

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E907637/F400957

CAROLYN BRASUELL	CLAIMANT
LONG JOHN SILVERS, INC.	NO. 1 RESPONDENT
FEDERAL INSURANCE INSURANCE CARRIER	NO. 1 RESPONDENT
ACE AMERICAN/GALLAGHER BASSETT INSURANCE CARRIER	NO. 2 RESPONDENT

OPINION FILED APRIL 13, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by G. CHADD MASON, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by DAVID HOFFMAN, Attorney, Monticello, Arkansas.

Respondents No. 2 represented by DAVID JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 21, 2006, 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 January 20, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. Prior opinions are res judicata and the law of this case.

3. Respondents No. 2 agree that they owe the claimant four days of temporary total disability.

By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's entitlement to additional medical treatment as well as reimbursement for medical treatment which she has paid out of her own pocket for her compensable injuries.

2. The claimant's entitlement to additional temporary total disability from November 24, 2005, to a date to be determined.

3. Claimant's entitlement to a penalty and interest on benefits which were previously ordered which she has not received from Respondents No. 1.

4. Respondent No. 2's entitlement to reimbursement from Respondents No. 1 in the amount of 50 percent of the benefits paid prior to October 7, 2005, and 100 percent reimbursement from October 7 through November 24, 2005.

5. Respondent No. 2's entitlement to a 20 percent penalty on all the benefits which they have paid in accordance with the prior order from Respondent No. 1.

6. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to additional medical and temporary total disability from November 28, 2005, to a date to be determined, penalty on awarded and unpaid benefits and attorney's fees.

In regard to the foregoing issues Respondents No. 1 offered no contentions.

In regard to the foregoing issues Respondents No. 2 contend that they have paid all benefits to which the claimant is entitled.

They further contend that they are entitled to reimbursement from Respondents No. 1 as well as a 20 percent penalty on reimbursement requested which Respondents No. 1 have failed to pay.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a report from Dr. Knox marked Claimant's Exhibit No. 1 and receipts from Walgreens marked Claimant's Exhibit No. 2. Respondent No. 2 submitted medical evidence marked Respondent No. 2's Exhibit No. 1 and a supplemental packet marked Respondent No. 2's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

This matter was heard initially on June 14, 2005, and an opinion was entered on September 8, 2005. The September 8, 2005, opinion is now res judicata and the law of the case. In the September 2005 opinion it was found that the claimant had proven by a preponderance of the evidence that she had a recurrence of her cervical spine problems resulting from her April 12, 1999, compensable injury. It was also found that the claimant had proven by a preponderance of the evidence that her bilateral carpal tunnel problems were a result of her work for the respondent. Respondent No. 1 was ordered to pay the cost of the treatment of the claimant's cervical spine problems as well as 50 percent of the treatment for her bilateral carpal tunnel problems. Respondent No.

2 was ordered to pay 50 percent of the cost of the treatment of the claimant's bilateral carpal tunnel problems.

The claimant testified that currently she is being treated by Dr. Knox and Dr. Van Ore. The claimant agreed that Dr. Knox has treated her for her bilateral carpal tunnel problems and has followed her subsequent to her surgery. The claimant also agreed that Dr. Blankenship did the surgery on her neck but that she has followed up with Dr. Knox. The claimant testified that within the last year she has continued to have headaches and that she is in pain all the time. The claimant testified that she sees Dr. Knox every couple of months and that she sees Dr. Van Ore once a month for her medication. The claimant testified that for the past six months she has been getting her prescription medications filled at Walgreens. The claimant explained that when she would go in to get her prescriptions filled, the pharmacist would call in to get authorization from the respondent for payment of her prescribed medications but that the respondents would not authorize payment.

The claimant testified that she was off work due to her injuries a couple of days before her surgery on August 26 and that she has remained off work to present. The claimant testified that she ultimately had carpal tunnel surgery on her other hand as well. The claimant testified that Dr. Knox released her from his care for her carpal tunnel problems in November or December but he has continued to treat her for her neck problems. The claimant testified that Dr. Knox has been trying to get her in to see Dr. Cannon to determine if her pain is coming from below or above the

plate in her neck. The claimant agreed that the purpose for this evaluation would be to determine what type of treatment would be needed for her neck problems. The claimant testified that currently she has shooting pains in her neck and that it hurts all the time. The claimant testified that her neck problems are worse than they were at the initial hearing and that was the reason why Dr. Knox is wanting to send her to Dr. Cannon. The claimant testified that although her bilateral carpal tunnel problems have resolved, Dr. Knox has continued to keep her off work because of her neck problems. The claimant testified that the respondent knows that she is still off work and on medical leave. The claimant testified that it was her understanding that she was to be off work until she was to be seen by Dr. Cannon. The claimant testified that she has tried to make appointments with Dr. Cannon about three times but each time Respondent No. 1 has not authorized her treatment. The claimant testified that she has not received any temporary total disability benefits from Respondent No. 1 since November 24, 2005. The claimant testified that it is the same way with her prescription medications. The claimant stated that when she takes her prescriptions in to be filled, Respondent No. 1 will not authorize payment. The claimant testified that the two prescriptions which she took in to be filled on January 31, 2006, were refused by the respondent and she was only able to pay for the Methadone at the cost of \$62.09. The claimant testified that on February 14, 2006, she went in to get her prescriptions refilled she was only able to fill the Morphine prescription at the cost of

\$39.49 because Respondent No. 1 would not authorize payment. The claimant testified that she has other prescriptions which she has not been able to get filled because she does not have the money to pay for them.

On cross examination by Respondents No. 1, the claimant testified that she did not know what insurance company was being called by the pharmacy when she was trying to get her prescriptions filled.

At the conclusion of the hearing, all sides made closing statements.

The medical records set forth that on October 20, 2005, Dr. Luke Knox wrote to Dr. Cannon on the claimant's behalf. Dr. Knox writes that the claimant has undergone extensive reconstructive spine surgery which included a C-3 through C-6 anterior fusion with a corpectomy and strut grafting at C5. Dr. Knox notes that there appears to be an element of telescoping of the anterior plate that is impinging upon the C-7 level and that the claimant continues to complain of severe neck pain and headache. Dr. Knox writes that he is not certain where the pain is coming from and he is referring to Dr. Cannon to see if he can differentiate the pain generator. Also on October 20, 2005, Dr. Knox writes to Dr. Schemel concerning the claimant. Dr. Knox notes that the claimant underwent extensive reconstruction spine surgery and that her x-rays show stable alignment of the fusion site, however, there appears to be impingement upon the disc space below her surgical site at C-7. Dr. Knox writes that he is referring the claimant to Dr. Cannon to

undergo pain management in hopes that he can evaluate and help alleviate a part of the claimant's pain difficulties. Dr. Knox writes that apparently the claimant tried an RS stimulator and that he is going to institute a physical therapy regime through Total Spine. There is an off work slip dated November 28, 2005, indicating that the claimant should remain off work until December 15, 2005, signed by Dr. Knox. There is a hand written note at the bottom indicating that the claimant has no restrictions due to her carpal tunnel syndrome and is off work due to her neck pain pending further work up. On December 28, 2005, Dr. Knox writes that the claimant has a 0 percent permanent impairment rating as a result of her bilateral carpal tunnel problems.

The medical records set forth that Dr. Luke Knox wrote to Dr. Van Ore on February 16, 2006, concerning the claimant. Dr. Knox writes that he has seen the claimant that day for cervical spondylitic changes as well as her cervical surgery and carpal tunnel syndrome. Dr. Knox notes that unfortunately the claimant has not had a chance to see Dr. Cannon and that she is absolutely miserable with her neck pain. Dr. Knox mentions a review of Dr. Miles Johnson's test for the claimant's carpal tunnel treatment and notes that these results do not particularly bother him but he continues to be worried about the claimant's difficulties with her cervical spine. Dr. Knox recommended that the claimant undergo physical therapy for her cervical musculature and that in the meantime she should follow up with Dr. Cannon for facet injections and/or epidural injections. The medical records set forth two

receipts from walgreens indicating that the claimant paid for medication on January 31, 2006, in the amount of \$62.09 and again on February 14, 2006, in the amount of \$39.49.

After a review of this completer matter, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her neck as recommended by Dr. Knox as well as reimbursement for any out of pocket expenses she has had to incur for payment of her prescribed medications. This additional medical treatment will include the referral from Dr. Knox to Dr. Cannon for evaluation of the claimant's neck problems. This medical treatment will be at the expense of Respondents No. 1 and Respondents No. 1 should be assessed a 20 percent penalty on the monies to be reimbursed to the claimant for her out of pocket medical expenses. The claimant has further proven that she is entitled to additional temporary total disability from November 24, 2005, to a date to be determined. Respondents No. 1 should pay this additional temporary total disability and again a 20 percent penalty shall be assessed against Respondents No. 1 for failure to comply with the Commission's order dated September 8, 2005, to the date of this hearing.

I further find that Respondents No. 2 are entitled to reimbursement from Respondents No. 1 in the amount of 50 percent for benefits paid to October 7, 2005, for the claimant's carpal tunnel problems. Respondents No. 2 are also entitled to reimbursement in the amount of 100 percent for benefits paid to the claimant from October 7 through November 24, 2005, from Respondents

No. 1. The letter set forth in the non medical exhibits as well as discussion by the party's set forth that numerous requests had been made to Respondents No. 1 as to compliance with the September 8, 2005, opinion. To the date of this hearing, Respondents No. 1 have not complied with the Commission's order and, therefore, should pay a 20 percent penalty on all reimbursed monies as ordered in this opinion to Respondents No. 2. It should be noted that any further non compliance with the Commission's order can result in a 36 percent penalty being assessed against Respondents No. 1 or perhaps a finding of contempt which can be awarded up to a maximum of \$10,000.00. See Ark. Code Ann. §11-9-802(e) and Ark. Code Ann. §11-9-706(b).

FINDINGS & CONCLUSIONS

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

2. Prior opinions are res judicata and the law of this case.

3. Respondents No. 2 agree that they owe the claimant four days of temporary total disability.

4. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical problems as well as reimbursement for any out of pocket expenses she has incurred for her medical treatment or prescriptions to be paid by Respondents No. 1. The reimbursement for out of pocket medical expenses paid by this claimant shall bear a 20 percent penalty which also shall be paid by Respondents No. 1.

5. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from November 24, 2005, to a date to be determined to be paid by Respondents No. 1. Respondents No. 1 should pay a penalty on this additional temporary total disability in the amount of 20 percent to the date of this hearing.

6. Respondents No. 2 are entitled to reimbursement from Respondents No. 1 in the amount of 50 percent of the benefits paid prior to October 7, 2005, for the claimant's carpal tunnel treatment. Respondents No. 2 are entitled to reimbursement from Respondents No. 1 in the amount of 100 percent from October 7, through November 24, 2005. Respondents No. 1 shall pay a 20 percent penalty to Respondent No. 2 on these reimbursed benefits. See discussion above.

7. Respondents No. 1 controverted the claimant's entitlement to additional benefits.

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

ORDER

That Respondents No. 1 shall pay for the claimant's additional medical treatment as well as reimburse the claimant for any out of pocket expenses she has incurred for her medical treatment and that this reimbursement shall bear a 20 percent penalty.

Respondents No. 1 shall pay to the claimant additional temporary total disability from November 24, 2005, to a date to be

determined. Respondents No. 1 should pay a 20 percent penalty on these additional benefits awarded up to the date of this hearing.

Respondents No. 1 shall reimburse Respondents No. 2 for 50 percent of the benefits paid prior to October 7, 2005, and should then reimburse Respondent No. 2 100 percent for benefits paid from October 7 through November 24, 2005. Respondents No. 1 shall pay a 20 percent penalty on these reimbursed amounts to Respondents No. 2.

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