

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F302463

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| JULIE MOORMAN, Employee | CLAIMANT |
| CITY OF FAYETTEVILLE, Employer | RESPONDENT |
| MUNICIPAL LEAGUE WCT, Carrier | RESPONDENT |

OPINION FILED AUGUST 25, 2005

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

Claimant represented by RONALD M. MCCANN, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 3, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 15, 2005, and a pre-hearing order was filed on that same date. 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 stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her low back on December 11, 2002.
4. The claimant was earning sufficient wages to entitle her to compensation at the maximum rates in effect for 2002.

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

1. Claimant's entitlement to additional medical benefits.
2. Claimant's entitlement to permanent partial disability benefits for wage loss.

3. Attorney fee.
4. Statute of limitations.

At the time of the hearing the claimant withdrew and reserved as an issue her entitlement to permanent partial disability benefits relating to wage loss.

The claimant contends that she is entitled to additional medical treatment for her compensable injury. Claimant contends that the claim filed for additional benefits on April 29, 2005 was within one year of the last payment of compensation benefits; therefore, her claim for compensation benefits is not barred by the statute of limitations.

The respondent contends that the claimant for additional compensation benefits filed on April 29, 2005 was not filed within one year from the last payment of compensation benefits. Therefore, respondent contends that claimant's claim for additional benefits is barred by the statute of limitations.

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 stipulations agreed to by the parties at the pre-hearing conference conducted on June 15, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant's claim for additional compensation benefits is not barred by the statute of limitations.
3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable back injury.

FACTUAL BACKGROUND

The claimant has been employed as a police officer by the respondent since September 11, 1995. The parties have stipulated that the claimant suffered a compensable injury to her back on December 11, 2002. This low back injury eventually resulted in surgery which was performed by Dr. Luke Knox, neurosurgeon, in March, 2003. Following her surgery the claimant continued to receive follow-up care from Dr. Knox. Dr. Knox's medical report of May 23, 2003, indicates that claimant was given a release to return to work on a restricted light-duty basis. In addition, Dr. Knox ordered additional tests on the claimant's low back. The claimant testified that she returned to work for the respondent performing limited duties on or about June 1, 2003. In a report dated October 9, 2003 Dr. Knox indicated that claimant might have to consider a fusion procedure in the future, but nevertheless noted that at that time claimant had reached maximum medical improvement. Dr. Knox in a subsequent report dated November 26, 2003 assigned the claimant a permanent physical impairment rating in an amount equal to 10% to the body as a whole.

In a letter dated December 19, 2003, the respondent accepted the impairment rating assigned by Dr. Knox. That letter indicates that claimant's impairment rating qualifies her for 45 weeks of permanent partial disability benefits. The carrier sent claimant an initial check which represented compensation from June 2, 2003 through December 21, 2003. Respondent continued paying those compensation benefits through April 11, 2004.

Claimant returned to see Dr. Knox on March 11, 2004 for follow-up care. Dr. Knox's report of that date indicates that he discussed various treatment options with the claimant and indicated that he would follow up with the claimant on a yearly basis. Claimant next returned to Dr. Knox on February 16, 2005 at which time Dr. Knox recommended claimant undergo physical therapy. Respondent denied payment of this visit to Dr. Knox and payment of the physical therapy contending that the statute of limitations has run.

Claimant has filed this claim contending that she is entitled to additional medical treatment for her compensable injury. Respondent contends that claimant's claim for additional compensation benefits is barred by the statute of limitations.

ADJUDICATION

The time for filing claims for additional compensation benefits is codified at A.C.A. §11-9-702(b)(1) which provides that claims for additional compensation shall be barred unless filed with the Commission within one year from the date of the last payment of compensation or two years from the date of the injury, whichever is greater. Here, respondent contends that the claim was not filed within one year from the date of last payment of compensation. The key to this issue is the beginning payment date for the 45 weeks of permanent partial disability benefits. In its letter to the claimant dated December 19, 2003, the respondent indicated that payment of the 45 weeks of permanent partial disability benefits would commence as of June 2, 2003. The respondent subsequently paid those permanent partial disability benefits bi-weekly through April 11, 2004. If the respondents are correct, the claimant's request for a hearing dated April 29, 2005, is a little more than two weeks after the one-year statute of limitations period. However, I find that the 45 weeks of permanent partial disability benefit payments should not have begun running until October 9, 2003, the date Dr. Knox opined that claimant had reached maximum medical improvement.

A healing period is defined as that period for the healing of an injury that continues until the employee is as far restored as the permanent character of the injury will permit. *Arkansas State Highway & Transportation Department v. McWilliams*, 41 Ark. App. 1, 846 S.W. 2d 670 (1993). Furthermore, permanent impairment has been defined as any permanent functional or anatomical loss remaining after the healing period has been reached. (Emphasis added.) *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W. 2d 216

(1969); *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W. 2d 411 (1994).

The respondent calculated claimant's entitlement to permanent partial disability benefits of 45 weeks beginning on or about June 2, 2005, the date claimant returned to work. However, even though the claimant may have no longer been entitled to temporary total disability benefits because she was released to return to work on restricted duty, that does not change the fact that claimant continued to remain within her healing period subsequent to that date. Dr. Knox in a letter to the respondent adjuster dated June 18, 2003 indicated that claimant would not reach maximum medical improvement until six months after her surgery in March 2003. As previously noted, Dr. Knox authored a report dated October 9, 2003 indicating that he had seen claimant on that date and noting that claimant was now at maximum medical improvement.

Based upon this evidence, the claimant was within her healing period after June 2, 2003 and continued in that healing period until October 9, 2003. By definition, permanent impairment is a permanent function or anatomical loss which remains after the healing period has ended, not before.

Accordingly, I find that claimant remained within her healing period until October 9, 2003 when Dr. Knox opined that claimant had reached maximum medical improvement. Claimant's entitlement to 45 weeks of permanent partial disability benefits would not begin until that date. Therefore, the last payment of those 45 weeks of benefits should have occurred in August 2004, not April 2004 as contended by the respondent. Claimant's claim for additional compensation benefits filed on April 29, 2005 was well within one year after the last payment of compensation should have been made in August 2004. Based upon the foregoing evidence, I find that claimant's claim is not barred by the one-year statute of limitations.

I also find that claimant's claim for additional compensation benefits is not barred by the statute of limitations for an additional reason. Continuing medical treatment for

workers' compensation injuries and the statute of limitations was discussed by the Full Commission in *Diane Jack v. Around the World Travel*, Full Commission Opinion filed June 15, 1995 (D916900). There, the Commission stated:

Where a respondent furnishes medical treatment and has either actual or constructive knowledge that the claimant is receiving medical treatment or that the claimant will require further medical treatment, the respondent continues to furnish medical treatment until it communicates to the claimant that it is controverting the claimant's entitlement to further medical treatment. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1995); see, also, *Safeway Stores, Inc. v. Lamberson*, 5 Ark. App. 191, 634 S.W. 2d 396 (1982).

In this particular case, the respondent did not indicate to the claimant that it was controverting her entitlement to further medical treatment until it refused to pay for Dr. Knox's evaluation on February 16, 2005. However, the respondent had actual or constructive knowledge that claimant was receiving medical treatment and that she would require further medical treatment. As early as October 9, 2003, Dr. Knox indicated that the claimant might need to consider a fusion procedure in the future. Dr. Knox did not feel that such treatment was appropriate at that time and he released claimant as having reached maximum medical improvement with instructions to return to him on an as-needed basis. Claimant returned to Dr. Knox for additional medical treatment of her compensable injury on March 11, 2004. This medical treatment was paid for by the respondent. Dr. Knox's medical report of that date indicates that he reviewed the claimant's functional capacities evaluation and her prior MRI scan. He also notes that he discussed various treatment options with the claimant. Notably, Dr. Knox stated: "I will plan to follow her up on a yearly basis." Thus, the respondent was on notice that claimant would require further medical treatment. This further medical treatment occurred when claimant was evaluated by Dr. Knox less than one year later on February 16, 2005. Accordingly, even though the

respondent did not pay for Dr. Knox's medical treatment on February 16, 2005, it is the furnishing of medical treatment, not the actual payment for those services, which constitutes payment of compensation for the purpose of the statute of limitations. *Heflin v. Pepsi-Cola Bottling Company*, 195 Ark. 244, 424 S.W. 2d 365 (1969). Because respondent had actual or constructive knowledge that claimant would require further medical treatment, I find that respondent furnished medical treatment by virtue of the visit to Dr. Knox on February 16, 2005; therefore, claimant's subsequent filing of a claim for additional compensation benefits on April 29, 2005 was within one year of that date and the statute of limitations had not run.

In summary, I find that claimant's claim for additional benefits is not barred by the statute of limitations.

Having found that claimant's claim for additional compensation benefits is not barred by the statute of limitations, 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. As previously noted, Dr. Knox indicated in October 2003 that claimant might have to consider further surgical treatment in the future. Dr. Knox instructed claimant to return to him on an as-needed basis. Claimant returned to Dr. Knox in March 2004 at which time he reviewed the claimant's testing and discussed various treatment options. Dr. Knox also indicated that he would see claimant on a yearly basis. Claimant's next visit with Dr. Knox occurred on February 16, 2005. Because claimant was pregnant at that time Dr. Knox ordered claimant to undergo physical therapy and to return to him for follow-up treatment after her pregnancy.

Based upon the opinion of Dr. Knox which I find to be credible and entitled to great weight, 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. This includes payment of Dr. Knox's treatment on February 16, 2005, the recommended

physical therapy, and any other medical treatment which Dr. Knox recommends which is reasonable and necessary.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

ORDER

Claimant's claim for additional benefits is not barred by the statute of limitations. 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.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE