

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F305637**

<b>SANDRA F. WOOTEN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CENTRAL MOLONEY, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CROCKETT ADJUSTMENT, INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 27, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 29, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Mr. Michael J. Dennis, Attorney at Law, Pine Bluff, Arkansas.

A hearing was held on October 29, 2004, to determine claimant's entitlement to the following: an independent medical evaluation (IME) at respondents' expense or a second change of physician; additional benefits; and an impairment rating.

The parties stipulated to a compensable injury of May 6, 2002, while claimant was in the employment of respondent-employer. The parties further stipulated that all medical and indemnity benefits have been paid through claimant's January 29, 2004, evaluation with Dr. David Rhodes, the doctor to whom claimant was granted a one-time change of physician.

Claimant contends that she is entitled to an IME, as the doctor to whom she was granted the one-time change of physician refused to examine her. Claimant further contends that she is entitled to additional benefits as follows: that all additional medical expenses she has incurred be paid by respondents; and, that future medical expenses be paid by respondents until the doctor deems claimant to have reached maximum medical improvement. Claimant further contends that she is entitled to a disability (impairment) rating and to be compensated for same.

Respondents contend that all of claimant's medical and indemnity benefits have been paid through the end of her healing period according to her treating physician, Dr. Moore, as well as her evaluation by the physician to whom she was granted her one-time change of physician, Dr. Rhodes. Respondents contend that it is an employer who is contracted with a managed care organization and that Ark. Code Ann. § 11-9-514(3)(A)(ii) allows an employee to petition the Commission one time *only* for a change of physician, which claimant did and was granted; therefore, if claimant wishes to have an IME, it should be at her own expense, rather than respondents'.

Respondents further contend the claimant has been provided all appropriate benefits to which she is entitled. Respondents assert that the additional benefits sought by the claimant were provided by an unauthorized physician and are not reasonably necessary or causally related to the May 6, 2002, work-related injury.

As the facts will develop, claimant wound up going to see a doctor, Dr. Willis Courtney, on her own in September of 2004. Thus, claimant has already been seen by another physician; claimant's request for an IME or another change of physician is, as a result, moot at this point. Claimant has further requested that Dr. Courtney's expenses be paid by respondents; as such, her claim will simply be construed as a claim for additional medical benefits and an impairment rating.

### **STATEMENT OF THE CASE**

Claimant presently works for respondent-employer and was working there on May 6, 2002, when she sustained compensable bilateral carpal tunnel and bilateral stenosing tenosynovitis injuries. Medical records indicate that claimant was treated by Dr. Michael Moore, who performed the following surgeries: on July 11, 2002, a left thumb A1 pulley release and a left carpal tunnel release; on October 24, 2002, a right carpal tunnel release; and, on April 30, 2003, a right thumb A1 pulley release. Following those procedures, Dr. Moore opined that claimant had reached maximum medical improvement (MMI) on the following dates: for her left hand and thumb, September 9, 2002; for her right hand, February 20, 2003; for her right thumb, July 24, 2003. Dr. Moore opined that claimant had no impairments, following her various surgeries; therefore, he issued no impairment ratings. Having found that claimant had reached MMI for all her injuries on July 24, 2003, Dr. Moore opined that claimant could then resume regular activities and released her from his care.

On November 19, 2003, claimant wrote to the Commission, requesting a change of physician. She stated in her request, "I feel my present doctor have [sic] done all he can do, and I'm not satisfied." Claimant testified that she was still experiencing pain. Claimant was granted a one-time change of physician in a Change of Physician Order dated December 19, 2003, changing her physician from Dr. Michael Moore to Dr. David Rhodes. Claimant saw Dr. Rhodes one time on January 29, 2004.

Dr. Rhodes' report of his only visit with claimant includes some obvious erroneous information. First, Dr. Rhodes notes that claimant was referred to him as a consult from Dr. Nancy Williams. This is inaccurate, since claimant came about seeing Dr. Rhodes only as a result of the Change of Physician Order from the Commission. Next, Dr. Rhodes correctly notes claimant's chief complaint as "bilateral hand pain since 5/6/02." However, in the section entitled "History of Present Illness," Dr. Rhodes notes, in part: "The patient is a 55 year old right hand dominant female, who states that *on 5/6/02 she underwent bilateral carpal tunnel release* and subsequently trigger thumb release." [Emphasis added.] Obviously, claimant did not undergo surgery on the same date she initially began experiencing pain, although this is how Dr. Rhodes' report reads.

Notwithstanding, Dr. Rhodes' report further notes that he physically examined claimant and took two x-rays of the right wrist. Dr. Rhodes did not order any nerve

conduction studies or any other tests, whatsoever. Based on his physical exam and x-ray of only one wrist, Dr. Rhodes opined as follows:

I do not see any recurrence of her stenosing tenosynovitis bilateral or her carpal tunnel syndrome. Patient has vague pains in bilateral upper extremities that may be consistent with fibromyalgia. I do not think that this is sequela or complications from any of her surgeries. I recommend that she follow-up with a rheumatologist to rule out fibromyalgia. I do not think that this is work-related since she no longer has symptoms of carpal tunnel syndrome or trigger finger. She may return to her previous work status.

Claimant testified that she continued to have pain and that she repeatedly asked her employer to send her to a different doctor. She contends that she was told she had had her one-time change of physician and that she could not see another doctor at respondents' expense. Claimant requested a hearing from this Commission on that issue, but testified that in the meantime, she was referred by Dr. Nancy Williams to Dr. Willis Courtney. Claimant, unauthorized by respondents, went to see Dr. Courtney. Claimant testified that she wanted to see him before the hearing so that if he told her her problems were not related to her previous injury, then she would drop her claim.

Medical records indicate that claimant began seeing Dr. Courtney on September 9, 2004. Dr. Courtney took claimant's history, examined her, and ordered a nerve conduction study (NCV), as well as other tests. On September 21, 2004, claimant saw Dr. Courtney again, and at that time, he opined: "NCV study revealed

bilateral carpal tunnel syndrome, right side greater than left.” Dr. Courtney recommended that claimant see an orthopedic surgeon for her bilateral carpal tunnel syndrome. Dr. Courtney scheduled an appointment for claimant with Dr. John Lytle; however, claimant canceled her appointment until this claim is resolved.

### **FINDINGS OF FACT**

1. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical benefits at respondents’ expense;
2. The issue of impairment rating is held in abeyance.

### **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 Hydrophonics, 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 Hydrophonics, 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 so proven.

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, Dr. Rhodes, to whom claimant was granted the one-time change of physician, did not order nerve conduction tests or any other tests; he simply x-rayed *one* of claimant's wrists and apparently relied, otherwise, upon her physical examination and Dr. Moore's previous assessment, although he obviously did not have Dr. Moore's records or he would have known that claimant did not have surgery on May 6, 2002, as he incorrectly notes in his report.

In addition, claimant was seen only one time by Dr. Rhodes and this was in January of 2004. Some nine months later, after claimant had asked several times for an authorization to see a doctor, but was denied, claimant - on her own - went to see Dr. Courtney, who did examine claimant thoroughly and did order further tests; Dr. Courtney produced objective findings in the form of nerve conduction studies that claimant again had bilateral carpal tunnel syndrome, right side greater than left. He recommended that she be referred to an orthopedic surgeon.

In this examiner's opinion, claimant has proven by a preponderance of the evidence that additional medical treatment is reasonably necessary and related to her work injury of May 6, 2002. As such, she is entitled to additional medical benefits at respondents' expense.

In regard to claimant's request for an impairment rating, it is this examiner's opinion that that request is premature. At this point in time, it would require speculation for me to issue an impairment rating based upon the evidence now before the Commission. Claimant's request for an impairment rating is, therefore, held in abeyance.

In this examiner's opinion, a preponderance of the credible evidence establishes claimant's entitlement to additional medical benefits. The issue of impairment rating is hereby held in abeyance.

**AWARD**

Respondents are directed to pay all reasonable, necessary, and related medical expenses which have been incurred by the claimant and which may be incurred in the future in relation to her compensable injury of May 6, 2002, to include the medical expenses claimant incurred from Dr. Willis Courtney.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge