BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310274

BEULAH ROSE ROBINSON, EMPLOYEE	**CLAIMANT**
GREEN ACRES NURSING, SELF-INSURED EMPLOYER	**RESPONDENT**
CCMSI, TPA	**RESPONDENT**

OPINION FILED JANUARY 5, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 21, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On August 17, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issue to be addressed during the course of the hearing, and the parties' respective positions relative to same. The Pre-hearing Order is herein designate a part of the record as Commission Exhibit #1.

The testimony of Beulah Rose Robinson, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Beulah Rose Robinson, the claimant, with a date of birth of March 18, 1942, commenced her employment with respondent on March 21, 2002, as a certified nursing assistant (CNA). Claimant acknowledged suffering a muscle strain in her legs in 1974 when she first as a CNA. Claimant recalls receiving treatment under the care of a Pocahontas physician for complaints relative to her back. Claimant was off work for a period of two (2) weeks as a result of same, and thereafter return to work. Claimant maintains that she was symptom free at the time she returned to work and remained so until she suffered an injury in the employment of respondent.

In describing the August 2, 2002, injury in the employment of respondent, claimant testified:

> I was pushing a resident in a geri-chair into the diningroom for supper and I stopped and started to step back and when I did there was another aide with a wheelchair behind me so close I could not step back and tripped over the wheelchair pedal to keep from landing on the patient. I tried to go sideways and nothing but the floor to catch me. (T. 8).

Claimant reported the incident to appropriate supervisory personnel of respondent. As claimant continued to work following the incident she begin to experience pain, and was sent by respondent to Dr. Barry D. Hendrix. Claimant noted that the lifting that she did at work made her back worse.

Claimant's testimony reflects that following x-rays and a MRI scan, she was referred by Dr. Hendrix to Dr. K. Dewayne Eubanks, a Jonesboro neurosurgeon. Claimant was seen by Dr. Hendrix on several occasions. Claimant asserts that following her examination by Dr. Eubanks surgery was suggested and scheduled. The surgery was not performed. Respondents arranged

for claimant to be evaluated by Dr. Edward D. Pratt, a Memphis physician on December 12, 2002.

Claimant's testimony reflects that while she was examined by Dr. Pratt, medical treatment was not rendered by same. After examining her and reviewing the medical records, claimant testified that Dr. Pratt recommended that she have injections in the treatment of her complaint. Claimant's testimony reflects that she continued to experience difficulty attributable to her August 2, 2002, accident. Claimant did not undergo the treatment recommended by Dr. Pratt.

Claimant went on her own to D. Michael W. Jarman, a chiropractic physician. Claimant acknowledge that she did not seek or obtain authorization from respondent before initiating treatment under the care of Dr. Jarman. Claimant received approximately six (6) months of treatment under the care of Dr. Jarman, consisting of adjustments and other modalities. Claimant maintains that she received relief from symptoms as a result of the treatment.

Claimant's testimony reflects that occasionally she experiences symptoms attributable to the August 2, 2002, accident and have to take pain medication. Claimant continues in her employment with respondent. Although claimant has group health insurance she has not turned the bills for her treatment with Dr. Jarman in to same. Claimant acknowledged completing the Form AR-N in September 2002, prior to initiating treatment with Dr. Jarman in December 2002.

Claimant is not receiving any treatment at this point, however noted that if she begin to feeling bad she will return for chiropractic treatments. Claimant's testimony reflects that now that she has had chiropractic treatment she does not want to have surgery unless it is absolutely necessary. Claimant last received chiropractic treatments in August 2004. Claimant testified that

the only medicine that she takes is over the counter (Tylenol or Advil).

The testimony of the claimant reflects that her present job with respondent is within her restrictions. Regarding her present job, claimant testified:

> I sit and talk. I walk with patients in what they call the Pioneer Room in trying to keep their mind active.
>
> Well, they didn't make it [the job] for me. It was already there and then one of the ladies retired and I asked for it and they said yes. (T. 21).

Claimant desires that respondent pay the cost of her treatment under the care of Dr. Jarman. Claimant initiated treatment under the care of Dr. Jarman on December 17, 2002, following her December 12, 2002, evaluation by Dr. Pratt.

The medical in the record reflects that claimant was initially seen by a physician for complaints growing out of the August 2, 2002, accident on September 10, 2002. Claimant was seen by respondent's designated medical provider, Dr. Hendrix, at that time. There is no evidence in the record to reflect that claimant experienced difficulties, limitations, or restrictions in her employment with respondent prior to the August 2, 2002, accident. At the time claimant under the September 26, 2002, MRI of her lumbar spine, pursuant to the directions of Dr. Hendrix, she was registering complaints of back pain and pain radiating down both legs.(JX. #1. p. 6).

On November 7, 2002, claimant was examined by Dr. K. Dewayne Eubanks, a Jonesboro neurosurgeon, at the request of Dr. Hendrix. The report of Dr. Eubanks relative to the examination of the claimant reflects, in pertinent part:

> On my exam, I am finding decreased left L5 sensation, as noted by Misty. She has possibly some EHL weakness on the left, but

> it is difficult to tell because of her pain. I agree with the other findings as noted below in the note.
>
> Her MRI scan shows severe lumbar stenosis, both canal and lateral recess at L4-5. There is some mild to moderate lateral recess stenosis at L3-4. At L3-4 and L2-3 it looks like there is some far lateral disc protrusion on the right, not the left.
>
> The plan is for a bilateral L4-5 medical facetectomy and L5 decompressions. I had a long discussion with her about risks, benefits, expectations, etc. of surgery and she desires to proceed. (JX.#1, p. 1).

The above referenced surgery was scheduled for November 20, 2002, however was cancelled.

On December 12, 2002, claimant was evaluated by Dr. Edward S. Pratt at Spine Memphis, pursuant to the directions of respondent. The report of Dr. Pratt relative to his evaluation of the claimant reflects, in pertinent part:

> . . . . By far and away her biggest complaint is pain in the back. She describes an aching, sharp, dull, shooting pain which has been stable. This is aggravated by exercise, standing, walking and bending forward and housework. It is relieved by laying down and taking medication.. . . . She describes some numbness in her right leg and weakness in her left leg. . . . . She is currently working. The patient is here as a second opinion as a neurosurgeon in the Jonesboro area has recommended to the patient to move forward with surgical decompression of her stenosis. She has had no other treatment of any consequence. She has had no physical therapy, no epidural injection and no other conservative treatment. MRI is performed which does reveal moderate to high grade spinal stenosis at L4-5. There also appears to be a very minimal Grade I spondylolisthesis at 4-5 as well which is a degenerative type.
>
> IMPRESSION: Degenerative disc disease, spinal stenosis related to facet hypertrophy L4-5 with likely spinal stenosis type symptoms. There is also evidence of a small disc protrusion which is right side 2-3, 3-4 which is inconsistent with her pain complaints.
>
> TREATMENT: I discussed the nature of the problem in detail with the patient and her case manager. My diagnosis is that of degenerative spinal stenosis rather than anything related to her traumatic workman's comp injury. At this point she has had no conservative treatment other than

> pain medication and I believe therefore moving forward with surgical intervention at this point is immature. She may ultimately require this but again, this should be after a full conservative trial and only under her own primary insurance not related to workman's comp. I have offered to move forward in the care of this patient if she so wishes. My recommendation would be an epidural injection, interlaminar followed by manual therapy program as the next step. (JX. #1, p.25-26).

The credible evidence in the record reflects that respondent declined to provide further medical benefits on behalf of the claimant relative to the August 2, 2002, accident on the basis of the report of Dr. Pratt.

On December 17, 2002, claimant presented at the office of Dr. Jarman, a Paragould chiropractic physician, for treatment relative to complaints growing out of the August 2, 2002, accident. A September 9, 2003, correspondence of Dr. Jarman details the history of his contact with the claimant and respondent:

> On 12-17-02, Ms. Robinson entered our office complaining of lower back pain and pain in her left leg and left foot. She stated that she had been injured on the job at Greene Acers Nursing Home on 8-2-2002, falling while moving a patient. As soon as Ms. Robinson arrived in our office, Camela Wells, my office manager, called her employer and gained authorization for treatment from Marilyn Marlar. She was aware that Ms. Robinson was coming to us for treatment, and she also gave her the phone number and address for CCMSI, the workers' compensation carrier for Greene Acers Nursing Home. Ms. Wells then called CCMSI and spoke Natasha Crow, who to her to forward our claims to her for payment.
>
> On 1-24-2003, we received payment from CCMSI in the amount of $374.84 for dates of service 12-17-02 through 12-26-02, however, they have denied all other claims stating the we did not get authorization for treatment, which we obviously did. . . . . .Ms. Robinson's outstanding bill in this office is $3,607.00. . .. .(JX. #1, p. 22).

The credible testimony of the claimant reflects that she received benefits from her chiropractic treatment with Dr. Jarman. Further the evidence preponderates that respondent was

not only aware of claimant's treatment under the care of Dr. Jarman for complaints growing out of her August 2, 2002, accident, but authorized it. Additionally, respondent paid some of the bill incurred by the claimant in her treatment with Dr. Jarman.

After a thorough consideration of all the evidence in this record, to include the testimony of the claimant, review of the medical and documentary evidence, and application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

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

2. On August 2, 2002, the relationship of employee-employer existed between the parties.

3. On August 2, 2002, the claimant sustained an injury arising out of and in the course of her employment.

4. Chiropractic treatment rendered to the claimant under the care of Dr. Michael W. Jarman, commencing December 17, 2002, was reasonably necessary, related and authorized relative to the treatment of the August 2, 2002, compensable injury of the claimant.

5. The respondent shall pay all reasonable, necessary, and related medical, chiropractic and hospital expenses arising out of the injury of August 2, 2002.

6. The respondent has controverted claimant's entitlement to medical and chiropractic treatment relative to her August 2, 2002, compensable injury subsequent to December 26, 2002.

CONCLUSIONS

The compensability of the claimant's August 2, 2002, injury in the employment of

respondent is not disputed. Claimant asserts that as a result of the compensable injury she require treatment subsequent to December 17, 2002, to include chiropractic treatment and medical treatment. Respondent contents that claimant suffered a temporary aggravation of her pre-existing condition in the August 2, 2002, accident and that she has been furnished all appropriate benefits. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

Claimant commenced her employment with respondent on March 21, 2002, as a CNA and successfully discharge assigned job duties without restrictions or limitation relative to her back until her compensable injury of August 2, 2002. The August 2, 2002, accident was reported to appropriate personnel of respondent, and claimant continued performing her regular job duties. Claimant developed symptoms of pain in her back and legs attributed to the August 2, 2002, accident and finally obtained treatment for same under the care of respondent's designated medical provider, Dr. Barry D. Hendrix. After obtaining diagnostic studies, to include a MRI of claimant's lumbar spine, Dr. Hendrix referred claimant to a neurosurgeon, Dr. Dewayne Eubanks, for further treatment.

Dr. Eubanks recommended surgery in the treatment of the claimant's complaint. Prior to under the scheduled surgery respondent arranged for the claimant to under a second opinion evaluation with a Memphis physician, Dr. Edward Pratt. Dr. Pratt pointed out the lack of conservative treatment measures in the treatment of the claimant's complaint to date, and recommended same.

On December 17, 2002, claimant sought and obtained treatment under the care of Dr.

Michael Jarman, a Paragould, Arkansas chiropractic physician. The evidence preponderates that claimant's treatment under the care of Dr. Jarman relative to the August 2, 2002, injury was authorized by respondent.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison,* 82 Ark. App. 460, 120 S.W. 3d 150 (2003). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown,* 53 Ark. App. 30, 917 S. W. 2d 550 (1996). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable.

It is not disputed the claimant has per-existing degenerative disc disease. The is no evidence in the record to reflect that claimant required, sought, or obtained medical treatment relative to same during her employment with respondent prior to the compensable accident of August 2, 2002. Subsequent to the compensable injury claim remained symptomatic for September 2002, through December 17, 2002, and thereafter until she received from chiropractic treatment with Dr. Jarman.

Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's compensable injury. *Cox v. Klipsch & Associates,* 71 Ark. App. 433, 30 S.W. 3d 764 (2000). A claimant does not have to support a continuing need for medical treatment with "objective medical findings". *Chamber Door Industries, Inc. v. Graham,* 59 Ark. App. 224, 956 S.W. 2d 196 (1997); *Hambelton v. Guy King & Sons,* Workers' Compensation Commission E904812 (Feb. 22, 2001).

The evidence in the record preponderates that treatment rendered to the claimant under the care of Dr. Michael Jarman, D.C., subsequent to December 17, 2002, was reasonably necessary and related to the treatment of the claimant's compensable injury. Further the evidence preponderates the chiropractic treatment rendered to the claimant by Dr. Jarman was authorized by respondent. Respondent has controverted the claimant's entitlement to chiropractic and medical treatment relative to her August 2, 2002, compensable injury subsequent to December 26, 2002.

AWARD

Respondent is herein ordered and directed to pay all reasonably necessary and related medical, nursing, chiropractic, and other apparatus expense growing out of the claimant August 2, 2002, compensable injury, to include related milage.

Respondent has controverted claimant's entitlement to medical and chiropractic benefits growing out of the August 2, 2002, compensable injury subsequent to December 26, 2002. Since the claimant's injury occurred after July 1, 2001, the claimant's attorney fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002).

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

_____

Andrew L. Blood, Administrative Law Judge