

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F209045

ALMA TYSON, EMPLOYEE

CLAIMANT

**EASTER SEALS OF ARKANSAS,
EMPLOYER**

RESPONDENT

**GREAT RIVER INSURANCE COMPANY,
(RISK MANAGEMENT RESOURCES, TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 25, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 28, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 28, 2004, to determine claimant's entitlement to additional benefits.

The parties stipulated to the existence of the employee-employer relationship on August 8, 2000. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$246.00 for temporary total disability benefits, based on an average weekly wage of \$369.55. The claim was accepted as compensable, and medical benefits were paid until May of 2001.

Claimant contends that she is entitled to additional medical care and treatment, as well as periods of temporary total disability indemnity benefits and attorney's fees.

Respondents contend that the claimant has been provided all appropriate benefits to which she is entitled. Specifically, respondents contend that claimant was paid medical expenses for her low back injury of August 8, 2000, until she was released by her authorized treating physician in March of 2001. Respondents contend that claimant continued working full duty until May of 2002. Respondents assert that the additional benefits sought by the claimant were provided by an unauthorized treating physician and are not reasonably necessary or causally related to the August 2000 work-related injury. Respondents contend that the claimant's need for additional treatment and disability, if any, is due to a pre-existing condition.

STATEMENT OF THE CASE

_____ Claimant is a forty-nine-year-old female who sustained a compensable low back injury on August 8, 2000, as she was lifting a patient out of a bathtub, while employed with respondent-employer. All of claimant's medical expenses for this injury were paid by respondents until she was released by her authorized treating physician on March 6, 2001. Coincidentally, claimant later listed this same date, March 6, 2001, as the date of a new injury on a Form N dated June 20, 2002, in which claimant alleges that she again injured her back while lifting a patient out of a bathtub. Although claimant did not fill out a Form N until June of 2002, and although she

alleges that she injured herself in March of 2001, she began seeing Dr. Philip Johnson on December 21, 2001, for an injury she alleged to Dr. Johnson happened “on the job six months ago” while she was, again, lifting a “heavy child out of a tub.” Six months prior to December 21, 2001, would have been June of 2001. Notably, however, on the history form filled out by claimant at her first office visit with Dr. Johnson, when asked if her problem was work related, claimant wrote, “No.”

Claimant testified on direct examination that she had never been involved in any other accidents or had any other injuries occur to her back. However, on cross-examination, when claimant was asked about testimony she gave in a February 2003 deposition wherein she admitted having back problems in the 1960s or 1970s and treating with the Betton Clinic for these problems, she stated that she “could not remember.” She further testified that she “could not remember” having been in an automobile accident in November of 1999 for which, according to medical records, she was again treated at the Betton Clinic, which included physical therapy. Moreover, claimant testified that she could not remember giving a medical history to the Betton Clinic that states: “She has had several back injuries in the past. The last back injury was six or seven years ago.”

After seeing claimant initially on December 21, 2001, Dr. Johnson ordered an MRI and diagnosed claimant as having “some spinal stenosis at L4-5.” He referred claimant for pain management, which apparently was ineffective. He eventually

referred claimant to Dr. Wayne Bruffett, as Dr. Johnson felt that claimant was a candidate for L4-5 decompression and fusion.

Dr. Bruffett testified in his deposition that he first saw claimant on June 26, 2002, at which time claimant gave him a history of an injury that occurred at work on approximately October 6, 2001, when she was lifting a client out of a bathtub. Dr. Bruffett diagnosed claimant as having “degenerative spondylolisthesis with marked facet arthritis and spinal stenosis.” Dr. Bruffett testified in his deposition that these are conditions that typically develop over time.

Dr. Bruffett discussed all of claimant’s options with her, and she elected to have surgery, which Dr. Bruffett performed on August 6, 2002. Claimant continued to complain of pain after the surgery, which Dr. Bruffett opined as “not uncommon.” Claimant requested more pain medication. Dr. Bruffett opined, as other doctors had whom claimant had previously seen throughout the years, that she might benefit from a breast reduction. Dr. Bruffett testified that he last saw claimant on May 28, 2003, and that he would expect her to reach the end of her healing period one year from the date of the surgery.

Dr. Bruffett admitted that although he had authored a report indicating that he believed the treatment he performed was due to claimant’s work-related injury of October 6, 2001, he was relying, in that assessment, on claimant’s history as she told it to him, rather than on objective findings. Further, Dr. Bruffett admitted that he was

unaware that claimant was involved in a motor vehicle accident on December 6, 1999, and was treated for low back pain at that point, as claimant had not divulged this information in the history she gave to him. Likewise, Dr. Bruffett was unaware that the history claimant had previously given Dr. Betton, the doctor who referred her to Dr. Johnson, also indicated that she had had several back injuries in the past, the latest being six to seven years prior to the December 6, 1999, accident.

Moreover, although claimant had been referred to Dr. Bruffett by Dr. Philip Johnson, Dr. Bruffett was unaware that the history claimant had given Dr. Johnson was that of a June 2001 injury. Finally, Dr. Bruffett admitted that claimant had not given him a clear history of any work-related injury having occurred in August of 2000, the very injury that respondents originally accepted as compensable and paid. When asked whether he would have any other basis to link claimant's treatment from him to a work-related injury, if the history claimant gave him was flawed or inconsistent, Dr. Bruffett admitted that he would not. Further, he admitted that he could not, then, state within a reasonable degree of medical certainty the cause or reason that claimant needed the treatment that he gave her, if she had documented similar complaints prior to that alleged injury.

_____ Claimant testified that she went on Family Medical Leave on May 15, 2002. She testified that she received short-term disability for a period of time after that and never returned back to work. She testified that she does not feel like going back to

work for respondent-employer. Claimant was asked by counsel for respondent and answered the following question:

- Q And then as I understand your testimony here today, the only accident with your back that you had while working at Easter Seals was the one that you've talked about happening on August the 8th of 2000, is that right?
- A Yes.

Claimant testified that she is currently unemployed and has applied for social security disability.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the credible evidence that she is entitled to additional benefits.

DISCUSSION

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 she desires is reasonable and necessary, in relation to her compensable injury. In this case, claimant has failed to do so.

The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*,

337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, claimant has given varying, inconsistent histories to nearly every doctor she has seen along the way. The only consistency she has shown is that she has alleged the same *injury* each time, that being an injury to her back while lifting a client out of a bathtub. However, unfortunately for claimant, she has given different *dates* for the alleged injury, including listing the date of injury on a Form N she signed on June 20, 2002, as March 6, 2001, coincidentally the very date she was released by her treating physician for her compensable work-related injury of August 8, 2000.

Although giving varying dates of alleged work-related injuries to doctors, claimant in fact testified at the hearing in this matter that the only accident with her back that she sustained while working for respondent-employer was the one on August 8, 2000. Claimant further testified that she “could not remember” several other back injuries that medical records prove claimant received treatment for in the past. These inconsistencies and coincidences cast serious doubts on claimant’s credibility, in this examiner’s opinion.

Further, Dr. Bruffett admitted that in giving his opinion as to the cause of claimant's condition, he was relying upon claimant's history as told to him, rather than on objective findings. Moreover, he admitted that if the history she gave him was flawed, he would not be able to state his opinion within a reasonable degree of medical certainty.

In this examiner's opinion, a preponderance of the credible evidence fails to establish claimant's entitlement to additional benefits. For the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge