

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313208

EUNICE FAULK	CLAIMANT
VAN BUREN SCHOOL DISTRICT	RESPONDENT
RISK MANAGEMENT RESOURCES INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 28, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by ROBERT BLATT, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 2, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 22, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On December 2, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On December 2, 2003, the claimant sustained a compensable injury to her right knee.

4. The appropriate compensation rates are \$192.00 for temporary total disability and \$154.00 for permanent partial disability benefits.

5. Medical expenses and temporary total disability benefits have been paid to September 30, 2004.

6. The respondents agree that the claimant is entitled to at least a 2 percent permanent partial impairment for her right leg.

By agreement of the parties the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Additional temporary total disability from September 30, 2004, to December 2, 2004.

2. Additional medical expenses subsequent to September 30, 2004.

3. Attorney's fees.

The claimant reserves the issue of additional permanent partial disability over the 2 percent impairment rating to her right leg.

In regard to the foregoing issues the claimant contends that she is entitled to temporary total disability benefits which the respondent has failed and refused to pay.

In regard to the foregoing issues the respondent contends that the claimant is not entitled to additional temporary total disability benefits subsequent to May 24, 2004.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted documentary evidence marked Claimant's

Exhibit No. 1, Claimant's Exhibit No. 2, Claimant's Exhibit No. 3 and Claimant's Exhibit No. 4. The respondents submitted medical information marked Respondents' Exhibit No. 1, Respondents' Exhibit No. 2 and Respondents' Exhibit No. 3. The parties submitted a return to work slip marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she worked for the respondent full time for a little over ten years. The claimant testified that as a result of her compensable right knee injury Dr. Griffin had given her instructions to work at a sit down type job. The claimant testified that she would sit in a little office chair with rollers and she would roll around and try to do what she could to help. The claimant testified that she would squeeze out rolls and scrap carrots as well as wipe off the steam tables, just whatever she could do by scooting around. The claimant testified that she was switched around to several different schools but that her last school was Parkview. The claimant testified that at Parkview Schawn Brown was her supervisor and told her that she was to sit for three hours and work for three hours. The claimant testified that Ms. Brown had her get up and work on the dishwasher. The claimant agreed that subsequently she was reprimanded by the respondent because she was standing up and working at the dishwasher and was not abiding by Dr. Griffin's restrictions. The claimant remembered that she worked at a sitting down job for a while and then was instructed to take dirty utensils and haul them

in her car to one of the schools to be washed. The claimant testified that Ms. Brown instructed her a few days later that she was responsible for washing these utensils. The claimant agreed that Ms. Brown told her that she would have help loading and unloading these utensils but that she never got any help except for one time when Janine Eversole helped her put a few dishes in her car. The claimant testified that this was not a sit down job and that the loading, unloading, driving the utensils from school to school and washing them caused her knee to hurt really bad and that she reported that she could not do this job. The claimant agreed that at some point before September 30, 2004, she told Ms. Brown that she was not going to take the pots and pans and wash them and she was written up because of her refusal to do this work. The claimant testified that after she was written up three or four times, she was terminated for not doing the work assigned to her. The claimant testified that even though Ms. Brown told her that she was suppose to be up working three hours then sitting three hours, her doctor had never told her that. The claimant agreed that she had been seeing Dr. Griffin during this period of time. The claimant testified that she last saw Dr. Griffin in September 2004 and was not allowed to make her return appointment on November 22 because the respondents refused to pay for the visit. The claimant testified that she would like to be able to go back to her treating physician and to carry through with a pain management program in order to address the pain which she is experiencing as a result of her injury.

On cross examination, the claimant testified that her conversation with Schawn Brown regarding dishwashing at Parkview took place before she was transferred to the administration building. The claimant testified that when she was transferred to the administration building she had a strictly sitting down job and anytime she would get up in order to do some of her tasks, Patty Dipboye would tell her she better sit back down. The claimant testified that there is no way she could do all the things they were telling her to do and sit in her chair all the time. The claimant was asked, "So you acknowledge that the respondent in September 2004 was telling you to work sitting down." The claimant responded, "Yes." The claimant testified that while she was working in the office with Schawn Brown, her job was to pour catsup, mustard and barbecue sauce into paper cups and then clean up after she finished these tasks. The claimant testified that she sat down to fill the cups and put the lids on them. The claimant testified that Kenny would bring her supplies from the warehouse but that she would have to get up and get gallons of food stuffs out of the refrigerator. The claimant testified that she was sitting down to do this job but she still had to get up to go to the bathroom and wet the rags to clean her area as well as get food out of the refrigerator. The claimant agreed that Schawn Brown instructed her to take the pans in her car to another facility to wash them. The claimant testified that the dishwasher that she was to use had already been torn down and there was not any way that she could sit down and wash dishes. The claimant testified that

she was told that they would have someone help her load and unload the pans but that they never provided anyone except that one time Janine helped her. The claimant explained that she would put the pans in her car, drive to her location, get the pans out of her car, go up the steps, go in the door and take the pans in. The claimant testified that she did this routine once at the high school and two to three times at Central. The claimant testified that the pans involved a long aluminum pan which weighed approximately ten ounces and that she also had her pitchers and gallon jugs. The claimant testified that she was carrying these items, getting in and out the doors, getting up and down the steps and that she just could not do it. The claimant agreed that her doctor did not tell her that she could not walk up stairs in order to get to her work. The claimant agreed that her only restriction was that while she was at work she was to be sitting in a chair. The claimant testified that she left the school district because she refused to wash the pans, noting that she could not get in and out of the doors and take them into the buildings. The claimant testified that she told the respondent that she could not carry the pans, open the doors and get them in the building. The claimant agreed that after she was not allowed to be seen by Dr. Griffin she went to Dr. Holder the next day and he had her undergo a functional capacity evaluation which lasted approximately four hours. The claimant agreed that she did not have any appointments with any other physicians.

On redirect examination, the claimant testified that she went on her own to River Valley orthopedics but no x-rays were taken and her money was refunded because they refused to see her since Dr. Griffin had previously operated on her. The claimant testified that she felt that Dr. Griffin had done something wrong with his treatment and that she wished to be seen by another orthopedic specialist to see if anything else could be done.

On recross examination, the claimant admitted that when she would go on her smoke break she would have to walk down the steps, get in her car and drive to a location off campus in order to smoke. The claimant agreed that she was doing physically the same things in order to go smoke that she was doing in order to get the dishes into her car except that she was not carrying anything. The claimant admitted that Dr. Griffin nor anyone else has given her any lifting restrictions.

Schawn Brown testified that Dr. Griffin sent a letter specifying that the claimant should have sedentary work. Ms. Brown testified that the claimant went one time to the high school with the pans and that the second time she went to Central and left the pans sitting on the loading dock. Ms. Brown testified that the claimant told her that she went to Central, honked and when no one came out to help her she left the pans on the loading dock.

On cross examination, Ms. Brown testified that she was the claimant's supervisor and that after the claimant returned to work following her knee surgery there was some confusion about what the doctor had said and what the doctor had in writing as to what the

claimant could or should do. The claimant testified that she contacted the physician's office and then had a discussion with the claimant explaining to her that she was to suppose to be working for three hours and sitting for three hours. This witness testified that she told the claimant that if her understanding of what the doctor wanted her to do was different than she needed to get something in writing from the doctor. Ms. Brown testified that at this point they provided work for the claimant within Dr. Griffin's restrictions. Ms. Brown testified that the claimant did not work through the summer of 2004 while school was out. This witness testified that the claimant did return to work for the respondent in August 2004 and at that time she was to have a sitting position only. This witness testified that the claimant was placed at the Parkview Elementary and that she received calls from the school reporting that the claimant refused to sit, that she was up moving around and so the claimant had to be called in and talked to. Ms. Brown testified that the claimant was reminded that she was on a sitting position job and that the claimant told her that she could not do the work sitting down and she was doing the best she could. Ms. Brown agreed that the claimant was given written warnings based on the fact that she was violating her instructions that she was to do her job sitting down. Ms. Brown testified that since the claimant was not following orders, a position was created for the claimant in the administration building so that she could be sure that the claimant would be doing her job sitting down. Ms. Brown testified that the claimant sat

right outside her office and that she had the job of filling condiment cups. Ms. Brown testified that she had the ladies from the school bring things to the claimant and they would sit them on the table, also Kenny would bring things in and open up the containers for the claimant. This witness testified that occasionally the claimant would have to go to the refrigerator but it was not very far and it was just for a few minutes. This witness testified that the administration building does not have a dishwasher, therefore, the claimant was instructed to take the empty pans to one of the schools and soak them. Ms. Brown testified that she provided a chair for the claimant so that she could sit down while the pans were soaking. Ms. Brown testified that this position was available to the claimant when she last refused to do the job, noting that the claimant refused to do her job that was asked of her that was within her restrictions.

On redirect examination, Ms. Brown was asked why her written notice set forth that the claimant was to soak the pans and then wash them. Ms. Brown responded that when you soak them you have to wash them off. Ms. Brown testified that the claimant could sit down in a chair and wash dishes in the sink.

The medical records set forth that the claimant underwent surgery on her right knee to repair a torn meniscus on January 30, 2004. This surgery was performed by Dr. Frank Griffin. The claimant was seen at the Crawford Memorial Hospital on April 2, 2004, by Dr. Anne Murphy reporting that she fell at work and landed on the concrete. Dr. Murphy notes that the claimant is very vague

as to the history of her fall and was uncertain whether she hit her knee, buttock or arm when she fell, noting that she was a very poor historian. On a follow up report that same day Dr. Murphy notes that the claimant's x-rays show no fracture present in her right knee. Dr. Murphy again writes that she is very suspicious that perhaps she had no fall at all. The doctor writes that the claimant's story was very vague with no specifics as to why she fell or how she fell or what she landed on. Dr. Murphy notes that she saw nothing on physical exam to support an abrasion or a bruise as a result of a fall. Dr. Murphy did prescribe a knee immobilizer for the claimant to wear while she is at work, released her with restricted duty and gave her a prescription for pain medications. An MRI of the claimant's right knee done on April 2, 2004, sets forth that the examination shows a small joint effusion and that the claimant has a tiny remnant of the posterior horn of the medial meniscus possibly from her previous surgery. Dr. Griffin writes on April 5, 2004, that he has seen the claimant for her complaints of her right knee after a fall while she was walking into work. Dr. Griffin writes that he has talked with the emergency room physician, Dr. Anne Murphy and that Dr. Murphy had indicated that the claimant had no objective findings at the time although an MRI was ordered. Dr. Griffin writes that the claimant's MRI is read as having a small joint effusion. Dr. Griffin writes that these changes are consistent with a previous surgery in her medial meniscus and in addition her lateral meniscus is noted to be in tack. Dr. Griffin writes that there are really no obvious acute

injuries on the MRI and that the small effusion would be consistent with her arthritic changes as well as her recent surgery. Dr. Griffin examined the claimant's knee and found no problems. Dr. Griffin writes that the claimant's symptoms are out of proportion to any obvious physical abnormalities in her right knee, noting that the claimant has expressed on numerous occasions an extreme reluctance to go back to work. Dr. Griffin recommended that the claimant go through physical therapy for a period of two weeks. The claimant continued to be seen by Dr. Griffin and he notes in his reported dated May 10, 2004, that her knee is about the same and she fell again about two weeks ago as well as reporting needle type pain at times in her medial joint line. The doctor writes that the claimant reports that school is just about over and indicated that she certainly does not want to go back to work during this time. Dr. Griffin examined the claimant and writes that she has continued right knee pain and symptomatology that seems out of proportion to any apparent physical abnormalities. The doctor recommended a depo-Medrol injection which the claimant refused. Dr. Griffin writes that the claimant's chief concern seems to be her work status and that he is doubtful whether another arthroscopy or any other type of medical intervention at this time would lead to a significant change in her knee symptoms. Dr. Griffin recommended that the claimant undergo a functional capacity evaluation. Dr. Griffin again writes that the claimant made it very clear that she does not want to go back to work and it seems very likely that she might fall on her way into work as she did the

last time that she was sent back to work. Dr. Griffin writes on May 24, 2004, that the claimant's functional capacity evaluation cleared her for sedentary light duty. Dr. Griffin again notes that the claimant has made it quite clear throughout her treatment program that she has no desire to return to work, noting that the claimant's functional capacity evaluation demonstrated some signs of inconsistency. Dr. Griffin notes that throughout the claimant's care she has obviously limped severely in the office but then was seen to walk without a limp in the parking lot. After examination, Dr. Griffin writes that there is really no physiological reason based upon the MRI findings that the claimant should have as much difficulty as she is describing. On June 21, 2004, Dr. Griffin writes that the claimant reports that her knee has been swelling real bad and it pops a hundred times per day as well as that her symptoms are gradually worsening. Upon examination, Dr. Griffin notes that there is no evidence of swelling or discoloration to her skin. The doctor instructed the claimant to walk up and down the halls in his office and he walked with her noting that she was unable to demonstrate even a single incident of popping. In order to rule out reflex sympathetic dystrophy, Dr. Griffin ordered a bone scan as well as a CBC and a sedimentation rate. Dr. Griffin notes that the claimant clearly demonstrates some voluntary symptoms, noting that her reported symptoms are in stark contrast to her actual clinical exam, noting that she seems to voluntarily limit flexation and that this voluntary limitation seems to go away with distraction. Dr. Griffin writes that the claimant's limp

worsens when she realizes that she is being observed and he writes that he is concerned that there are some non orthopedic issues going on here that are contributing to her complaints. On September 28, 2004, Dr. Griffin writes that the claimant is seen with complaints of significant pain in her right knee, noting that the claimant reports that she simply cannot work and that she wants what is coming to her and that she believes that she should be placed on disability. Upon physical examination, the doctor notes the claimant's inconsistencies as to her reports and his physical examination. Dr. Griffin assessed the claimant with mild degenerative joint disease in the right knee with persistent symptomatology that seems to be clearly beyond any apparent physical abnormalities. Dr. Griffin gave the claimant a return to work slip with a sitting job only, noting that clearly she does not have any physical abnormalities that would prevent her from doing a sitting job at this time. Dr. Griffin notes that he would recommend evaluation by a pain management specialist who can rule out any other unusual diagnosis and perhaps assess any other factors that might be contributing to her knee pain. Dr. Griffin concludes with writing that he is quite doubtful that any orthopedic intervention would be indicated given the issues which he has discussed in this report. The claimant underwent an independent medical evaluation on November 23, 2004, performed by Dr. Keith Holder. Dr. Holder did an extensive review of the claimant's previous medical treatment as well as a review of her functional capacity evaluation. Dr. Holder performed his own

functional capacity evaluation where he notes that the various tests suggest the presence of variable levels of physical effort and suggests considerable questions be drawn as to the reliability and accuracy of the claimant's subjective reports of pain and limitations. After a functional capacity evaluation which lasted three hours, the formal lift test found the claimant to fall in the category of sedentary to medium physical demand levels. Dr. Holder notes that there was a large variance in the claimant's lifting abilities as well as inconsistencies in her gait, weight bearing on her right lower extremity and range of motion testing of the right knee. Dr. Holder writes that the claimant was inconsistent in six of seven tests for bell curve and rapid exchange and noted several other inconsistencies and self limiting behavior on the part of the claimant. Dr. Holder writes in the summary of pain assessments, he notes that the claimant perceives herself as being severely disabled. Dr. Holder concludes that the claimant has status post right knee arthroscopy with medial meniscus tear as well as mild degenerative changes of the medial knee compartment. Dr. Holder also notes that he diagnoses her with illness behavior. Dr. Holder writes that the claimant has reached maximum medical improvement and is not in need of further medical treatment and none is recommended. Dr. Holder did rate the claimant's right lower extremity due to her medial meniscus repair at 2 percent to the lower extremity. Dr. Holder writes that the claimant should be able to go back to work in the light category.

After a complete review of this case, I find that the claimant has failed to prove by a preponderance of the evidence that she was temporarily totally disabled from September 30, 2004, to December 2, 2004. The claimant's treating physicians had released her to sedentary work and the claimant has testified that the respondent provided sedentary work for her. It was not until the claimant refused to do the work assigned to her that she was counseled, warned and then terminated for willful noncompliance for her assigned work duties. Dr. Keith Holder in his report dictated December 2, 2004, evaluated the claimant with illness behavior and along with other assessments, released the claimant to work in a light to medium category. I further find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to September 30, 2004. Dr. Griffin has treated the claimant consistently for her compensable injury and he as well as other physicians following her treatment plan have indicated that she has consistently been inconsistent as to her complaints as they apply to their clinical examinations. At Dr. Holder's last meeting with the claimant, no additional treatment was recommended and he released the claimant to work in a sedentary job. It is noted consistently by Dr. Griffin that he has not found any clinical evidence of the claimant's various complaints of pain, swelling and popping of her right knee. Dr. Griffin did consistently note that the claimant considered herself to be severely disabled and wanted what was coming to her. Dr. Holder, after performing a functional

capacity evaluation, released the claimant to return to work in a light to moderate setting with no treatment recommended for her compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On December 2, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On December 2, 2003, the claimant sustained a compensable injury to her right knee.

4. The appropriate compensation rates are \$192.00 for temporary total disability and \$154.00 for permanent partial disability benefits.

5. Medical expenses and temporary total disability benefits have been paid to September 30, 2004.

6. The respondents agree that the claimant is entitled to at least a 2 percent permanent partial impairment for her right leg.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from September 30, 2004, to December 2, 2004. See discussion above.

8. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to September 30, 2004. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability or additional medical treatment as a result of her compensable injury. Therefore, this claim for additional benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE