

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410964

KAREN MILLER

CLAIMANT

AREA AGENCY ON AGING

RESPONDENT

RISK MANAGEMENT RESOURCES
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 2, 2005

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

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondent represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 19, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 6, 2005. 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 October 4, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant was in a motor vehicle accident while working on October 4, 2004.

4. The claimant is entitled to a compensation rate of \$138.00 per week for temporary total disability as well as permanent partial disability. This is based on an average weekly wage of \$207.11.

5. The claimant sustained compensable injuries to her neck and right shoulder on October 4, 2004.

6. Medical benefits have been paid for his claimant's compensable injuries up to January 17, 2005, for her neck and shoulder.

7. The respondents have paid temporary total disability from October 5, 2004, to November 1, 2004.

By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's entitlement to additional medical to include some medical prior to January 17, 2005.

2. The claimant's entitlement to temporary total disability from November 2, 2004, to January 31, 2005.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to temporary total disability benefits from November 2, 2004, through January 31, 2004, and that she is entitled to additional medical payments for services received related to her compensable injuries following her compensable injury on October 4, 2004, to present.

In regard to the foregoing issues the respondent contends that the claimant was involved in a motor vehicle accident in the course and scope of her employment on October 4, 2004. The respondent initially paid some TTD and medical benefits. They contend, however, that there are no objective medical findings to support the claimant's claim for continued TTD benefits or medical treatment. The respondent also contends that they have denied payment of certain medical bills owed to Sparks Regional Medical Center on the grounds that the medical treatment which resulted in those charges was unauthorized, unreasonable and unnecessary. The respondent reserves the right to amend these contentions after the completion of investigation and discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing Order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondent submitted medical information marked Respondent's Exhibit No. 1 and they submitted non medical information marked Respondent's Exhibit No. 2. All of these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was 44 years old and on October 4, 2004, she was employed by the respondent as a driver. The claimant explained that she transports clients to and from doctors as well as their children from their home to daycare.

The claimant testified, and it has been stipulated, that she was involved in a motor vehicle accident while working on October 4, 2004 at which time she sustained injuries to her neck and right shoulder. The claimant testified that her immediate symptoms were pain in her neck and shoulder and that her neck was throbbing because she was thrown forward two or three times when she was hit. The claimant testified that this injury was reported immediately and that Tena Cline, an employee of the respondent, came and picked her up and took her to the Sparks emergency room. The claimant testified that pursuant to the treatment she received at Sparks, she was referred to River Valley Orthopedics and eventually was referred for pain management. The claimant testified that when she was seen at Sparks after her injury she was taken off work and that she had remained off work until January 31, 2005. The claimant agreed that on that date, January 31, 2005, she received a return to work slip from Dr. Cheyne. The claimant testified that this release to return to work was at her request because she was having financial problems. The claimant testified that at the time of her release by Dr. Cheyne she had not been receiving workers' compensation benefits. The claimant testified that as per a telephone conversation on November 3, 2004, her benefits had been stopped. The claimant testified that she did not return to work after January 31, 2005, because she was in pain and she could not fulfill the physical requirements of her job. The claimant testified again that she was still having pain in her neck and

shoulder with tingling in her arm and hand. The claimant testified that she was doing home therapy since her physical therapy was stopped.

The claimant testified that besides working for the respondent, she also worked for the U.S. Postal Service and had been working for them for approximately four years. The claimant testified that she is a temporary mail carrier and that she drives a rural route delivering mail on Saturdays. The claimant testified that in order to do this job she sits between the middle and right-hand side, puts mail in the mailboxes and drives with her left hand. The claimant agreed that she was doing this job before her injury and that she is still doing this job. The claimant testified that the postal job requires her to work about eight and one half to nine hours each Saturday and that she is still able to do this job although she does have some pain in her neck and shoulders with some stiffness and tingling.

The claimant testified that Dr. Cheyne has recommended that she undergo pain management but that this has not been provided to her. The claimant stated that she feels she is in need of additional medical treatment. The claimant testified that she is still experiencing some spasms and pain that go down between her shoulder blades.

The claimant testified that in 1997 she was involved in an automobile accident in which she hurt her neck and received chiropractic treatment for almost a year. The claimant testified

that she was involved in a second automobile accident in 1998 and again injured her neck for which she received medical treatment for about six months. The claimant testified that between 1999 and October 4, 2004, she did not receive any medical treatment for her neck or right shoulder. The claimant further testified that she has not had any additional injuries to her neck or right shoulder during this period of time nor did she have to change her work or lifestyle in any way to accommodate any problems with her neck and right shoulder between 1999 and 2004.

On cross examination, the claimant was asked a series of questions concerning her October 4, 2004, automobile accident. The claimant testified that she was rear ended by a pickup truck that would not have been going much over five miles an hour. The claimant testified that, to her knowledge, the pickup truck that hit her did not sustain any damage but the van she was driving did have a dent in the bumper. The claimant testified that her van was still able to be driven and the driver of the pickup truck did not appear to be injured. The claimant testified that after the accident she got out of her van and remembers talking to Tena about not needing an ambulance. The claimant agreed that Tena Cline, her supervisor, took her to the Sparks Emergency Room and at some point she was referred to Dr. Slabbert who subsequently prescribed physical therapy. The claimant agreed that ultimately she was seen by Dr. Cheyne and that he also send her to physical therapy and suggested that she do home therapy. The claimant agreed that she

has been back to the Sparks Emergency Room on a number of occasions since her October 4 accident to get pain medication. The claimant agreed that she did not get authorization from the respondent to go to these ER visits, stating that she was in severe pain and needed help. The claimant testified that her treating physicians were not prescribing pain medication for her but were prescribing muscle relaxers. The claimant then was asked a series of questions concerning her current boyfriend, Mark Evans, and the claimant testified that she was not getting pain medication for him nor did she share any of her pain medication with him. The claimant testified that after Dr. Cheyne released her from his care and gave her a return to work slip, she went on her own to a clinic called Accidents, Injuries and Rehabilitation. The claimant agreed that she did not have a referral from any of her authorized physicians to go to this clinic. The claimant testified that after she got her release to full duty work she contacted the respondent about returning to work and she was put back on the schedule to work. The claimant testified that she did not go in and do any of the work that she was scheduled to do because she did not feel she could do it. The claimant explained that she did not want to drop a client whether it be a child or an adult because she often had to physically help clients in and out of the van and she did not want to hurt someone. The claimant agreed that the respondent was ready, willing and able to provide work for her. The claimant agreed that she never went in to try and do the work and in fact

within a week or so she called and told the respondent that she was not coming back. The claimant agreed that during all this period of time she was continuing to work for the post office. The claimant testified that the Saturday following October 4, 2004, she did her Saturday mail deliveries. The claimant testified that before she begins making her mail deliveries she has to sort the mail and this requires the use of both of her hands. The claimant testified that after the mail is sorted and placed into various bundles she began her route which takes about eight to nine hours. The claimant testified that when she delivers the mail she operates the gas and the break with her left foot, drives with her left hand and puts the mail in the mailbox with her right hand. The claimant testified that she does not twist or reach in order to do this job. The claimant testified that besides delivering mail every Saturday she also has twenty-six days out of the year she is to work for the postal service. The claimant testified that she is on twenty-four hour call with the post office in order for her know when to come in to work her twenty-six days. The claimant agreed that her post office job does not give her a lot of flexibility as to obtaining other employment.

On redirect examination, the claimant agreed that it was the respondent that took her to Sparks' emergency room immediately following her October accident. The claimant agreed that no one with the respondent ever told her that she was not to return to Sparks' ER or that they were not going to pay for it. The claimant

testified that she went to the ER because of her severe pain and not being able to sleep. The claimant testified that her visits to the ER were at different times and some of these visits were after work hours or on weekends. The claimant testified that when in the ER she was given a shot for pain and she also would receive a prescription for medications. The claimant testified that her treatment at Accident, Injuries and Rehabilitation was before she was told that her workers' compensation benefits were stopped. The claimant testified that when she got her full release from Dr. Cheyne she was hoping that the respondent would make some sort of accommodations for her so that she could come back to work.

On recross examination, the claimant testified that on November 3, 2004, she learned that her workers' compensation carrier was not going to pay for anymore medical treatment. The claimant agreed that some of her later emergency room visits were for headaches, noting that she had never had headaches like this before her October 4th accident. The claimant did agreed that she has had problems with headaches in the past but these were allergy headaches. The claimant testified that just recently she has begun to have headaches. The claimant testified that she began having these headaches about March 2005 but she associates them with her October 4th accident. The claimant agreed that she never went into the respondent's business to try and workout a way to come back to work with some accommodations.

On redirect examination, the claimant testified that she did not go in for an examination by Dr. Cheyne on January 31, 2005. The claimant testified that on November 3, 2004, Jill told her that all of her workers' compensation benefits were stopped.

On recross examination, the claimant testified that she has not received any bills from Dr. Cheyne and that she was referred to Dr. Cheyne by Dr. Slabbert.

The medical records set forth that the claimant was seen at Sparks' Regional Medical Center Emergency Room on October 4, 2004, with complaints of neck and bilateral shoulder pain resulting from a motor vehicle accident. X-rays of the claimant's cervical spine were normal, the claimant was prescribed medications and taken off work for seventy-two hours. The claimant returned to Sparks' ER on October 5, 2004, for her continuing complaints of neck and shoulder pain. Medications were administered and she was instructed to take her medications as instructed, follow up with a primary doctor and return to the ER if necessary. The claimant was seen at the Available Medical Care on October 7, 2004, for her neck, right shoulder and right arm problems. The claimant was treated and taken off work for seven days. The roentgenological findings dated October 8, 2004, indicate that the claimant has mild degenerative changes at C5-6 and C6-7. The claimant was evaluated and treated on October 8, 2004, where it is noted that she has restricted range of motion, muscle spasm and pain. The claimant returned to Available Medical Care on October 13, 2004, reporting that she is

still sore and stiff with her right arm, right shoulder and the right part of her neck and having a hard time dealing with her pain. The doctor from Available Medical Care released the claimant from work for a seven-day period of time. The claimant began being seen at Total Rehabilitation, Inc. on October 18, 2004, where she reports that she was involved in a motor vehicle accident following which she was taken to Sparks via ambulance. The claimant also indicated that she underwent back surgery in the year 2000 at the C6 level. A treatment plan was formulated and the claimant was to engage in this program for three weeks or up to nine visits. The claimant was seen at Available Medical Care on October 20 and October 26 for her continuing complaints of neck, back and shoulder pain. On October 26 it is noted that she is still going to physical therapy and getting better, noting that the pain comes and goes. The claimant was released to limited duty with no pushing, pulling, lifting or standing, for sitting work only. The claimant was seen at the Sparks' ER at around 7:14 on the evening of October 28, which was a Thursday, for her neck and shoulder pain problems. The claimant was examined and scheduled for an MRI. There is a note from Total Rehabilitation signed by Velvet Medlock Brown indicating that the claimant was seen at the request of Dr. Slabbert and that she was treated with moist heat, ultrasound and myofascial release with message. It is noted that the claimant was very disruptive taking six telephone calls where she was yelling and screaming at someone on the phone. The therapist notes that

the claimant was not rescheduled because of her disruptive behavior in the clinic. The claimant underwent an MRI of her cervical spine on November 2, 2004, which was noted as within normal limits.

On November 3, 2004, the claimant was seen at Available Medical Care for her continuing complaints and she was released to limited duty with sitting work only to be reevaluated in one week. The claimant was seen at the Accident, Injuries and Rehabilitation Clinic on November 5, 9, 10, 11, and 22. I am unable to read these notes or decipher what their markings refer to except for a few words and that her pain level is between a six to a seven. On November 10, 2004, the claimant was seen at Available Medical Care and she was referred to Dr. Cheyne and instructed to take her MRI as well x-rays with her to that appointment. Dr. Thomas Cheyne writes on November 30, 2004, that he has seen the claimant and reviewed her test results. The doctor diagnosed the claimant with having acute cervical strain with residual myofascitis and prescribed three Aleve a day, hot showers as well as physical therapy for a home exercise program and Darvocet was prescribed to help her sleep. Dr. Cheyne released the claimant to return to work on November 22, 2004, with restrictions of not to lift over ten pounds, no work above shoulder level, no repetitive reaching and that she cannot drive more than two hours per day. This claimant was seen at the Sparks' ER four days later at 8:00 in the evening, noting that she is out of pain meds and has pain in her neck and right shoulder. Physical therapy and medications were prescribed.

The claimant continued with her regime of medical treatment including two to three trips to see Dr. Cheyne up until after the first of the year of 2005, frequent visits to the ER for medication and pain shots as well as treatment at the chiropractic clinic. According to these numerous records, her complaints were in approximately the same areas and with the same level of intensity usually not lower than a five nor over an eight. On January 31, 2005, Dr. Cheyne notes that the claimant called the office and he released her to return to regular duty work on February 1.

The claimant was treated at the Sparks' ER on February 2, 2005, for complaints of severe headaches for the past two days. The claimant underwent a CT scan of her brain on February 2 which was a normal CT scan of her head without IV contrast.

After review of this complete record, I 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 neck and shoulder strain subsequent to January 17, 2005. I also find that her treatment at the Accident, Injuries and Rehabilitation Clinic is unauthorized and will not be the responsibility of the respondent. I do find, however, that the claimant's visits to the Sparks' ER for treatment of her compensable neck strain following her motor vehicle accident should be the responsibility of the respondents up to January 17, 2005. I also find that the claimant has failed to prove by a preponderance of the evidence that she is temporarily totally disabled from November 2, 2004, to January 31,

2005. The claimant has been released to limited duty or restricted duty several times during this period of time and by her own testimony she has continued to work for the U S Postal Service every Saturday and fill in days when called to fulfill her obligation on a rural mail route. The claimant has not shown herself to be totally disabled during this period of time and the respondents should not have to pay indemnity benefits for this period of time.

FINDINGS & CONCLUSIONS

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

2. On October 4, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant was in a motor vehicle accident while working on October 4, 2004.

4. The claimant is entitled to a compensation rate of \$138.00 per week for temporary total disability as well as permanent partial disability. This is based on an average weekly wage of \$207.11.

5. The claimant sustained compensable injuries to her neck and right shoulder on October 4, 2004.

6. Medical benefits have been paid for his claimant's compensable injuries up to January 17, 2005, for her neck and shoulder.

7. The respondents have paid temporary total disability from October 5, 2004, to November 1, 2004.

8. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical and right shoulder strain subsequent to January 17, 2005. The respondents should pay, however, for her trips to the Sparks' ER for the treatment of her compensable injury, however, they are not responsible for her trips to the chiropractic clinic, Accidents, Injuries and Rehabilitation Clinic, since these visits were unauthorized. See discussion above.

9. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from November 2, 2004, to January 31, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from November 2, 2004, to January 31, 2005.

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 January 17, 2005. The respondents, however, should pay for the Sparks' ER visits which this claimant made for the treatment of her compensable injury up to January 17, 2005. The respondents will not be responsible for the cost of treatment from Accident, Injuries and Rehabilitation Clinic since these visits were unauthorized.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE