was no medical to dispute this claim. Dr. Charles Pearce, on December 30, 2003, recommended ongoing use of Celebrex. Finally, Dr. Thomas Hart, on September 28, 2004, requested the claimant follow up in four to six weeks following the cervical epidural injections. I find respondents are responsible for the additional medical treatment the claimant has sought for her right shoulder and neck problems. While respondents contend the neck was not a work-related injury, the claimant's testimony and the medical records reveal the claimant began complaining of pain in both the shoulder and neck region and the treatment has

been ongoing for both areas. I find the preponderance of evidence supports the claimant's contention of a compensable neck injury and right shoulder injury.

ORDER

The claimant has proven by a preponderance of the evidence that the additional medical treatment she has pursued for her right shoulder and neck is reasonable and necessary and related to her compensable August 4, 2003, injury. Respondents remain liable for reasonable and necessary medical treatment for both the neck and right shoulder.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

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.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE