

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F014096

CARIE D. COX, EMPLOYEE	CLAIMANT
ARKANSAS METHODIST HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA, In Liquidation, Claims by ARKANSAS PROPERTY & CASUALTY GUARANTY FUND, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 6, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on May 13, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Mark A. Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted May 13, 2005, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this case on March 23, 2005, and a Prehearing Order was filed on said date. At the hearing, it was announced that the stipulations, issues, as well as the respective contentions of the parties were properly set out in the Prehearing Order subject to a clarification concerning the date additional benefits were controverted.

It was stipulated that the employee/employer relationship existed at all relevant times, including November 13, 2000; that the claimant sustained a compensable, head injury on said date; that her average weekly wage was \$264.00,

entitling her to a compensation rate of \$176.00 per week for temporary total disability; that respondents paid temporary total disability benefits for various times through claimant's return to work on or about May 26, 2001; that respondents last paid medical expenses on September 10, 2001; and that respondents had controverted all benefits beyond those previously paid. At the hearing, the parties agreed that respondents last paid medical expenses on July 25, 2001, and that September 10, 2001, was the date notice of controversion was filed.

By agreement of the parties, the following issues were presented for determination:

- 1) Claimant's entitlement to additional medical treatment.
- 2) Claimant's entitlement to additional temporary total disability.
- 3) Whether the statute of limitations is a bar to the claim for additional benefits.

Claimant contended, in summary, that as a result of her admitted, compensable injury, she sustained a seizure disorder which has continued to require follow-up medical treatment; that respondents were responsible for outstanding medical treatment, together with continued, reasonably necessary medical treatment; that she was entitled to various periods of temporary total disability after May 26, 2001, which would be identified at the hearing; and that a controverted attorney's fee should attach to any additional benefits awarded. The claimant reserved the issue of permanent disability, if applicable.

The respondents contended that the claim was barred by the statute of

limitations. Alternatively, respondents maintained that any additional medical treatment was not causally related to the admitted injury. Finally, respondents asserted that the claimant could not prove entitlement to additional temporary total disability.

In addition to the claimant, Pamela Crow was called as a corroborating witness. Further, at the hearing, it was announced that one of the claimant's witnesses, Tammy Boyd, a registered nurse, was unexpectedly called out to care for a patient on the morning of the hearing. The parties agreed to provide the testimony of Ms. Boyd by evidentiary deposition, subsequent to the hearing. Accordingly, the record is composed solely of the transcript of the May 13, 2005, hearing containing numerous exhibits, together with the evidentiary deposition of Tammy Boyd submitted subsequent to the hearing as "Commission's Exhibit 2" and retained in the Commission file in bound form. Prior to the hearing, respondents submitted a trial brief addressing the statute of limitations argument. Subsequent to the hearing, claimant's attorney submitted a response brief. Said briefs have been blue-backed and are considered a part of the record herein.

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations of the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that respondents are responsible for outstanding medical treatment, including, but not limited to reimbursement of prescription medications, and respondents remain responsible for continued, reasonably necessary medical treatment including, but not limited to additional diagnostic studies recommended by authorized treating physicians, as well as continued prescription medications for the claimant's seizure disorder.
4. Respondents were not justified in unilaterally terminating all of the claimant's medical treatment.
5. The claimant has failed to prove, by a preponderance of the credible evidence, that she is entitled to additional temporary total disability.
6. The within claim is not barred by the statute of limitations.
7. Additional issues, including but not limited to claimant's entitlement to permanent disability benefits, if any, are specifically reserved.
8. Respondents have controverted all benefits beyond those previously paid.

DISCUSSION

_____The relevant facts in this case are basically undisputed. On and before

November 13, 2000, the claimant was employed as a Certified Nurses Assistant by the respondent. The claimant sustained a head injury on said date when she was struck in the right temple by a violent patient who had been restrained with a chest and wrist restraints. Apparently, the patient had gotten out of his restraints and, while the claimant was taking his blood pressure, he struck her on the right temple behind her right eye. The claimant pushed the call button for assistance, at which time several co-workers responded. Shortly after the incident, the claimant suffered a post-concussion seizure which was witnessed by several co-workers including the claimant's immediate supervisor and charge nurse, Ms. Tammy Boyd. As a result of her fall which occurred during the seizure, the claimant sustained a cut below her left eyebrow which required stitches. The claimant was immediately taken to the emergency room where she was initially examined and treated by Dr. Hardcastle at the respondent hospital. (Tr.16-21)(Jt. Ex. A, pp.1-2)

In her evidentiary deposition taken subsequent to the hearing, Ms. Boyd confirmed observing the seizure activity which was also observed by other workers. The seizures followed the work-related incident. (Commission Exhibit 2)

The employer next sent the claimant to its company physician, Dr. L. L. Shedd, with the Family Practice Clinic in Paragould, Arkansas, who ran various diagnostic studies and eventually referred the claimant to Dr. D. W. Blair, a neurosurgeon in Paragould, Arkansas, who performed additional diagnostic studies. The claimant has, at all times, been treated primarily with medications to control her

seizure disorder. Dr. Blair eventually released the claimant to return to work at light-duty and to avoid driving on May 23, 2001. As reflected by the stipulations, respondents paid appropriate temporary total disability through claimant's return to work on May 26, 2001. (Jt. Ex. A, p.14)

The claimant stated that after Dr. Blair adjusted her medications, her seizures appeared to be controlled by the medication Trileptal. The claimant testified that after Dr. Blair left Paragould, leaving her without a primary treating physician, the workers' compensation carrier sent her to Dr. Ron South. The claimant stated that Dr. South discontinued all of her medications. The claimant reported that after her medications were discontinued, she began having increased seizures while asserting that the seizures had been controlled prior to Dr. South's actions. No valid explanation has ever been provided concerning why the claimant's medical treatment, including prescription medications were unilaterally terminated by respondents.

However, the record reflects that the claimant has, at all times, continued working. The claimant has since left the employment of the respondent. At the time of the within hearing, the claimant was working for Paragould Nursing Center, full-time, earning more money than she earned while working for the respondent. (Tr.32)

Again, the record reflects that after the claimant's primary treating physician, Dr. Blair, left town, respondents sent her to Dr. Ron South. Although the claimant

had been treated with a number of medications to control her seizure disorder, Dr. South took her off all medications in July, 2001, at which time the seizures increased. The claimant pointed out that she spoke to both Debbie Vassar, the Director of Nursing, and Terry Shults, who handled the insurance with the H.R. department and advised that she was having seizures again; however, the employer refused to authorized additional medical treatment, relying on the opinion of Dr. South. The claimant stated that the only medical treatment she received after her release by Dr. South was obtained at emergency rooms where apparently prescriptions of prior medications were issued until the claimant could see a regular physician. The claimant asserted that she paid for the medications herself. The claimant eventually returned to Dr. South at her own expense, at which time she was referred to Dr. Aaii, at UAMS, who recommended a sleep study which has never been performed because of the cost and claimant's lack of insurance. (Tr.27, 53)

A portion of the claimant's illuminating testimony is set out below:

Q Did you go back to Dr. South?

A Dr. South would not see me.

Q Why?

A He said that there was no need, that I showed no signs of anything like neurologicalwise.

Q So did you, in fact, go back to him after he took you off the medication?

A No. I had spoke to Debbie Vassar and Terry Shults and them.

Q Who are they?

A Debbie Vassar is a DON, and Terry Shults was with the insurance.

Q DON meaning Director of Nurses?

A Yes, sir, I'm sorry.

Q And who's the other person?

A Terry Shults.

Q And what's her position?

A She is like with the medical insurance.

Q Well, did you explain to these Respondent employees that you were having seizures again?

A Yes.

Q Did they not send you back to the doctor?

A No, sir.

Q Did you ask to go back to the doctor?

A Yes, sir.

Q Did they tell you why you couldn't go to the doctor?

A They said going by Dr. South's thing, that there was no need to do it.

Q And did you request any relief at that time from the Workers' Compensation Commission?

A What do you mean relief?

Q Try to force them to provide you with medical treatment?

A I did not know at that time what all I could do to push the issue.

Q Well, when did you decide to push the issue?

A It was whenever I had contacted Mr. Burton there, and I don't recall that date.

Q That would have been, based on these documents that were presented, in 2002, the latter part of 2002, is that right?

A Yes, sir.

Q Okay. What happened from 2002 to the present?

A I would go and be seen in the ER.

Q And did they prescribe you medication?

A Yes, they asked me what I was taking whenever I was taken off and I told them, and then that's what they would prescribe me.

Q Okay. And then as I recall from your testimony, and I know that we jumped around here a lot, but you said that after having seizures for a considerable length of time after you were taken off of it, you, in fact, got to see Dr. South again and he put you back on the medication?

A That was just last September or October, 2004, when I finally got to see him again.

Q So you almost went two years?

A Because that's whenever St. Bernards referred me to him and told me to go see him, and I went back and I seen him.

Q At your own expense?

A Yes, I had – I don't remember the price I had to pay. I know it was a hundred and something dollars.

Q And did he recall you from two years earlier?

A Yes, he said he remembered seeing me the first time.

Q And did you explain to him that he had taken you off of your medication two years earlier and you were having increased seizures?

A Yes, sir.

Q And he put you back on it?

A Yes, sir.

Q On the medication?

A And sent me – he said he wanted to have me seen by the neurologist and stuff down there at UAMS.

Q Which you never have accomplished because of the cost?

A No, right. I had went down there to talk and I have seen the doctor, however you pronounce his name, the A-a-i, –

Q Okay.

A – and they could not go any further due to the cost.

Q Okay. The other think I'm somewhat confused about is the medication itself. Do you take your medication regularly now, the anti-seizure medication?

A No, I won't be able to get it filled for like two or three more days. So I've been without it, but other than that, yes, sir.

Q And is it controlling your seizures?

A I don't have them quite frequent. There's sometimes I go two or three months without one.

Q Two or three months?

A Yeah. And then there's –

Q And you pay for these medications yourself?

A Yes. They're high. (Tr.50-54)

STATUTE OF LIMITATIONS

It is undisputed that the claimant sustained a compensable head injury on

November 13, 2000. Initially, respondents exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant prompt medical treatment, as well as appropriate, temporary total disability for various times that the claimant missed work through on or about May 26, 2001. Respondents last paid medical benefits on July 25, 2001, which was apparently after Dr. South released the claimant from his care. Thereafter, the claimant's attorney requested a hearing in November, 2002; however, because prehearing information filings were not answered, the claim was returned to the Commission's general files on December 4, 2002. No further request for a hearing was filed until January 5, 2005. (Jt. Ex. A, pp.30-31)

Despite respondents' assertion in its letter brief that the claimant's request for a hearing was a claim for initial benefits and that the claim is barred by the statute of limitations, the facts simply do not support such contention. Clearly, since the claimant received benefits from November 13, 2000, through July, 2001, her claim was for additional benefits. The filing of the claim for additional benefits tolled the statute of limitations. Admittedly, after the claim was returned to the Commission's open general files, no further relief was sought by the claimant until January, 2005; however, the claim was never dismissed for want of prosecution. Further, respondents did not request a dismissal for lack of prosecution. It appears that the problem, in part, was caused because the employer's insurance carrier first went into receivership and, ultimately, liquidation. The claim is now administered

by the Arkansas Property & Casualty Guaranty Fund. Suffice it to say that respondents' argument that the claimant's claim was a claim for initial benefits by relying on the Commission Form AR-C, (Jt. Ex. A, p.29), is without merit. It places form over substance. The statute of limitations was effectively tolled by the filing of the claim and hearing request for additional benefits. Respondents have failed to prove that the claim is barred by the statute of limitations.

TEMPORARY TOTAL DISABILITY

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department vs. Breshears*, 272 Ark. App. 244, 613 S.W.2d 392 (1981); *Johnson vs. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1984).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *see, Palazolo vs. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

The record reflects that the claimant has been gainfully employed at all times since May 26, 2001. In fact, the claimant earns substantially greater wages today

than she did at the time of her admitted injury. Although the claimant submitted a list of dates that she was allegedly off work following a seizure, there was no documentation whatsoever to corroborate that the days missed were related to her admitted injury rather than for personal reasons. Accordingly, the claim for additional temporary total disability must be, respectfully denied and dismissed.

ADDITIONAL MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I found the claimant to be a credible witness. Her undisputed testimony is that she continues to experience occasional seizures and requires medications to control said seizures. The claimant did not experience any seizures prior to her admitted head injury.

Pamela Crow, a corroborating witness works with the claimant at the

Paragould Nursing and Rehab Center. She, and other employees, observed the claimant experiencing a seizure episode during the latter part of March or early April, 2005. The claimant has proven, by a preponderance of the evidence, that she is entitled to follow-up medical care and treatment, including, but not limited to prescription medications, as well as possibly, additional diagnostic testing. Respondents were not justified in unilaterally terminating all of the claimant's treatment on July 25, 2001. In view of the foregoing, I hereby make the following:

AWARD

Respondent, Arkansas Property & Casualty Guaranty Fund, is hereby directed and ordered to pay and/or reimburse to the claimant all outstanding medical expenses, including reimbursement of prescription medications that the claimant can properly document. Additionally, respondents remain responsible for continued, reasonably necessary medical treatment.

All additional issues are specifically reserved.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge