

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F408271

MARY J. PICKETT, EMPLOYEE **CLAIMANT**

**BEVERLY HEALTHCARE MONTICELLO,
EMPLOYER** **RESPONDENT**

**AMERICAN HOME ASSURANCE CO./
CONSTITUTION STATE SERVICE CO. (TPA),
INSURANCE CARRIER** **RESPONDENT**

OPINION FILED OCTOBER 13, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on July 15, 2005, in Monticello, Drew County, Arkansas.

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

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

A hearing was held on July 15, 2005, to determine claimant's entitlement to additional benefits, specifically an MRI recommended by Dr. Peter Go, as well as possibly temporary total disability benefits, mileage, and attorney's fees.

The parties stipulated to the existence of the employee-employer relationship on May 9, 2004. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$215.00 for temporary total disability and \$161.00 for permanent partial disability benefits.

Claimant contends that she injured her back in the course and scope of her employment while she was transferring a patient on May 9, 2004, and that as a result of her injuries, she was required to seek medical services. Claimant sought and received some treatment for her injuries but contends she has been denied payment for all further necessary medical treatment. Claimant exercised her right to a one-time change of physician to Dr. Peter Go, which was granted on October 15, 2004. Claimant contends that the initial visit with Dr. Go was covered by respondents; however, he recommended further treatment and/or diagnostic testing in the form of an MRI, but respondents have refused the doctor's recommendations.

Claimant further contends that she may be entitled to some TTD benefits and is entitled to mileage expenses, as well.

Respondents contend that claimant's condition is not corroborated by objective medical findings, as required by Ark. Code Ann. § 11-9-102. In the alternative, respondents contend that if there was a compensable injury, the healing period has ended and that claimant was released to return to full duty with no need for additional treatment on May 25, 2004, by Dr. Reinhart, her original treating physician. Respondents contend that the treatment recommended by Dr. Go is not reasonable and necessary in relation to her alleged compensable injury of May 9, 2004.

With regard to TTD benefits, respondents contend that claimant can prove no period of entitlement to TTD benefits; further, respondents contend that no mileage has ever been submitted to the respondents from claimant.

STATEMENT OF THE CASE

Claimant testified that she was employed on May 9, 2004, as a CNA for respondent-employer and had been employed there for approximately fourteen or fifteen years. It was her job to feed patients, give them a bath, get them in and out of a bed or wheelchair, and to basically just care for them. She testified that her job did require her to physically lift or move patients.

On May 9, 2004, claimant testified that she and another employee were transferring a patient out of the bed and as they proceeded to lift him up to put him in the wheelchair, claimant felt a pain in her back and in her side, moving down through her leg. She testified that she continued working for a few more hours but that she began hurting, so she went to the charge nurse, Julie, and told her that she was in pain.

Claimant testified that Julie required her to take a drug test, as is standard procedure; then, Julie sent her to the emergency room there in Monticello. Claimant testified that no x-rays, no CT scan, and no MRI was taken at the E.R.; they simply recommended that she go and see the company doctor, gave her a prescription for some muscle relaxers, and gave her a shot. She testified that her back was not better the next day. She stated that she told her employer over the phone what the E.R. told

her, and she went to see the company doctor, Dr. Reinhart, the next day, which was a Monday.

Claimant testified that Dr. Reinhart took some x-rays, although he did not do a CT scan or an MRI. She testified that he gave her a prescription for some pills and referred her to a chiropractor, Dr. Collins. She also testified that Dr. Reinhart put her on light duty work restrictions. She testified that she was still able to work but that she just has to more or less use her own judgment.

Claimant testified that she then began seeing Dr. Collins and saw him approximately ten times. She testified that Dr. Collins never took her off work or advised her to continue on light duty. She testified that he never sent her for a CT scan or an MRI or a myelogram. She testified that he put her on a TENS unit. She testified that at the time, it provided her with some relief, but later testified that his treatment really did not help her. Dr. Collins sent her back to Dr. Reinhart. Claimant testified that Dr. Reinhart released her, telling her that “You’re just gonna hurt.”

Claimant testified that her pain was so intense, and her back and side felt numb at times; therefore, she petitioned for a change of physician. She was granted a one-time change of physician to Dr. Peter Go in Dumas. Claimant testified that the respondents paid for the initial visit to Dr. Go. Dr. Go recommended that claimant have an MRI; however, respondents have denied that request, contending that an MRI

is not reasonable and necessary in relation to her alleged compensable injury of May 9, 2004.

Claimant testified that she has never had any previous car wrecks or anything of the sort that would cause injury to her back. She testified that she has had no previous problems with her low back with the type of symptoms she has described having since May 9, 2004.

Claimant testified that she lives in Wilmar and that she saw Dr. Reinhart approximately six-to-eight times, driving her personal vehicle each time. She testified that she drove her vehicle to each of approximately ten visits to see Dr. Collins. She further drove her own vehicle on the visit to Dumas to see Dr. Go. She testified that she had not been, as of the date of the hearing, reimbursed by respondents for any mileage. She also testified that she had not yet submitted any request for mileage.

Claimant testified that since the date of her alleged injury, May 9, 2004, she has continued to work and has only missed maybe fives times from work, altogether. She testified that the last time she saw a doctor for her back injury was in October of 2004, and that was Dr. Go.

Claimant admitted that Dr. Reinhart could not find anything wrong with her and released her as having reached maximum medical improvement on May 25, 2004. She further admitted that Dr. Collins released her as having reached maximum chiropractic treatment in July of 2004. Claimant testified that she works full time now

and has no hobbies nor does anything that creates back pain; however, she still experiences the back pain.

FINDINGS OF FACT

1. The stipulations agreed to herein are accepted as fact;
2. Claimant is entitled to further medical treatment, as recommended by Dr. Go, specifically an MRI, at respondents' expense;
3. Claimant is entitled to all mileage expenses she is seeking; claimant is to submit a valid mileage request to respondents for prompt reimbursement;
4. Claimant has failed to prove entitlement to any TTD benefits at this time.

DISCUSSION

With regard to claimant's treatment by Dr. Go and his recommendations, the Arkansas Court of Appeals has held that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. *See generally, Georgia-Pacific Corp. v. Dickens*, 58 Ark. App. 266, 950 S.W.2d 463 (1997); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983); *Tiner v. Total Petroleum*, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may remain liable for medical treatment

reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). (“Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.”) A claimant, however, must prove that the additional treatment he or she desires is reasonable and necessary, in relation to his or her compensable injury.

In this case, it is this examiner’s opinion that the claimant has so proven. Neither Dr. Reinhart nor Dr. Collins ordered any definitive tests to determine what was causing claimant’s back pain. She has no prior history of accident or injury to her back. In this examiner’s opinion, an MRI seems not only reasonable and necessary in relation to her injury, but sensible. Therefore, Dr. Go’s recommendation of an MRI to determine the cause of claimant’s back pain, in my opinion, is reasonable and necessary in relation to her alleged injury.

With regard to claimant’s request for mileage expenses, respondents have already accepted her prior medical treatment and are herein being ordered to bear the continued treatment by Dr. Go. Obviously, claimant is entitled to the mileage expenses she is seeking. Claimant is, therefore, encouraged to submit a valid mileage request to respondents for prompt reimbursement.

In regard to TTD benefits, claimant has failed to prove entitlement at this time to any period of temporary total disability indemnity benefits. Temporary total

disability is that period within the healing period in which an employee suffers a total incapacity to earn wages; the healing period is that period for healing of an accidental injury that continues until the employee is as far restored as the permanent character of his injury will permit, and that ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The Court of Appeals has held that the determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Id.* These are matters of weight and credibility, and thus lie within the exclusive province of the Commission. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

Arkansas Code Annotated § 11-9-501(a)(1) states that compensation to the injured employee “shall not be allowed for the first seven days’ disability resulting from injury, excluding the day of injury.” Subsection (2) states that “If a disability extends beyond that period, compensation shall commence with the ninth day of disability.” In this case, claimant was never taken off work by any doctor. Further, she testified that she continued working from the date of injury on; and in a year and two months total time, she only missed five times total, as a result of this injury.

Clearly, from her testimony alone, she would not be entitled to TTD benefits. As such, her claim for TTD benefits is denied.

AWARD

Respondents are directed to pay claimant mileage expenses, to be submitted by the claimant to respondents.

Respondents are directed to pay for the additional testing recommended by Dr. Go, specifically an MRI.

Respondents are directed to pay the claimant's attorney, Mr. Michael Boyd, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge