

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310941

RACHEL FINN,
EMPLOYEE

CLAIMANT

SUPERMARKET INVESTORS, INC.,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL FIRE INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 29, 2005

Decision rendered on documentary record by ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

The respondents were represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above-styled claim was submitted for a decision on a documentary record on April 5, 2005. A prehearing order was entered in this case on March 3, 2005. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time.

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

1. The jurisdiction of the Commission.
2. The employee-employer relationship.
3. An injury to the claimant's shoulder on 9-3-03.

4. A compensation rate of \$265/198.

5. The respondent has accepted this claim.

By agreement of the parties, the issues to be litigated and resolved at the present time are limited to the following:

Claimant:

1. Additional medical treatment.

Respondent:

1. Additional benefits.

2. Attorney's fees. (none for 2003 injury)

The record consists of the Prehearing Order filed March 3, 2005 and the Claimant's Medical Exhibit (which I have blue-backed for identification purposes).

DISCUSSION

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).

Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, 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 addition, the Full Commission explained in Wells v. Wal-Mart Associates, Full Workers' Compensation Commission, Opinion filed May 22, 2002 (W.C.C. No. F100849):

[W]e note that an injured worker is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). However, we note that the presence or absence of ongoing objective pathology can be a relevant factor.

In the present case, Ms. Finn sustained an admittedly compensable shoulder injury lifting a chicken pan out of a rotisserie at work in late 2003. Although the prehearing order contains a stipulation that the injury occurred on

September 3, 2003, the medical exhibits indicate that the injury actually occurred on October 3, 2003.

Ms. Finn was treated for approximately six weeks by Dr. Scott Carle and Dr. William Warren at Concentra Medical Centers in Little Rock. During that time the doctors prescribed medication, an x-ray, modified work activity, physical therapy, and trigger point injections. Dr. Carle's October 28, 2003 report indicates that Ms. Finn reported that day that her symptoms were worsening. Dr. Carle ordered an MRI of the neck and shoulder. When the MRIs proved negative, Dr. Carle made the following findings in his next scheduled follow-up report on November 18, 2003:

Rachel Finn has been seen for over 6 weeks for ongoing shoulder pain without objective evidence of injury. She recently had a negative cervical spine MRI and no evidence of radicular pathology was found. Also, she had a normal MRI of the right shoulder excluding pain from a radiating pathology of the gleno-humeral joint. Her current complaints of activity intolerance are not supported by objective evidence of injury. She is at her technical MMI date and does not appear to have a ratable injury to her shoulder or upper back. She is not likely to benefit from continued medical attention. There appears to be no physiological basis for her current pain complaints.

Regarding her ability to work: The ability for this patient to tolerate discomfort is a blend of physiological and non physiological factors. There does not appear to be an organic diagnosis that precludes full and unrestricted work if the patient so chooses. A functional capacity

evaluation in this patient would [sic] not be helpful.

After her release by Dr. Carle, Ms. Finn presented to Dr. Linda Morrow at the Autumn Road Family Practice on several occasions in early 2004 for unrelated medical conditions. Dr. Morrow's reports from early 2004 also document the presence of persisting shoulder problems. Dr. John Slater, an orthopedic specialist, saw Ms. Finn on referral from Dr. Morrow on February 17, 2004, and recommended a referral to an expert in shoulder pain.

Ms. Finn saw Dr. John Wilson, also an orthopedic specialist associated with Dr. Slater, pursuant to a change of physician order, on April 22, 2004. Dr. Wilson's examination indicated mild restricted shoulder motion, and Dr. Wilson noted a possible radicular type pain. Dr. Wilson performed injections and recommended continued normal activities at work with out-patient physical therapy and a return for follow-up.

The respondents denied liability for the additional medical treatment proposed by Dr. Wilson. Were my decision based solely on Dr. Carle's November 18, 2003 report and preceding course of treatment, I would deny the claimant the treatment at issue. However, subsequent to Dr. Carle's

release, two orthopedic specialists examined Ms. Finn and proposed additional treatment for Ms. Finn's chronic pain symptoms. As noted above, those persistent shoulder symptoms were likewise documented after October of 2003 in the reports of Dr. Morrow. In addition, I note that physical therapy appears to be an appropriate course of treatment for a chronic shoulder injury to avoid a frozen shoulder as a consequence of chronic shoulder pain, and I note that Dr. Wilson documented reduced shoulder motion in his report.

Because I accord greater weight to the conclusions of the two orthopedists who saw Ms. Finn in 2004 than the weight I accord the October 2003 conclusions of Dr. Carle, I find that Ms. Finn has proven by a preponderance of the evidence that additional shoulder follow-up proposed by Dr. Wilson is reasonably necessary for treatment of her admittedly compensable injury. I note that Dr. Wilson's immediate recommendation in April of 2004 was for physical therapy. I find that proposal also reasonably necessary as of April of 2004. I also recognize however that, if Ms. Finn chooses to continue treating with Dr. Wilson, Dr. Wilson's recommendation on his next follow-up may now have changed a year later, and I do not in any way intend to

suggest that the claimant's follow-up treatment in the future is limited to physical therapy.

Because the claimant's injury occurred after July 1, 2001, I am without statutory authority to award the claimant's attorney a controverted attorney's fee on the additional medical treatment awarded herein. See Ark. Code Ann. § 11-9-715 (a) (1) (B) (ii) (Repl. 2002).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The jurisdiction of the Commission.
2. The employee-employer relationship.
3. An injury to the claimant's shoulder on 9-3-03.
4. A compensation rate of \$265/198.
5. The respondent has accepted this claim.
6. The claimant has proven by a preponderance of the evidence that additional shoulder follow-up proposed by Dr. Wilson is reasonably necessary for treatment of her admittedly compensable injury.

AWARD

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge