

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408293

AUDRA WRIGHT

CLAIMANT

MAGNOLIA GRAPHICS
UNINSURED

RESPONDENT

OPINION FILED JUNE 8, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

Respondents not represented by counsel.

STATEMENT OF THE CASE

A hearing was held on April 28, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 7, 2005. The respondent did not appear at the pre-hearing conference, however, they were notified by certified mail, return receipt requested. Kelly Hames signed the return receipt for the respondent on February 9, 2005. Several attempts have been made to contact the respondent as noted by the numerous returned letters in the Commission's file. The respondent did receive notice of the pre-hearing conference as evidenced by the return receipt in the file signed by Kelly Hames dated February 9, 2005. This return receipt is in the Commission file. The pre-hearing order set forth the stipulations offered by the parties, the issues to litigate, the contentions of the claimant and the date and time of the full hearing on the issues.

The following stipulations were submitted by the claimant and are hereby accepted:

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

2. On June 27, 2003, the relationship of employee-employer-carrier existed between the parties.

The issues to litigate are limited to the following:

1. Compensability.

2. Wages.

3. Related medical.

4. Temporary partial disability from the date of injury to April 12, 2004.

5. The claimant's entitlement to permanent partial disability.

6. Attorney's fees.

In regard to the foregoing issues the claimant contends that she sustained a compensable injury on June 27, 2003, while participating in team building exercises at a required "all company" meeting in Memphis, Tennessee. The claimant has received medical treatment, including surgery, for her left knee injury which remains unpaid. The claimant's wages were reduced from the date of the injury until April 12, 2004, when her healing period ended and she is entitled to temporary partial disability benefits in an amount to be determined during that period. The claimant is entitled to a permanent impairment rating although one has not yet been assessed by her treating physician. The Commission should

also award the maximum statutory attorney's fee on the indemnity benefits to which the claimant is entitled.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and a letter from Dr. Keith Bolyard marked Claimant's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she currently is employed with the Heavener Public Schools as an assistant project director for a safe schools program. The claimant testified that she has been in this position for the past two years. The claimant testified that prior to working for the Heavener School System she worked for the respondent for approximately one and a half years. The claimant testified that she was a district sales manager over Arkansas, Oklahoma and Missouri for the respondent. The claimant testified that the respondent put together and printed community directories for small communities in these states. The claimant testified the respondents' headquarters was located in Granada, Mississippi but that they did business in approximately fifty states. The claimant testified that she supervised at times ten to fifteen people and that some of these employees worked in the state of Arkansas. The claimant testified that she worked in the state of Arkansas and that her first supervisor, Lori Brady, was located in Van Buren, Arkansas. The claimant testified that while she was working for the respondent she had a yearly salary of \$36,000.00. The claimant

stated that in addition to her salary she earned a 1 percent commission on all of the employees that worked under her as to what they sold and that she also received a commission on what she personally sold in the way of ads for the respondent. The claimant agreed that her base salary would have been approximately \$3,000.00 a month but that her sales commission would range anywhere from \$1,000.00 to \$1,500.00 a month. The claimant agreed that in June 2003 her monthly income from the respondent would be approximately \$4,000.00 to \$5,000.00 per month. The claimant testified that she was reimbursed for her travel expenses but this was a dollar for dollar reimbursement for her actual out of pocket expenses to do her job.

The claimant testified that on June 27, 2003, she was attending a required business meeting in Memphis, Tennessee. The claimant testified that this meeting was to encourage building team skills. The claimant explained that different divisions of the company were to compete against each other. The claimant testified that the teams were playing tug of war an exercise designed by the president of the respondent's business and was a part of the required meeting. The claimant testified that in the process of participating in this tug of war activity she tore the ACL ligament in her left knee. The claimant testified that following her injury she did not obtain immediate medical treatment. The claimant testified that she could get up and walk following her incident but she just thought that she had sprained something and just tried to hang on until she could get home. The claimant testified that

immediately following her injury, her supervisors went and got an ice pack for her. The claimant testified that the next day, Sunday, she traveled home and on Monday she went to the doctor.

The claimant testified that she went to the Hillcrest Medical Center and saw Dr. Scott Clark in Poteau, Oklahoma, at the Eastern Oklahoma Medical Plaza which is part of the Eastern Oklahoma Medical Center. The claimant testified that Dr. Clark had her undergo an MRI which revealed that she had torn her ACL and at that point Dr. Clark referred her to Dr. Bolyard with the River Valley Muscular Skeletal Center. The claimant testified that Dr. Boylard who is an orthopedic surgeon made her a new ACL out of one of her other tendons. The claimant testified that after her surgery she was unable to use her left leg and was on crutches and could not bend her left knee.

The claimant testified that she continued working for the respondent but was unable to get out and make sales as she once had so her commissions were greatly reduced. The claimant agreed that she continued to receive her base salary of \$3,000.00 per month. The claimant testified that her income, therefore, was reduced from \$1,000.00 to \$1,500.00 a month due to her inability to earn commissions. The claimant testified that Dr. Bolyard released her from his care on April 12, 2004. The claimant testified that she did not return to work for the respondent because at that point she had begun to work for the Heavener School System. The claimant explained that between the date of her injury on June 27, 2003, and

the date of her release by Dr. Bolyard on April 12, 2004, the respondent had gone out of business and filed bankrupt.

The claimant testified that during this period of time following her injury she did have contact with the respondent through Kelli Hames and Ashley Madden. The claimant testified that Kelli Hames was the president of the respondent's business. The claimant testified that on numerous occasions she would talk to Ms. Hames about her need for medical treatment and would get authorization from Ms. Hames to go forward with her physical therapy. The claimant testified that Ms. Hames instructed her to write down what had happened and send it in to her because she had to send it in to the Workers' Compensation Commission. The claimant testified that Kelli Hames would call and give her the ok over the phone for her to receive medical treatment and to tell the providers that the respondent would be responsible for the bills if the Commission did not come through. The claimant testified that right before her surgery was scheduled, she talked with Ashley Madden who was a co CEO/President of the respondent's business and he oked her surgery over the phone and told her that the company would be responsible for all bills that had to do with her surgery and medical treatment. The claimant agreed that the respondent had authorized all of the medical treatment which she received for her injury.

The claimant testified that Dr. Bolyard practices out of the River Valley Muscular Skeletal Center but that her surgery was performed at the Sparks Regional Medical Center. The claimant

testified that following her surgery, she had physical therapy at River Valley Orthopedic. The claimant testified that, to her knowledge, the respondent has not paid any of these bills and that she continues to receive all of these medical bills. The claimant testified that she was aware that Dr. Bolyard had assessed her with a 7 percent permanent impairment to her left lower leg.

The medical records set forth that the claimant was seen by Dr. Clark on June 3, 2003, where it is noted that she has complaints of left leg pain. Dr. Clark's notes set forth that the claimant was playing tug of war Friday night and fell. On July 7, 2003, Dr. Clark recommended that the claimant have an MRI. Dr. Niles Axelsen writes on July 21, 2003, that he has seen the claimant for her complaints of left knee pain. Dr. Axelsen notes that the claimant's MRI of her left knee shows either a chronic tear or an incomplete acute tear as well as intrasubstans degeneration of the medial meniscus posterior horn. The claimant was diagnosed with a torn ACL in her left knee. Dr. Axelsen referred the claimant to Dr. Bolyard for ACL reconstruction and physical therapy was recommended. Dr. Keith Bolyard writes on July 24, 2003, that he has seen the claimant for her left knee injury of June 27, 2003. After examination and review of the claimant's MRI, Dr. Bolyard assesses the claimant with having a left knee anterior cruciate ligament tear and a Grade 1 medial cruciate strain. Surgery was discussed and physical therapy was continued. On September 4, 2003, Dr. Bolyard recommended surgery for the claimant's left knee and on September 9, 2003, Dr. Bolyard operated

on the claimant's left ACL tear doing a left ACL reconstruction. Dr. Bolyard writes on September 16, 2003, that the claimant is improving after her ACL reconstruction but she is to continue with her crutches as well as her therapy. On September 25, 2003, Dr. Bolyard notes that the claimant continues to improve, noting that the sutures at her harvest site were removed. Dr. Bolyard recommended that the claimant continue with her physical therapy as well as the use of her crutches until she can walk without a limp. Dr. Bolyard writes on October 23, 2003, that the claimant still has quite a bit of retropatellar pain, noting that her incision is nicely healed. Dr. Bolyard writes that the claimant should do physical therapy on her own and encouraged her to join a gym but not to do any running. Dr. Bolyard continued with follow up with the claimant in November 2003, February 2004 and April 2004. On March 17, 2005, Dr. Bolyard assesses the claimant with a 7 percent permanent partial impairment to her left lower extremity, noting that this is in accordance with the Forth Edition of the A.M.A. Guides.

After a complete review of all of the evidence presented, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on June 27, 2003, while she was participating in work activities. The claimant has testified that she was an employee of the respondent and had been for approximately a year and a half at the time of her injury. The claimant testified that while participating in a team building effort playing tug of war as

instructed by the president of the respondent's company, her team lost and the person in front of her fell on her leg causing her injury. Therefore, the respondents should pay for all the medical treatment for this claimant's compensable knee injury to include but not be limited to the bills from the Eastern Oklahoma Medical Center, the Eastern Oklahoma Medical Plaza, Dr. Scott Clark, Dr. Niles Axelsen, Dr. Keith Bolyard, the River Valley Muscular Skeletal Center and Sparks Regional Medical Center as well as her physical therapy expenses for the rehabilitation of her left knee. The claimant has testified that she was a salaried employee earning \$3,000.00 per month plus commissions which averaged from \$1,000.00 to \$1,500.00 per month. This would at least leave the claimant with a yearly income of \$48,000.00 and an average weekly income of \$923.07. This, therefore, would entitle the claimant to the maximum workers' compensation rate for the year 2003 which is \$440.00 for temporary total disability and \$330.00 for permanent partial disability. I also find that the claimant has shown by a preponderance of the evidence that she is entitled to a permanent partial disability impairment rating of 7 percent to the left lower extremity which the respondent should pay. The claimant, by her testimony, has stated that her income was greatly reduced as a result of her compensable injury. The claimant has stated that she was able to continue to work enough to draw her monthly regular salary but that her commissions were eliminated due to her inability to get out and work. The claimant has testified that she earned a year salary of \$36,000.00 a year which would entitle her

to an average weekly wage of \$692.30 per week. The claimant previously had been earning an average weekly wage of \$923.07 which included the \$12,000.00 over and above her \$36,000.00 a year salary. Therefore, the claimant experienced a reduction in her average weekly wage of \$230.77. Ark. Code Ann. §11-9-520 sets forth that temporary partial disability should be paid to a claimant in the amount of 66 2/3 of the difference between the employees' average weekly wage prior to the accident and her wage earning capacity after the injury. Therefore, the claimant is entitled to temporary partial disability in the amount of \$154.00 per week from June 28, 2003, to April 12, 2004.

FINDINGS & CONCLUSIONS

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

2. On June 27, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on June 27, 2003. See discussion above.

4. The claimant is entitled to the maximum compensation rate for the year 2003 which would be \$440.00 for temporary total disability and \$330.00 for permanent partial disability. See discussion above.

5. The respondent should pay for all related medical treatment for this claimant's compensable injury to include treatment by Dr. Clark, Dr. Axelsen and Dr. Bolyard as well as to various medical

providers which include the Eastern Oklahoma Medical Center, Eastern Oklahoma Medical Plaza, Arkansas Valley Muscular Skeletal Center, Sparks Regional Medical Center and the cost of the claimant's physical therapy for treatment for her compensable injury. Also see discussion above.

6. The claimant has proven by a preponderance of the evidence that she is entitled to temporary partial disability from June 28, 2003, until April 12, 2004, in the amount of \$154.00 per week. See discussion above.

7. The claimant has proven by a preponderance of the evidence that she is entitled to a permanent partial impairment rating as assessed by Dr. Keith Bolyard in the amount of 7 percent to the left lower extremity.

8. The respondent has controverted this claim in its entirety.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on June 28, 2003.

The claimant is entitled to a workers' compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

The respondent should pay for all related medical treatment for this claimant's compensable injury to include; Dr. Steve Clark, Dr. Niles Axelsen, Dr. Keith Bolyard, the Arkansas Valley Muscular

Skeletal Center, Sparks Regional Medical Center, Eastern Oklahoma Medical Center, Eastern Oklahoma Medical Plaza and the physical therapy for this claimant's compensable injury.

The respondent should pay temporary partial disability to this claimant from June 28, 2003, until April 12, 2004, in the amount of \$154.00 per week.

The respondent should pay permanent partial disability to this claimant for her 7 percent impairment rating to her left lower extremity.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE