

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212923

TERESA PALMER	CLAIMANT
ARAMARK EDUCATIONAL SERVICES, INC.	RESPONDENT
SPECIALTY RISK SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 18, 2005

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

Claimant represented by SUSAN WALKER ALLEN, Attorney, Russellville, Arkansas.

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 22, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 4, 2004. 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 28, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on October 28, 2002.

4. Medical expenses have been paid to the date the claimant was released by Dr. Safman.

5. The claimant is entitled to a compensation rate for temporary total disability of \$140.00.

6. The claimant received temporary total disability until she was released by Dr. Safman to full duty on October 14, 2003.

7. The claimant last worked for the respondent in January 2003.

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

1. Additional medical subsequent to October 14, 2003.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that the claimant is entitled to have TTD paid from October 28, 2002, to a date yet to be determined for her work related injuries. That the claimant is entitled to have prescriptions, medical bills, radiology tests, future medical bills and attorney's fees paid.

In regard to the foregoing issues the respondents contend that the claimant has received all benefits to which she is entitled. Respondents contend that claimant's healing period has ended for her injury and that she has been released with zero percent impairment. Respondents contend that claimant has received all medical benefits to which she is entitled.

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 respondents submitted medical records marked Respondents' Exhibit No. 1, Commission Form AR-N marked Respondents' Exhibit No. 2 and an invoice marked Respondents' Exhibit No. 3. The parties submitted a letter from Georgia Beascher marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

The respondents offered a personnel data sheet which is marked Respondents' Proffer No. 1.

DISCUSSION

The claimant testified and it has been stipulated by the parties that she sustained a compensable injury to her low back on October 28, 2002. The claimant testified that she hurt her low back with pain down into her left hip into her left leg. The claimant stated that this pain has persisted if not gotten worse since her October 2002 injury. The claimant testified that she told Dr. Graves that her back hurt when she got in and out of her husband's four wheel drive truck and does not know why Dr. Graves, on December 16, 2002, wrote that she hurt her back getting into her husband's truck. The claimant agreed that she began seeing Dr. Safman and that he gave her four steroid injections. The claimant testified that she has also done physical therapy as recommended by Dr. Bruce Brown but that Dr. Safman had her stop physical therapy when he began his pain management program. The claimant testified that Dr. Safman also prescribed medications for her but she was unsure as to what they were. The claimant testified that some of

the medications prescribed for her caused her blood pressure to elevate so that her medications had to be adjusted.

The claimant remembers that when she last saw Dr. Safman on October 14, 2003, he gave her Lidoderm patches and Darvocet. The claimant testified that when her prescription for Darvocet ran out the respondents would not authorize a refill of her pain medication. The claimant remembers that Dr. Safman also gave her a TENS unit but that she has been unable to replace the supplies in order to get it to work due to the respondents refusing to pay for these additional supplies.

The claimant tried to testify about a possible liver problem. This line of testimony was objected to by the respondents and the issue of the claimant's liver condition was reserved for a later time.

The claimant testified that she quit working for the respondent. The claimant indicated that she did not sign anything or resign from her work, that she just did not go back.

On cross examination, the claimant testified that the only time that she has been seen by Dr. Brian Cotner was when she had a rash all over her body. The claimant testified that initially it was feared that she might have Lupus and she was sent to Little Rock for testing. The claimant testified that during the period of time she had her rash she had pain in her back as well as in her legs and feet. The claimant testified that currently she is being treated by Dr. Marshall for her liver as well as her back. The claimant testified that Dr. Marshall has not prescribed medications

for her because she is unable to fill the prescriptions. The claimant agreed that she was seen by Dr. Safman on August 12, 2003, at which time he gave her some injections and put her on Lidoderm patches as well as provided her with a TENS unit. The claimant testified that she thought the doctor prescribed Darvocet for her because it was the only medicine she could take without throwing up. The claimant testified that she did report to Dr. Safman on September 2, 2003, that she had tried to catch the alarm clock when it was falling off the dresser and felt bad pain shoot through her. The claimant testified that she was complaining of a lot of pain to Dr. Safman, noting that she still has a lot of pain. The claimant was questioned about her visits to Dr. Safman on September 2 and September 16, 2003, where he notes that she has no guarding and no muscle spasms and the claimant responded that she had plenty of muscle spasms. The claimant agreed that when she last saw Dr. Safman on October 14, 2003, she was having difficulty with her medications. The claimant indicated that she was unaware that Dr. Safman had released her without restrictions or that he wrote that she could use over the counter Ultracet. The claimant agreed that she has been seeing Dr. Roxanne Marshall for her gastric reflux disease and indicated that Dr. Marshall has not prescribed medications for her back because she had told the doctor she could not take any of the medications. The claimant agreed that she was seen at the ER after having an altercation with her husband. The claimant explained that she had tried to kill herself and her husband had stopped her which resulted in her falling and hitting

her head on the cabinet. The claimant testified that as a result of her altercation with her husband they have been set up for marriage counseling. The claimant agreed that she has also been set up for counseling for her depression. The claimant testified that currently she is not taking any medication for her back or leg problem but she has been using her TENS unit although it does not help all that much. The claimant agreed that she has applied for social security and her case is on appeal. The claimant testified that she quit her job voluntarily and at the time she quit she had a thirty-pound lifting restriction.

On redirect examination, the claimant was asked about her complaints of back pain in the year 2000. The claimant again testified that she had an all over rash with flu like symptoms which involved her back aching as well as her arms and legs aching. The claimant testified that when the rash went away her back quit hurting.

The medical records set forth that the claimant was treated at the Johnson Regional Medical Center on October 28, 2002, as a result of her compensable injury. A doctor at the Clarksville Medical Group writes on November 4, 2002, that he has seen the claimant for follow up and she now has complaints of low back pain. The doctor notes that the claimant's x-rays of her low back were negative except that she does have some mild facet joint osteoarthritis. The doctor prescribed medication and opined that her problems were muscular skeletal strain of the low back and returned her to light duty work. The claimant was seen at the

Clarksville Medical Group on November 7, 2002, where the doctor notes that when the claimant left his office on November 4, 2002, she had to get into a pickup truck that is high off the ground and when she reached to pull herself up she had severe back pain. It is noted that the claimant reports more pain in her lower back and a bit of pain in her lower thoracic area with pain in her legs to about her knees. The claimant was taken off work and her medications were adjusted. The claimant underwent an MRI and the doctor from the Clarksville Medical Clinic writes that this test showed some mild arthritic changes and desiccation of L3-L4/L4-L5 but no disc protrusion or herniation. The doctor notes that the claimant reports that she still has low back pain but not all the time. The doctor kept the claimant off work and scheduled her for physical therapy. On December 4, 2002, the doctor writes that he has seen the claimant for follow up of her low back strain, noting that she has had two weeks of physical therapy and reports that she is getting a lot better. It is noted that the claimant is ready to go back to work and was released to light duty. The doctor writes that the claimant is to continue with her physical therapy. The doctor from the Clarksville clinic writes on December 16, 2002, that the claimant reports that her back to not getting any better, that she feels as if she is getting spasms in her back at times and reports pain into the left sciatic area. The doctor stopped the claimant's physical therapy since it did not appear to be helping. The doctor writes that he is not sure but it may be getting to the

point where the claimant is looking for some secondary gain because every time she comes in she has a new complaint.

The claimant was seen by Dr. Bruce Brown on March 31, 2003. Dr. Brown sets forth the claimant's medical history following her compensable injury and after physical examination and review of the claimant's x-rays and MRI, notes that she has back pain after her fall probably secondary to mechanical symptoms. Dr. Brown recommended that the claimant return to physical therapy, fitted her with a back support and altered her medication. Dr. Brown writes on April 22, 2003, that the claimant is still having back pain although she feels as though her physical therapy is helping. Dr. Brown notes that the claimant is expressing complaints of several other symptoms not related to her back. Upon examination, he notes that neurologically she is in tack. Dr. Brown ordered several tests more related to the claimant's complaints of bladder problems and her fluid retention. On May 5, 2003, Dr. Brown writes that the claimant's tests were basically normal but that he was referring her to a urologist for further work up. Dr. Brown writes that there is nothing orthopedically that explains any of her symptoms and that if the urologist clears her, he would recommend that she has reached maximum medical improvement and would have nothing further to offer for her except for maintenance and rehab programs. Dr. Brown notes that they might consider steroid injections but with dessication of her disc he is not sure if this would help her very much. On June 11, 2003, the claimant was seen at the Marshall Medical Clinic with complaints of bleeding from the

bowls and epigastric pain. After an extensive examination, the doctor notes that the claimant, at this point, has no blood in her stool and assessed her with having a peptic ulcer and noted that she had back pain. Dr. Charles Brown writes on July 15, 2003, that after examination and evaluation of the claimant's various tests it is his impression that her back pain is not related to any of her urinary problems. Dr. Bruce Brown writes on July 22, 2003, that he feels they have completely evaluated the claimant's pain and he does not have a specific etiology for her complaints of pain that radiates down into her legs. He recommended a strengthening program and physical therapy to return her to the work place as well as an evaluation for pain management.

Dr. Bruce Safman writes on August 12, 2003, that he has seen the claimant for her complaints of persistent severe back pain that is sharp dull stabbing pain which interferes with her sleep which has been unchanged since her initial injury. Dr. Safman notes that her MRI demonstrated mild degenerative changes and that her plain x-rays of her lumbar spine were normal. Dr. Safman writes that range of motion of the claimant's lumbar spine does not increase her pain, further noting that her strength sensation and reflex examination of both lower extremities is in tact except for the fact that she has decreased sensation in the dorsum of the left foot. Dr. Safman put her on Lidoderm patches, recommended a TENS unit, recommended that the claimant stay off work for one week and gave her some Ultracet. Dr. Safman notes that the claimant reports no intension of going back to her former employer to work due to

their not providing her with protective shoes which, in her opinion, led to her fall. On August 19, 2003, Dr. Safman writes that the claimant is tender in the mid and lower lumbar area and there is a trigger point in the left quadratus lumborum. Dr. Safman writes that her straight leg raising is normal and that there is no guarding or muscle spasm present. Dr. Safman administered trigger point injections and gave the claimant samples of Gabitril, prescribed Darvocet and gave her a prescription for a lumbar belt. Dr. Safman writes on September 2, 2003, that the claimant reports that she reached for her alarm clock, twisted and has been in severe pain since. Dr. Safman notes that the claimant was hyperventilating and was exhibiting a great deal of pain behavior. Upon examination, it was noted that the claimant had no guarding or muscle spasms and that her leg raising was negative. Dr. Safman writes that this patient has a great deal of subjective pain and there are no objective findings on examination. The doctor recommended medications. When Dr. Safman saw the claimant on September 16, 2003, it is noted that her prescribed medications were not improving her pain and, in fact, had given her headaches. The doctor notes that she reports that the trigger point injections were helpful. Upon examination, it was noted that the doctor could not palpitate guarding or muscle spasms and that there was quite a bit of pain behavior present. Dr. Safman changed her medications and noted that beyond this there was little else he could offer her. On October 14, 2003, Dr. Safman writes that the medications which he had recently prescribed for the claimant, she could not

tolerate but that the TENS unit is helping her. Dr. Safman writes that he thinks that he has done all he can do and notes that she is at maximum medical improvement with zero disability rating and released her without restrictions. Dr. Safman writes that she has a refill on her Lidoderm patches and she can use over the counter Ultracet.

Dr. Roxanne Marshall writes on May 27, 2004, that the claimant presents needing refills for her Prilosec. Dr. Marshall writes that the claimant has been having a lot of pain in her left leg which she has been treating with her TENS unit and that the medications given to her for her degenerative joint disease in her back is causing her to have reflux symptoms and a lot of epigastric pain. Dr. Marshall recommended Prilosec for her reflux. Dr. Marshall writes on July 15, 2004, that the claimant presented wanting to have staples removed from the left side of her head. The doctor writes that the claimant was in the ER after she was involved in an altercation with her husband. The claimant also reported that her liver enzymes were found to be elevated when she was seen at the ER and that she is on many different medications. Dr. Marshall writes that the claimant brought in a bag of several medications and listed out nine medications that the claimant had been taking for which the doctor recommended that she cease taking immediately. On September 9, 2004, the claimant was seen by Dr. Marshall with complaints of severe back pain which keeps her awake at night. Dr. Marshall writes that the claimant reports that she had an MRI scan last year which showed a herniated disc and the

claimant was asked to get these test results. Dr. Marshall writes that the claimant also has had pain in her neck for two years with radiation down both arms and she has had elevated liver enzymes in the past which the doctor related to her pain medications. The claimant's physical examination was normal, although it was noted that she had pain on palpitation of the L4 and L5 area. The claimant underwent an MRI on September 16, 2004, for her lumbar spine. This test revealed that she had no acute fracture subluxation, bony destruction, focal disc herniation or spinal or foraminal stenosis. This test showed, however, that she had fluid present in the posterior facets at the L3-4 and L4-5 levels consistent with synovitis.

After a complete review of this case, 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 injury subsequent to October 14, 2003. The claimant had an admittable compensable fall while working for the respondent on October 28, 2002, for which she received medical treatment for her low back up until Dr. Safman released her on October 14, 2003, with no restrictions and no disability rating. It is further noted that Dr. Safman and her other treating physicians could not locate or establish an etiology for her continuing complaints of low back pain with radiation into her leg. The claimant has an extensive medical history of numerous complaints, many of them dealing with bladder and rectal problems as well as female problems. By the claimant's own testimony, she has a hard time tolerating most

medications yet when she was seen by Dr. Marshall on July 15, 2004, she brought in a bag of medications she was taking which contained nine different medications, some of which the doctor noted were redundant. The claimant has undergone physical therapy, she has undergone numerous medication therapy, steroid injections, pain management and has been examined by many different doctors, none of which have been able to come up with an explanation as to her continuing complaints of back pain. I, therefore, join Dr. Safman in finding that the claimant reached maximum medical improvement as of October 14, 2003, and is not entitled to additional medical treatment for her compensable injury subsequent to that date.

FINDINGS & CONCLUSIONS

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

2. On October 28, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on October 28, 2002.

4. Medical expenses have been paid to the date the claimant was released by Dr. Safman.

5. The claimant is entitled to a compensation rate for temporary total disability of \$140.00.

6. The claimant received temporary total disability until she was released by Dr. Safman to full duty on October 14, 2003.

7. The claimant last worked for the respondent in January 2003.

8. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment subsequent to October 14, 2003, for her compensable low back injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment subsequent to October 14, 2003, for her compensable low back injury. Therefore, this claim for additional medical benefits is denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE