

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203812

JANETT L. HUGHES, EMPLOYEE	CLAIMANT
COUNSELING SERVICES OF EASTERN ARKANSAS, EMPLOYER	RESPONDENT
ZENITH INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 20, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on February 25, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Charles E. Halbert, Jr., Attorney-at-Law, Helena, Arkansas, and Mr. Robert J. Donovan, Attorney-at-Law, Marianna, Arkansas.

Respondents represented by Mr. J. Matthew Mauldin, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 25, 2005, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted January 5, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to additional stipulations, clarifications, and amendments set out below. A copy of the Prehearing Order was introduced without objection as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the parties at all relevant times, including March 20, 2002; that the claimant sustained compensable injuries to her neck, back, and right knee as the result of a motor vehicle accident on said date; that the claimant's average weekly wage was sufficient to entitle her to compensation rates of \$350.00 per week for temporary total disability and \$263.00 per week for permanent partial disability; that respondents had controverted claimant's entitlement to additional, temporary total disability, as well as additional medical and related expenses. At the hearing, the parties further stipulated that respondents paid temporary total disability for the period beginning March 20, 2002, through December 17, 2003; temporary partial disability benefits from December 22, 2002, through January 18, 2003; as well as additional temporary total disability beginning January 28, 2003, to March 10, 2003, at the appropriate rates. It was further agreed that the healing period for the right knee injury ended August 1, 2002, and that the claimant did not sustain any permanent impairment related to the right knee.

By agreement of the parties, the extent of claimant's permanent disability was specifically reserved. The parties agreed to litigate the following issues:

1. The date claimant's healing period ended, as well as claimant's entitlement to additional temporary total disability, if any.
2. Respondents' responsibility for various disputed medicals, as well as continued medical treatment.

At the prehearing conference, the claimant contended, in summary, that her

healing period ended on July 27, 2004; that she was entitled to temporary total disability benefits beginning March 20, 2002, and continuing through July 27, 2004, less credit for any temporary total disability previously paid, as well as credit for the dates that she worked. In addition, the claimant maintained that all of her medical and related treatment is directly and causally related to her admitted accident and should be paid by the respondents, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded. At the hearing, the claimant amended her contentions to request additional temporary total disability for the period beginning May 15, 2003, and continuing through July 27, 2004, apparently acknowledging that appropriate indemnity benefits had been paid prior to May 15, 2003.

The respondents contended that they had accepted and paid all appropriate benefits. Respondents maintained that the claimant's medical treatment for blackouts, headaches, and vascular problems was not reasonably necessary in connection with the compensable injuries. Respondents further contended that claimant's healing period ended on March 5, 2003, and that it had paid appropriate temporary total disability.

The record in this claim also reflects conflicting impairment ratings concerning the admitted injuries to claimant's cervical spine, as well as low back. Specifically, Dr. Gregory Ricca assigned a fourteen percent (14%) whole body impairment by report dated March 5, 2003, and Dr. Robert E. Abraham assigned an impairment

rating of twenty percent (20%) to the lumbar spine and fourteen percent (14%) to the cervical spine in a report dated July 27, 2004. However, as previously noted, by agreement of the parties, the extent of claimant's permanent disability has been reserved. Likewise, the liability, if any, of the State's Special Funds, specifically, the Second Injury Fund, and the Death & Permanent Disability Trust Fund, is also reserved.

The claimant was the only witness to testify. The record is composed solely of the transcript of the February 25, 2005, hearing containing substantial medical evidence.

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 claimant and to observe her 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 agreed to by the parties are hereby accepted as fact.
3. The claimant's healing period for her cervical spine injury and low back injury ended on or before January 29, 2004.
4. The claimant has shown, by a preponderance of the credible evidence, that

she is entitled to additional temporary total disability for the period beginning May 15, 2003, and continuing through January 29, 2004, while being evaluated for a determination as to the cause of her continuing headaches, blackouts, and vascular problems.

5. Respondents are responsible for all hospital, medical, and related expenses for treatment of claimant's admitted, compensable injuries, including, but not limited to reimbursement to appropriate health providers who paid for evaluation of claimant's headaches, blackouts, and vascular problems, and respondents remain responsible for continued, reasonably necessary medical treatment for the claimant's admitted, compensable injuries.
6. Respondents are entitled to a dollar-for-dollar offset for any benefits previously received for the medical services provided under claimant's group health insurance plan pursuant to A.C.A. §11-9-411.
7. The claimant's entitlement to appropriate permanent impairment benefits, as well as the overall extent of claimant's permanent disability has been specifically reserved.
8. Claimant's entitlement, if any, to benefits pursuant to A.C.A. §11-9-113 is, by necessity, likewise reserved.

DISCUSSION

The claimant, Janett Lea Hughes, testified in her own behalf. On and before March 20, 2002, the claimant was employed as an adult case manager for

Counseling Services of Eastern Arkansas. She called on approximately forty (40) clients. Her duties required her to drive to the various clients' homes, assess their needs, and provide community based needs, including transporting clients. On March 20, 2002, she had just dropped a client off for an eye appointment when she was involved in a motor vehicle accident. The claimant was initially treated by the company doctors, Dr. Metcalf and Dr. Brophy. She subsequently came under the care of her primary care physician, Dr. James T. Meredith, a general practitioner in Forrest City, Arkansas. Dr. Meredith has referred the claimant to numerous treating physicians for her admitted, compensable injuries, specifically, injuries to the right knee, neck, and back. The claimant was first referred to Dr. Glenn Dickson, an orthopedic surgeon in Jonesboro, Arkansas, for treatment of her right knee. The claimant was also referred to Dr. Gregory F. Ricca, a neurosurgeon in Jonesboro, Arkansas, for both her cervical and low back problems. Following failed conservative treatment, the claimant ultimately underwent discectomies, as well as fusions to both her neck and low back. The claimant underwent a cervical fusion in September, 2002, followed by a lumbar fusion in November, 2002. The claimant testified that she returned to work for the employer herein on or about December 16, 2002. The claimant was permitted to return to light-duty on a part-time basis, basically involving paperwork. She stated that she continued to perform restricted work through on or about January 17, 2003, at which time she was involved in another incident at work which apparently aggravated her pre-existing condition, at which time the claimant

returned to Dr. Ricca and was, again, taken off work. As reflected by the stipulations, aforementioned, the claimant was again paid temporary total disability through March 10, 2003, at which time Dr. Ricca opined that the claimant had reached maximum medical improvement. The claimant was again permitted to return to work on March 10, 2003, for light-duty and to avoid excessive driving. (Resp. Ex. A, pp.22-23)

The claimant testified that she returned to work and was provided light-duty office work until March 26, 2003, at which time she was told, by the clinic coordinator, Rhonda Peppers, and the personnel director, Scott Waddell, that if she was not able to resume her case management job, full-time, that she was going to be terminated. The claimant stated that she only worked a few days from March 27, 2003, until April 1, 2003, at which time another incident occurred while driving her car, specifically, coming to an abrupt stop which aggravated her neck injury and caused her to begin having headaches and blackout spells, at which time she returned to Dr. Meredith who again took her off work. (Tr.21-24)

The record reflects that the claimant reported the incident to her employer, as well as Dr. Meredith. Dr. Meredith eventually precluded the claimant from driving beginning May 15, 2003, which is when the claimant maintains that she is entitled to additional temporary total disability. The history contained in Dr. Meredith's April 3, 2003, report reflects the following:

Janett is in with headache, neck pain and she thinks she had a syncopal episode yesterday. She got jarred while driving Tuesday, car pulled out in front of her and she had to abruptly stop. She was wearing her seat belt. When she stopped abruptly it

sort of jarred her in her car and she has been having problems with her neck since then. We went over her functional capacity evaluation that she had done in Jonesboro. She disputed several of the things that the evaluators said. In any event, we talked about this and I have recommended she get in touch with her attorney and see if she can have this done again.

Dr. Meredith diagnosed cervical disc disease and migraine headaches; advised her to avoid driving, and referred her to Dr. Dickson. Dr. Dickson first saw the claimant on May 14, 2003, at which time he opined that she was unable to work beginning May 14, 2003, pending evaluation by a neurologist or neurosurgeon. (Cl. Ex. A, pp.9-12)

Dr. Meredith then referred the claimant to Dr. Ron South, a neurologist, to determine the cause of the claimant's syncopal episodes. Dr. South, in turn, referred the claimant to Cardiology Associates of Northeast Arkansas followed by a referred to Dr. Victor Biton with the Arkansas Epilepsy Program in Little Rock, Arkansas, specifically, for various diagnostic studies and to eliminate cardiovascular and/or epilepsy as being the cause of the claimant's frequent headaches and blackouts. The claimant was first evaluated by Dr. Fraser Richards, as Cardiology Associates in June and July, 2003. The claimant was next evaluated by Dr. Biton on July 29, 2003. Dr. Biton subsequently conducted a twenty-four (24) hour ambulatory EEG video monitoring on August 2 through August 3, 2003, which determined that the claimant did not have epilepsy. The claimant subsequently underwent further work-up by Cardiology Associates which proved negative for an Arrhythmia related etiology for her symptoms, at which time she was advised to follow-up with a neurologist. (Cl. Ex. A, pp.13-22)(Resp. Ex. A, pp.39-43)

The claimant was next examined and evaluated by Dr. Robert E. Abraham, a neurosurgeon at the NEA Clinic in Jonesboro, Arkansas, apparently by referral from Dr. Brian Dickson. Dr. Dickson conducted additional diagnostic studies, but, apparently did not provide any further treatment. The record reflects that the claimant was first evaluated by Dr. Abraham on January 19, 2004. In a response letter dated July 27, 2004, Dr. Abraham assessed the claimant's permanent impairment ratings at twenty percent (20%), secondary to the lumbar spine, and fourteen percent (14%), secondary to the cervical spine. It is apparent that Dr. Abraham's assessment of permanent impairment is inconsistent with the rating assigned by Dr. Gregory Ricca, the treating surgeon; however, as previously noted, permanent disability has been specifically reserved. (Jt. Ex. A, pp.23-29)

After the claimant's evaluation by Dr. Abraham, the claimant was sent by respondents' case nurse manager, Ms. Diane Patton, to Dr. Reginald J. Rutherford with Arkansas Specialty Care Centers in Little Rock, Arkansas. Dr. Rutherford concluded that based upon his review of the medical records, and his clinical examination, suggested that a conversion reaction was the claimant's predominant problem. Dr. Rutherford recommended that the claimant complete the diagnostic testing with Dr. Biton, specifically, in-patient EEG monitoring, and that if the monitoring supported conversion reaction, that a psychological evaluation and counseling should be pursued. Dr. Rutherford opined that the claimant was a poor candidate for further spinal surgery. (Resp. Ex. A, pp.45-48)

In a subsequent report, dated June 15, 2004, addressed to Diane Patton, Dr.

Rutherford makes the following recommendations:

I have received additional medical records pertaining to Janet [sic] Hughes. As you will recall, I saw Ms. Hughes on February 12, 2004. It was recommended that Ms. Hughes complete her evaluation with Dr. Biton and that if no evidence for an epileptiform process or other organic basis for her recurrent syncopal spells be identified that arrangements be made for psychological evaluation in that the records pertaining to Ms. Hughes were considered strongly suggestive of a conversion reaction. Ms. Hughes did see Dr. Biton in follow up on February 23, 2004. He nicely summarizes the results of all investigations performed referable to her complaint of recurrent syncope circa his note of February 23, 2004. There was no evidence found to support epilepsy or cardiac arrhythmia.

Based upon this additional information, I would strongly recommend that Ms. Hughes be referred to Dr. Judy White Johnson for detailed psychological evaluation. (Resp. Ex. A, p.52)

The claimant was subsequently referred by respondents and Dr. Rutherford to Dr. Judy White Johnson. The psychological evaluation was conducted following the prehearing conference in this claim, specifically, over a two-day period, January 25 and 26, 2005. Rather than conduct an exhaustive analysis of Dr. Johnson's seven (7) page narrative report, suffice it to say that while Dr. Johnson opined that there appeared to be secondary gain associated with the claimant's multiple symptoms, her overall pattern was consistent with a conversion disorder attributable to the March 20, 2002, motor vehicle accident and extensive course of medical treatment. Dr. Johnson acknowledged that whatever physical problems are diagnosed, treatment will be complicated by the claimant's psychological pattern of functioning. However, I feel compelled to point out that claimant's entitlement to benefits related to any

psychological injury was not joined by the parties at the within hearing, and accordingly, by necessity, must be specifically reserved.

On cross-examination, respondents pointed out that the claimant had several physical problems which pre-existed the March 20, 2002, admitted injuries. The record reflects that the claimant experienced heart related problems in the 1990s. In addition, the claimant has problems with low blood sugar which compromises her ability to take medications. The claimant stated that she cannot take pain medications due to her pre-existing heart problems, and that she is precluded from taking various muscle relaxers because it lowers her blood sugar levels. The claimant also acknowledged having been involved in a motor vehicle accident in the early 1990s which she maintained injured her shoulder rather than her cervical spine.

The record further reflects that the respondents unilaterally and wrongfully terminated all medical treatment after the claimant was released by Dr. Ricca in March, 2003. Thereafter, all of the claimant's medical treatment was paid through the employer's health insurance, save any co-payments which were paid by the claimant. Accordingly, respondents are entitled to a dollar-for-dollar offset for any benefits paid by other providers pursuant to A.C.A. §11-9-411. (Tr.59-61)

TEMPORARY TOTAL DISABILITY BENEFITS

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's initial healing period and entitlement to temporary total disability occurred on or before March 10, 2003, at which time her treating physician, Dr. Gregory Ricca, opined that the claimant had reached maximum medical improvement, and assessed permanent impairment. However, it is undisputed that after the claimant returned to work, she sustained either a recurrence of her compensable injury or an aggravation thereof when she was required to stop abruptly while driving a vehicle, causing additional neck pain followed by headaches and syncopal episodes which required her to return to her primary care physician, Dr. James T. Meredith who, again, took the claimant off work and made several referrals to determine the cause of the claimant's blackouts and headaches. Accordingly, the claimant has proven, by a preponderance of the credible evidence, that she is entitled to an additional period of temporary total disability. Nevertheless, the claimant's contention that she is entitled to temporary total disability beginning May 15, 2003,

and continuing through July 27, 2004, is not supported by the record as a whole. It appears that the claimant is requesting total disability benefits through the date that a consulting neurosurgeon, Dr. Robert Abraham, assessed permanent impairment. The claimant's reliance on Dr. Abraham's July 27, 2004, report (Cl. Ex. A, p.29) is simply without merit. In fact, the record reflects that Dr. Abraham did not offer any treatment to improve the claimant's overall condition. Rather, Dr. Abraham was consulted to determine whether the claimant had sustained any additional injury and required further treatment. Again, no such treatment was provided. Dr. Abraham did request additional diagnostic studies, specifically, a cervical MRI which revealed minimal bulges at multiple levels which Dr. Abraham did not find to be the cause of the claimant's complaints of headaches and blackouts. Dr. Abraham released the claimant to return on an as needed basis only on January 29, 2004. Accordingly, I find that the claimant's healing period ended on or before January 29, 2004, which is the date that all recommended diagnostic studies revealed that the source of claimant's additional problems with headaches and blackouts were unrelated to her physical injury. That is also the date the claimant was released to return only on an as needed basis. (Cl. Ex. A, p.27)

I feel compelled to point out that a work-up by physicians selected solely by the respondents reflect that the claimant's on-going complaints may be causally related to a psychological conversion disorder rather than her physical injury; however, claimant's entitlement to benefits related to a possible mental injury was not at issue.

(See, Resp. Ex. A, pp.45-48) (Resp. Ex. B)

It is clear that the claimant sustained a recurrence of aggravation of her pre-existing injury after the healing period was ended by Dr. Ricca. Respondents were not justified in unilaterally terminating all medical treatment. Because of additional problems following the April 1, 2003, incident, the claimant returned to her primary care physician who made numerous referrals to determine the nature of claimant's additional problems. Respondents should be held responsible for temporary total disability during the periods that diagnostic studies were performed to eliminate any organic cause for the claimant's continued problems.

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).

However, injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment

of the compensable injury. *Norma Beatty vs. Ben Pearson, Inc.*, Full Workers' Compensation Commission Opinion filed February 17, 1989, (AWCC #D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. *Debra Jones vs. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989, (AWCC #D512553). Also, respondent is only responsible for medical services which are causally related to the compensable injury.

Despite instructions by claimant's primary treating physicians that the claimant be provided light-duty only, and to avoid excessive driving, her employer required her to resume her regular job duties or face termination. The claimant returned to work performing activities which were outside her physical restrictions and was involved in another incident which caused a recurrence of neck pain, as well as additional problems which had not existed prior to the incident on April 1, 2003. Admittedly, as pointed out by respondents on cross-examination, the claimant had prior histories of complaints similar to those voiced after April 1, 2003; however, any prior difficulties had long since resolved. There was no competent evidence whatsoever that the claimant was experiencing any significant problems prior to the March 20, 2002, motor vehicle accident which resulted in extensive injuries requiring multiple surgeries and spinal fusions at multiple levels. It would have been imprudent for treating physicians to allow the claimant to continue driving a vehicle in light of the claimant's

multiple complaints. As previously noted, respondents were not justified in unilaterally terminating all medical treatment after March 10, 2003. As a consequence, the claimant was required to utilize her health insurance in order to obtain treatment including diagnostic studies necessary to determine the nature of her injury and the cause for her additional complaints. I find that the claimant has proven, by a preponderance of the evidence, that the additional studies were reasonably necessary and causally related to the March 20, 2002, injury or a compensable consequence thereof, and that the respondents should be held responsible for payment of such medical services.

There remain many unresolved issues in this claim. Specifically, the extent of claimant's permanent impairment and the validity of conflicting assessments of permanent impairment between Dr. Ricca and Dr. Abraham is apparent. The parties have specifically reserved the issue of permanent disability. One or more of the Special Funds may be joined prior to any final determinations of permanent disability. It is unclear from the record whether the respondents have accepted and paid any indemnity benefits subsequent to the termination of temporary total disability on March 10, 2003. Clearly, the claimant has sustained substantial injuries as the result of her compensable motor vehicle accident and resulting surgeries. Fortunately, the claimant has continued to obtain reasonably, necessary medical treatment through her group health insurance policy provided, in part, by the employer. It is the fervent hope of this administrative law judge that the parties will cooperate in an effort to

amicably resolve the remaining issues rather than pursue protracted litigation and appeals. In view of the foregoing, I hereby make the following:

AWARD

Respondent, Zenith Insurance Company, is hereby directed and ordered to pay, to the claimant, additional temporary total disability benefits for the period beginning May 15, 2003, and continuing through January 29, 2004.

All temporary total disability benefits having accrued, respondents are directed and ordered to pay same in lump sum and without discount.

Respondents are further directed and ordered to pay and/or reimburse to the appropriate carrier, all hospital, medical, and related expenses, including, but not limited to diagnostic testing recommended to determine the nature of claimant's continuing problems, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorneys, Mr. Charles E. Halbert, Jr., and Mr. Robert J. Donovan, are hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to, and limited by, A.C.A. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge