

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308369

DEBORAH PHILLIPS, EMPLOYEE	CLAIMANT
DOLLAR TREE STORES, INC., EMPLOYER	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, CARRIER	RESPONDENTS

OPINION FILED JUNE 2, 2005

Hearing held March 10, 2005, at Little Rock, Pulaski County, Arkansas, before HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant, of Little Rock, Arkansas, appeared pro se.

Respondents represented by Hon. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 10, 2005, the above-styled claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was held on January 26, 2005, and a prehearing order was filed on January 27, 2005. At the hearing the parties announced the stipulations, issues, and their respective contentions were properly set out in the prehearing order, subject to additional stipulations, issues and contentions agreed to at the hearing. A copy of the January 27, 2005 prehearing order was marked as Commission Exhibit #1, and made a part of the record herein, without objection.

At the hearing the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times,

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including June 16, 2003.

- 3) That the claimant sustained a compensable injury on June 16, 2003, for which the respondents paid some benefits.
- 4) That the claimant's applicable TTD and PPD weekly compensation rates would be \$267.00 and \$200.00, respectively.

By agreement of the parties, the issues to be presented for determination were as follows:

- 1) Whether the claimant is entitled to additional medical, indemnity and travel benefits, associated with her June 16, 2003 compensable injury.
- 2) Whether the claimant's current condition is related to the June 16, 2003 accident.

The claimant originally contended at the prehearing conference she was still within her healing period from the June 16, 2003 injury, and was entitled to additional TTD benefits from July 28, 2003 to a date yet to be determined. However, during the course of her testimony at the full hearing, the claimant modified her request for additional TTD to cover July 28, 2003 through October 29, 2003 only. The claimant further contended she was entitled to additional medical benefits related to her compensable neck and left shoulder injury, and associated travel expenses.

The respondents contended the claimant was paid TTD benefits from June 17, 2003 through July 27, 2003, and that they have paid her all the benefits to which she is entitled. That the claimant was released to work without any impairments on July 28, 2003. That the major cause of her current condition is not the accident at work, but instead fibromyalgia, which is not a work related injury, and is an ordinary disease of life that is not compensable under the Arkansas Workers' Compensation Law. Respondents contend there are no objective medical findings to

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substantiate a work-related injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §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 hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional TTD benefits.
- 4) The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.

DISCUSSION

I. HISTORY

The claimant was working at the respondents place of business on June 16, 2003, when she sustained the stipulated compensable injury. The claimant testified as follows regarding her compensable injury:

“MS. DEBORAH PHILLIPS: On June the 16th I was relieving at the cashier's counter. I had been stocking. I believe that's what -- yeah. And I was bagging a customer's items and I believe it was -- she had liter cokes, -- we had the three (3) liter bottles. We sold the three

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(3) liter bottles. She had quite a few items, because that particular person I was waiting on, I think she spent over, like, a hundred and fifty dollars (\$150) and that's one dollar (\$1) items.

So just like normal I bagged her things, put them in the shopping cart. And I have a tendency if I work the register, I use my left hand, not my right hand, -- because the way the register is, (T. pg. 28, lines 12-25) I'm to them with my left. So it's just -- and lifting her bags into the shopping cart from over the counter -- you know. I can't tell you how many bags she had, because it was two (2) shopping carts full. But, anyway, I somehow pulled my -- you know, strained my arm or whatever, but --

THE COURT: Your left arm?

MS. DEBORAH PHILLIPS: Yes, sir.

THE COURT: Okay.

MS. DEBORAH PHILLIPS: And I work from -- I work -- like I say, when I'm at the register I work with -- it's easier to, like, work with your left then (sic) it is your right.

THE COURT: And so the injury was to your left shoulder and neck, is that -- is that correct?

MS. DEBORAH PHILLIPS: Yes, sir, -- because -- because -- would you like me to stand and demonstrate?

THE COURT: No, I think I understand." (T. pg. 29, lines 1-19)

The claimant testified she worked two more days after June 16, 2003, but had to discontinue working due to the injury. According to the medical exhibits, which are sparse, the claimant treated with Baptist Health from 6/23/03 through 9/15/03, for her neck and left shoulder

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strain. On July 28, 2003, Baptist Health generated a report that stated the claimant could return to regular duty on July 28, 2003. (CX 1, pg. 12) Upon the “resume regular duty” report from Baptist Health, the respondents stopped paying TTD and medical benefits related to the admitted June 16, 2003 compensable injury.

The claimant also submitted medical documents evidencing she had treated with Concentra Health Center from about June 30, 2003 through July 1, 2003 for left shoulder strain. According to the medical evidence submitted, the claimant treated with Dr. Bruce Safman, for left shoulder pain as well as for other symptoms from October 13, 2003 through June 28, 2004.

Dr. Safman diagnosed the claimant with fibromyalgia on October 29, 2003. (CX 1, pg. 26) During Dr. Safman’s course of treatment, he administered trigger point injections into the claimant’s left shoulder and gave her various types of medication for pain management. The claimant testified she continues to treat her current conditions at UAMS; however, no medical documentation was presented from UAMS.

II. TEMPORARY TOTAL DISABILITY

For the claimant to be entitled to temporary total disability, she must prove by a preponderance of the evidence that she is still within her healing period and totally incapacitated from earning wages. Arkansas Highway & Transportation Dept. v. Breashears, 272 Ark. 244,613 S.W. 2d 393 (1981). The claimant’s exhibits clearly show her healing period ended on July 28, 2003. (CX 1, pg. 12) The July 28, 2003 report from Baptist Health states that she was released to full duty at that time with no restrictions. Further, the claimant was able to earn some wages well before the “no restriction” release. Claimant’s Exhibit #1, at page 9 states the claimant was

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released to modified duty on June 23, 2003. Clearly she was able to earn some wages during the time she has requested TTD benefits, and as mentioned, I find her healing period had ended with her release to full duty.

I recognize the claimant testified she attempted to return to work in August of 2003, but was unable. However, her testimony was that she passed out due to the heat and medication, not from her shoulder or neck. Further, she treated at Baptist Health after the alleged “passing out” incident on August 28, 2003, and the report stated she was still fine to return to regular duty on the day of examination. (CX 1, pg. 14). I find the claimant was outside her healing period and able to earn wages during the period of time she is requesting TTD and therefore deny any additional TTD benefits.

III. ADDITIONAL MEDICAL

The claimant has requested additional medical benefits after July 28, 2003, to the present for treatment to her left shoulder and neck. The claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Norman Beaty v. Ben Pearson, Inc., Full Commission Opinion filed February 16, 1989 (D612291)

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. Arkansas Department of Correction v. Holybee, 46 Ark. App. 232, S.W. 2d 420 (1994).

The claimant testified she continues to be treated for her compensable injury and

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requested reimbursement from the respondents for injections to her left shoulder. The question becomes whether the requested medical services are connected to the compensable injury. In this instance, I find they are not.

When determining whether a given medical procedure is reasonably necessary for treatment of the compensable injury, one must analyze both the proposed procedure and the condition it is sought for remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion December 13, 1989 (D511255) The only medical evidence submitted which evidences treatment after July 28, 2003 is that from Dr. Bruce Safman. In the first report from Dr. Safman, dated 10/13/04, he states:

“Range of motion of the left shoulder does not produce discomfort. Range of motion of the cervical spine does not produce discomfort. In speaking to the patient, she has many signs and symptoms of fibromyalgia, which I think may be responsible for diffuse aches and pains, depression, parathesias in her hands and feet.” (CX 1, pg. 25)

Dr. Safman's initial diagnosis was confirmed in his next examination of the claimant. (CX 1, pg. 26). Dr. Safman seems to attribute all of the claimant's problems to her fibromyalgia. I find nothing to connect the fibromyalgia to the June 16, 2003 compensable injury. Further, even though Dr. Safman did inject the claimant's left shoulder, he also injected her right shoulder, hip, and other areas. It would be a closer call if only injections were done to the left shoulder. However, the bilateral problems are more consistent with treatment for the fibromyalgia and not the June 16, 2003 injury. As such I find the additional medical treatment requested is not reasonably related to the June 16, 2003 compensable injury.

ORDER

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The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability or additional medical treatment, and therefore, this claim is hereby respectfully denied and dismissed.

DALE DOUTHIT
Administrative Law Judge

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