

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F009787

PEGGY LINDSEY, EMPLOYEE	CLAIMANT
THURL LINDSEY, EMPLOYER	RESPONDENT
HARTFORD UNDERWRITERS INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 18, 2005

This matter comes before Administrative Law Judge J. Mark White on a stipulated record.

Claimant represented by Mr. Michael Boyd, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Gene Williams, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed March 28, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed March 28, 2005, and the letter brief and attached medical exhibit submitted by the claimant on April 27, 2005.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; and that this claim is the subject of an Order entered December 14, 2004, by the Full Commission on remand from the Court of Appeals, which Order is now final and is *res judicata* to the present claim.

The parties agreed that the sole issue to be presented was whether an

independent medical evaluation is reasonably necessary.

Respondents contend that an independent medical evaluation is necessary in order to determine whether the claimant has reached the end of her healing period, and what further medical treatment may be advisable.

The claimant contends that she continues in her healing period and remains totally disabled as a result of a compensable injury of June 29, 2000; that she continues to require medical treatment which is reasonable and necessary relative to her injury; that respondents are liable for said benefits to include medical and temporary total disability benefits; that there is no basis for respondents' request at this time; that the claimant's current treating physician should be allowed to treat the claimant before an evaluation is performed; in the alternative, that if an evaluation is ordered, it should be by a doctor of the Commission's choosing rather than the respondents' choice; and that she is entitled to attorney's fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include the brief and exhibits submitted by the claimant, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The respondents have failed to prove by a preponderance of the evidence that an independent medical evaluation is reasonably necessary.

DISCUSSION

The claimant sustained a compensable injury on June 29, 2000, while in the employ of her husband, Thurl Lindsey. She was treated conservatively by her physicians until April 13, 2001, when Dr. Reginald Rutherford released her from care and declared her to have reached maximum medical improvement. The respondents denied further medical treatment, and the claimant filed a claim for benefits.

The administrative law judge who initially heard the claim awarded the claimant additional medical and indemnity benefits, but the Full Commission reversed the judge's decision and denied the claim on appeal. The claimant then appealed to the Arkansas Court of Appeals. In a decision delivered October 27, 2004, the Court of Appeals reversed the Commission, holding there was no

substantial evidence to support the Commission's denial of continued care for the claimant's injury. *Peggy Lindsey v. Thurl Lindsey*, __ Ark. __, __ S.W.3d __ (October 27, 2004). On remand, the Full Commission directed that the original award made by the administrative law judge be reinstated. *Peggy Lindsey v. Thurl Lindsey*, A.W.C.C. F009787 (Dec. 14, 2004). The respondents have now asked that the Commission order an independent medical evaluation.

The Workers' Compensation Act grants the Commission power to order physical examination or treatment by a physician of the Commission's choosing at a location reasonably convenient to the claimant. ARK. CODE ANN. § 11-9-511. The granting of an IME is not automatic; the threshold question is whether it is reasonable and necessary. *King v. Willow Oaks Acres*, A.W.C.C. E903202 (Jan. 25, 2001). Whether a treatment is reasonably necessary is determined by weighing the probability a treatment will reduce disability by a significant amount, against the risk of the treatment to the claimant. *Id.*, citing *Larson's Workers' Compensation*, Desk Edition, § 13.22.

Though the respondents made arguments in support of this request in their response to the prehearing questionnaire, the prehearing questionnaire responses were not incorporated into the Prehearing Order, nor has the respondents asked that they be incorporated into the stipulated record herein. The parties were given

approximately thirty days from the entry of the Prehearing Order in which to file exhibits and briefs, but to date none have been received from the respondents.

If the claimant received medical treatment for her compensable injury, other than medication, from the denial of benefits in 2001 until the reinstatement of benefits by the Court of Appeals in 2004, such is not reflected in the record before me. Records submitted by the claimant establish that the claimant saw her treating physician, Dr. Robert Floss, on November 10, 2004, and again on December 10, 2004. Since that time, Dr. Floss has recommended a number of diagnostic tests, including MRI, myelogram and nerve conduction studies. An MRI was performed December 21, 2004, and a nerve conduction study on March 23, 2005, both of which revealed abnormal results. The record does not reflect whether the claimant has had a myelogram yet, and there is no evidence that Dr. Floss has yet made any definitive treatment recommendation in light of the various diagnostic tests performed.

As Dr. Floss has apparently not yet decided on a definitive course of treatment, and since diagnostic testing has only recently been completed, it is apparent that an independent medical evaluation at this stage is extremely premature. Dr. Floss has made no surgery recommendation, nor any recommendation of anything other than diagnostic testing and conservative treatment. Since the Commission has explicitly ordered that the claimant is entitled

to treatment from Dr. Floss, I conclude that Dr. Floss should have the opportunity to diagnose and actually treat the claimant before any secondary evaluation takes place.

Given these facts, and given the holding of the Court of Appeals, I cannot find that an independent evaluation is reasonably necessary at this time. I find that the respondents have failed to prove by a preponderance of the evidence that an independent medical evaluation is reasonably necessary. Therefore, the respondents' request for an evaluation must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge