

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302839

PATRICIA K. CURTIS, EMPLOYEE	CLAIMANT
ACTRONIX, INC., EMPLOYER	RESPONDENT
THE HARTFORD, CARRIER	RESPONDENT

OPINION FILED OCTOBER 20, 2005

Hearing before Administrative Law Judge Mark Churchwell on August 3, 2005 in Mountain Home, Baxter County, Arkansas.

Claimant represented by Honorable Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Honorable Tom Harper, Jr., Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 3, 2005 in Mountain Home, Arkansas. A Prehearing Order was entered in this case on July 22, 2005. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the Prehearing Order or during the course of the hearing and are hereby accepted:

1. On February 4, 2003, the claimant received admittedly compensable injuries to her left shoulder and lower back.

2. Compensability of the claimed neck injury, depression, and related benefits have been denied and are fully controverted by respondents.

3. If Mr. Curtis were called to testify, he would corroborate Mrs. Curtis' testimony.

The issues to be litigated and resolved at the present time were limited during the course of the hearing to the following:

1. Compensability of neck injury.

2. Reasonable and necessary medical treatment as recommended by Dr. Sakr [i.e. referral to neurosurgeon and related treatment].

3. Controverted attorney's fees.

All other issues are reserved. The record consists of the August 3, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred

arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). 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. Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

In the present case, I find that the claimant has established by a preponderance of the evidence that she sustained a compensable cervical injury, in addition to her

admittedly compensable low back injury and admittedly compensable shoulder injury, in the incident at work on February 4, 2003. The evidence that brings me to this conclusion includes the history that Ms. Curtis struck her head in the fall, the persistent history of Ms. Curtis' neck symptoms since the fall (as documented in the medical record), and Ms. Curtis' lack of neck symptoms prior to the fall. I am also persuaded by the severity of the shoulder and low back injuries that Ms. Curtis also sustained in the incident.

I also find that the neck injury is established by medical evidence supported by objective findings. In this regard, I am persuaded by the abnormalities indicated in the cervical disks at the C5-6 and C6-7 levels by MRI testing performed on October 5, 2004. In reaching this conclusion, I note that an earlier cervical MRI performed on February 19, 2003 was read as not identifying abnormalities at C5-6 or C6-7. However, Dr. Tullis, the radiologist who read both MRIs, identified three possible reasons for the discrepancy in a November 4, 2004 letter: possible disk degeneration, possible acute injury after the first MRI, or the higher resolution of the 2004 MRI scan at the hospital as compared to the earlier office-based scan performed in 2003. In light of the persistent nature of Ms. Curtis' neck

complaints from the time of the 2003 incident at work to the time of the 2004 hearing, I am persuaded that the discrepancy between the two MRI results is due to the higher resolution of the 2004 scanner, and not due instead to disk degeneration or new disk injury after the 2003 MRI scan.

The claimant has also established by a preponderance of the evidence that the neurosurgical evaluation which she seeks is reasonably necessary for treatment of her neck injury. In this regard, I am persuaded by Dr. Tullis' October 5, 2004 opinion that a neurosurgical referral seemed appropriate since Ms. Curtis apparently continues to have pain referable to C5-6 and C6-7. I am similarly persuaded by Dr. Sakr's January 20, 2005 recommendation for a neurosurgical referral in light of Ms. Curtis' neck pain starting on February 4, 2003 and the nature of the abnormalities identified in the 2004 MRI.

Mr. Spencer has also raised issues questioning the constitutionality of the Arkansas Workers' Compensation Law, and requesting that I recuse from consideration of that issue. As part of his evidence, Mr. Spencer has proffered affidavits from former ALJs Michael White and Bill Daniels. Mr. Harper has objected to the admissibility of those two affidavits.

The Arkansas Supreme Court has indicated that constitutional questions should be avoided where appropriate. In the present case, the claimant stands to gain nothing financially if I were to address the constitutionality of the Arkansas Workers' Compensation Law, or if I were to address further the claimant's request that I recuse from addressing the constitutionality of the Arkansas Workers' Compensation Law, since I have already herein provided the claimant precisely the relief which she seeks. Under these circumstances, I find that the claimant's constitutional argument, the claimant's associated recusal request, and the respondents' objection to evidence related to these issues, are all moot. See Quinn v. Webb Wheel Prods., 334 Ark. 573, 976 S.W.2d 386 (1998).

Because the claimant's injury occurred after July 1, 2001, I find that I am without statutory authority under Ark. Code Ann. § 11-9-715 (2002 Repl.) to award the claimant's attorney an attorney's fee on the additional medical benefits specifically awarded herein. However, I find that the claimant's attorney will be entitled to a 25 percent attorney's fee for any indemnity benefits to which the claimant may become entitled as a result of her compensable neck injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On February 4, 2003, the claimant received admittedly compensable injuries to her left shoulder and lower back.

2. Compensability of the claimed neck injury, depression, and related benefits have been denied and are fully controverted by respondents.

3. If Mr. Curtis were called to testify, he would corroborate Mrs. Curtis' testimony.

4. The claimant has established by a preponderance of the evidence that she sustained a compensable injury to her neck on February 4, 2003.

5. The claimant has established by a preponderance of the evidence that a neurosurgical referral for her neck injury is reasonably necessary medical treatment for that injury.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

IT IS SO ORDERED.

HONORABLE MARK CHURCHWELL
Administrative Law Judge