

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F012020

CAROLYN SUE HAMMONS, Employee	CLAIMANT
WEST FORK HIGH SCHOOL, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED AUGUST 15, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by AARON MARTIN, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 14, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 4, 2005, and a pre-hearing order was filed on May 5, 2005. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulation:

1. The Full Commission's opinion of August 7, 2003 is final and res judicata.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Additional medical treatment.
2. Payment of a 12% impairment rating.
3. Payment of penalty for medical previously awarded, including Dr. Valley and pain pump charges.
4. Attorney fee.

At the time of the hearing the parties clarified several issues. First, the parties agreed that claimant's request for permanent partial disability benefits would include not only an impairment rating, but wage loss benefits as well. In addition, respondent's

attorney represented that respondent has paid or intends to pay all medical benefits through the date of March 4, 2004; therefore, claimant's request for additional medical benefits is for the period after March 4, 2004. Finally, the parties agreed that medical benefits relating to Dr. Valley and the insertion of a pain pump have been paid; therefore, there is no longer a request for a penalty for those benefits.

The claimant contends that she is entitled to additional medical treatment for her compensable injury. Claimant also seeks payment of permanent partial disability benefits based upon a 12% impairment rating, loss in wage earning capacity, and a controverted attorney fee.

The respondents contend that claimant is not entitled to any additional benefits for her compensable injury.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Full Commission's opinion of August 7, 2003 is final and res judicata.
2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to March 4, 2004.
3. As a result of her compensable injury, the claimant has suffered a permanent physical impairment in an amount equal to 2% to the body as a whole. In addition, claimant has suffered a loss in wage earning capacity in an amount equal to 20% to the body as a whole.

4. Respondent has controverted claimant's entitlement to all unpaid compensation benefits.

FACTUAL BACKGROUND

The claimant is a 60-year-old woman with a 12th grade education who went to work for the respondent in 1976. For the 17 years prior to her compensable injury the claimant worked as a study hall clerk/library monitor for the respondent. The parties have stipulated that claimant suffered a compensable injury in the form of a compression fracture at the T7-8 level on September 11, 2000 when she twisted her back while attempting to dodge students who were running in a hallway. Since that time the claimant has been evaluated and treated by a number of physicians. Claimant underwent a vertebroplasty on the T8 vertebra wherein cement was placed in the fracture on October 15, 2001. Despite that procedure the claimant had little if any relief in her symptoms and has subsequently undergone numerous treatments for alleviation of her pain. This has included oral medication, injections, and most recently the insertion of a pain pump.

The respondent initially accepted the claimant's injury as compensable and paid medical benefits through January 17, 2002 and temporary total disability benefits through December 2, 2001. A hearing was previously conducted on claimant's entitlement to additional medical benefits and temporary total disability benefits subsequent to those respective dates. In an opinion filed September 17, 2002 I found that claimant was entitled to additional medical treatment subsequent to January 17, 2002. I noted that evidence presented at the initial hearing indicated that an intraspinal narcotic trial had been recommended by Dr. Valley in a letter dated August 28, 2002. In addition, I also awarded claimant additional temporary total disability benefits subsequent to December 2, 2001. That opinion was appealed by the respondent to the Full Commission which in an opinion filed August 7, 2003 reversed the finding of claimant's entitlement to additional temporary

total disability benefits. The Commission found that claimant's healing period had ended by at least December 2, 2001. Although claimant did continue to receive medical treatment subsequent to that date, the Full Commission noted that the additional medical treatment was for pain management, not treatment to improve claimant's permanent condition. In addition, the Full Commission also affirmed the finding that claimant was entitled to additional medical treatment. The Full Commission noted that medical treatment intended to reduce pain or enable a claimant to cope with chronic pain may constitute reasonably necessary medical treatment.

Subsequent to the original hearing the claimant underwent a procedure wherein a pain pump was inserted in an effort to control her back pain. The medical records indicate that claimant has continued to receive medical treatment which includes refilling the pump with medication. Following the Full Commission's opinion the respondent again paid for claimant's medical treatment, including the insertion of the pain pump and subsequent refills, through March 4, 2004. The respondent has not paid for any medical treatment subsequent to that date. As a result, claimant has filed this claim requesting additional medical treatment as well as permanent partial disability benefits associated with her compensable injury.

ADJUDICATION

ADDITIONAL MEDICAL TREATMENT.

In its opinion of August 7, 2003, the Commission noted that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Following the original hearing the claimant did undergo the insertion of a pain pump in an effort to alleviate the chronic back pain she suffered as a result of the compensable

compression fracture. The use of this pain pump necessitates refilling the medication on a periodic basis.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. Specifically, I find that claimant is entitled to additional medical treatment provided to her in an effort to control her chronic pain. Claimant testified at the most recent hearing that the pain pump lowers her pain from a level of 7 to 8 on a 10 point scale to a level of 5. Claimant also testified that the pump has allowed her to increase the activities she is able to perform such as household chores, working in her flower garden, and walking up to two miles.

In addition, I note that the medical reports indicate that claimant's treating physicians have continued to prescribe the pain pump regiment as treatment for her chronic pain. While respondent is not required to prove that additional medical treatment is not necessary, I do note that there is a lack of medical evidence indicating that this medical treatment is not beneficial to the claimant.

Accordingly, based upon the evidence presented, I find that claimant has met her burden of proving by a preponderance of the evidence that she is in need of additional medical treatment for her compensable compression fracture. As previously noted by the Commission, medical treatment intended to reduce pain or to enable an injured worker to cope with chronic pain may constitute reasonably necessary medical treatment. Here, claimant testified that the pain treatment does allow her to engage in activities which she was unable to engage in prior to the pain pump treatment. Claimant also testified that the pain pump lowers her pain from 7 to 8 on a 10 point scale down to a 5. Given all of this evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury

subsequent to March 4, 2004.

PERMANENT PARTIAL DISABILITY BENEFITS.

Claimant contends that as a result of her compensable injury she is entitled to permanent partial disability benefits including benefits attributable to a 12% permanent physical impairment. Claimant's request for the 12% rating is apparently based upon a rating assigned by Dr. Kelly Danks, a neurosurgeon, in a report of August 24, 2004. While Dr. Danks did assign the claimant a 12% permanent impairment rating, 10% of that rating was attributable to a prior lumbar injury. For the claimant's compensable compression fracture of the thoracic spine, Dr. Danks assigned claimant only a 2% impairment rating. I note that this 2% impairment rating is in line with a discussion in the Full Commission's prior opinion of August 7, 2003 noting that according to the *AMA Guides* a person with a compression fracture of one vertebral body would sustain a permanent impairment of between 2 and 5 percent.

Based upon the opinion of Dr. Danks, which I find to be credible and entitled to great weight, I find that claimant has suffered a permanent physical impairment for her compression fracture injury in the amount of 2% to the body as a whole.

Also at issue is the claimant's entitlement to permanent partial disability benefits for a loss in wage earning capacity. According to A.C.A. §11-9-522(b)(1), when considering claims for permanent partial disability benefits in excess of the percentage of permanent physical impairment, the Commission may take into account various factors including the percentage itself, as well as the employee's age, education, work experience, and all other matters reasonably expected to affect their future earning capacity.

In this particular case, the claimant at the time of her most recent hearing was 60 years old. She has a 12th grade education and has worked for the respondent since 1976 with the last 17 years as a study hall clerk/library monitor. Claimant testified that as a

study hall clerk she was responsible for making sure that the students were studying and also helping them with homework. Prior to working for the respondent the claimant worked at First National Bank for 11 years. Claimant testified that she worked as a bookkeeper, teller, and in the loan department.

Claimant testified that even though the pain pump has allowed her to increase her activities, she still does not believe that she can perform activities that she performed before the accident. In addition to performing some household chores, working a little in her flower garden, and walking up to two miles, claimant testified that she spends her days reading, watching TV, and sleeping. Claimant testified that she has not looked for work since she last worked for the respondent. Claimant also testified that she is currently drawing social security disability benefits and has done so for approximately two years at the rate of \$680.00 per month.

Obviously, the claimant continues to suffer from chronic back pain which has resulted in treatment in the form of the pain pump. Dr. Danks did assign the claimant a permanent physical impairment rating in an amount equal to 2% to the body as a whole for her compression fracture, but he did not address the claimant's ability to return to work in his report of October 24, 2004. In fact, there seems to be very little medical evidence relating to the claimant's ability to work since the time of the first hearing. While several treating physicians at the time of the first hearing were of the opinion that claimant was unable to work at that time, it is unclear from a review of their medical reports whether they considered that condition to be permanent. In conjunction with claimant's ability to return to work, I note that claimant underwent a functional capacities evaluation on March 27, 2002. That evaluation indicates some minor inconsistencies in claimant's abilities. In fact, the physical therapist stated that due to the claimant's "lack of full physical effort and significant degree of symptom magnification, I am unable to provide an accurate estimate of her physical abilities and limitations at this point." While the evaluation indicates that

the inconsistencies were considered minor, they did prevent an accurate estimate of the claimant's physical abilities and limitations. This evaluation was performed approximately four months after claimant's healing period ended on December 2, 2001.

In summary, after consideration of all relevant wage loss factors, I find that claimant has suffered a loss in wage earning capacity in an amount equal to 20% to the body as a whole. While the claimant obviously suffers from chronic pain which requires treatment through a continued regimen of a pain pump, claimant's treating physicians have not opined that she is permanently totally disabled from working. Dr. Danks did not address claimant's ability to return to work in his report of August 24, 2004. However, he did assign the claimant a permanent physical impairment rating for her compression fracture of only 2% to the body as a whole. Furthermore, claimant underwent a functional capacities evaluation in March 2002 during which she failed to give a full physical effort and exhibited a significant degree of symptom magnification. As a result, the physical therapist indicated that she was unable to provide an accurate assessment of claimant's physical abilities and limitations at that time. Finally, I note that while the claimant does suffer from chronic pain, she has prior job experience and job skills at jobs which do not require great physical exertion. In addition to working for the respondent as a study hall monitor, the claimant also worked at a bank for 11 years as a bookkeeper, teller, and in its loan department. These job duties would indicate that claimant has job skills which would permit her to perform sedentary-type jobs. Finally, I note that claimant is currently drawing social security disability benefits and has not looked for work since she last worked for the respondent.

Given consideration of all the relevant wage loss factors, I find that claimant has suffered a loss in wage earning capacity in an amount equal to 20% to the body as a whole.

AWARD

_____ Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable compression fracture injury. This includes continued treatment in the form of the pain pump. I also find that as a result of her compensable injury, claimant is entitled to permanent partial disability benefits in an amount equal to 22% to the body as a whole. This includes a 2% permanent physical impairment rating as well as a loss in wage earning capacity in an amount equal to 20% to the body as a whole. Respondent has controverted claimant's entitlement to all unpaid compensation benefits.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half to be paid by the claimant and one-half to be paid by the respondents. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE