

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312262

MICKIE G. BROWN, EMPLOYEE	CLAIMANT
NORTH LITTLE ROCK SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ADMINISTRATION (RISK MANAGEMENT RESOURCES, TPA), CARRIER	RESPONDENT

OPINION AND ORDER FILED JULY 5, 2006

Hearing before Administrative Law Judge Barbara Webb in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James Stanley, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Ms. Betty Demory, Friday, Eldredge & Clark, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on April 5, 2006. A Pre-hearing Order was entered in this case on January 18, 2005. This Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Pre-hearing Order was made Commission Exhibit No. 1 to the hearing record. The following stipulations were submitted by the parties in the Pre-hearing Order and are hereby accepted:

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1. That the employer/employee/carrier relationship existed on November 4, 2003, and at all relevant times.
2. That the claimant sustained a compensable injury which arose out of and during the course of her employment.
3. That the claimant's temporary total disability rate is \$60.00 per week.
4. That the claimant was awarded a change of physician in March of 2005, and that her current authorized treating physician is Dr. Julio Hochberg.

By agreement of the parties, the issues to be litigated were limited to the following:

1. When the claimant's healing period ended.
2. Whether claimant is entitled to permanent partial disability benefits of ten percent (10%) to her right leg.
3. Whether claimant is entitled to an attorneys fee for controversion of the issues listed above.

The record consists of a one-volume transcript of the April 5, 2006 hearing, consisting of the testimony of the claimant and all documentary

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evidence, including the Claimant's Exhibit 1 (medical records) and Exhibit 2 - 5 (photographs) and Respondent's Exhibit 1 (abstract) and Exhibit 2 (medical records).

DISCUSSION

The claimant contends that she sustained a ten percent anatomical impairment rating to the arm and leg as noted by Dr. Norman Pledger in his reports and that said impairment is supported by objective medical evidence. Claimant contends that she is entitled to additional benefits beyond the temporary total benefits that she has already received and continuing medical treatment. The claimant has reserved all issues relating to on-going or future medical treatment, including reimbursement for over-the-counter and prescription medications.

The respondents contend that claimant sustained an admittedly compensable burn injury in November of 2003; that she has received temporary and medical benefits; that she is not entitled to any permanent partial impairment rating; that she does not qualify for scarring benefits under the Arkansas Worker's Compensation Act as the scars are not to her face and head; and that claimant has not sustained any permanent impairment in that it does not fall

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within the AMA Guidelines, 4th Edition; and that Dr. Pledger considers pain and subjective factors as opposed to objective factors. Respondents further contend that they have not controverted medical treatment and have not been presented with any treatment requests since she treated with Dr. Hochberg in May of 2005.

A. TESTIMONY OF CLAIMANT

Claimant is a fifty-one year old part-time former school cafeteria worker employed three months prior to sustaining a compensable burn injury. Her job duties included serving on the line, cleaning the deep fryer, washing dishes, sweeping, and mopping. Prior to that time, she worked for several years in a convenience store. She has been married for 34 years and completed the 8th grade. She does not have a GED. On November 4, 2003, while working in the school cafeteria, the claimant slipped and fell into a bucket of hot grease. She sustained burns to her right arm, upper right thigh, right calf, left ankle, left thigh, and both buttocks. She immediately sought medical attention by ambulance to the emergency room at St. Vincent's North and was subsequently transported to the burn unit at Children's Hospital. At Children's, the burns were scrubbed and treated with silverdine and wrapped with gauze. She was released in two days and continued to receive home health care. The home health nurse continued to

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scrub and treat the burns, wrapping the claimant "like a mummy" with gauze. She was prescribed pain medications. She testified that she would have to take two Percocets and a Tramadol before the nurse came in order to deal with the pain. She described her pain level at a ten on a scale of one to ten. She testified that she had nightmares and that her burns continue to bother her. She did not undergo any skin grafting. She returned to work on March 21, 2004, at the same location. She described the residual effects of the burns to include continuing numbness in her right arm and drawing up and stinging on a daily basis in her upper right thigh when she bends her leg. She testified that she has scars on her upper right thigh, upper right arm, left ankle, and right calf. She testified that she has trouble bending her right leg, getting into the bathtub, and sexual intercourse. She testified that she has difficulty kneeling, swelling in her right arm, and general sensitivity to touch and cold temperatures in the burn sites. She continues to treat the burn sites with medicated moisturizing cream. She continues to take both over-the-counter and prescription medications, including Tramadol, Aleve, and hydrocodone. She testified that she has paid for all her medications since the release from her doctor on March 21, 2004. She testified that she continues to see her family doctor, Dr. Pledger, and has been

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examined by Dr. Hochberg and Dr. Peeples. She testified that she is currently employed full-time in the food service canteen at Fort Roots Medical and left her job with the North Little Rock School District for a better job and better money. On cross-examination, the claimant testified that she has sought treatment with Dr. Pledger on unrelated left knee problems, her back, and carpal tunnel syndrome. In February of 2006, she underwent steroid shots for back problems and has applied for social security disability due to her back injury. She testified that she was currently scheduled for surgery on her left knee. She admitted that the pain medications were in part due to the pain in her back and limitations on her ability to squat and kneel were related to her left knee as opposed to her burn injuries. She agreed that in May of 2005, Dr. Hochberg indicated that her burn sites had completely healed, were flat, and had minimal contracture with no deficit in function, no pain, and no indication of surgery on scars. She further agreed that she recently returned for a visit with Dr. Hochberg on February 23, 2006. At that visit, she testified that he did not prescribe any medications. She further agreed that she was able to continue to work but would be off work for her unrelated upcoming knee surgery. She explained that the reason Dr. Hochberg's report reflect that she reported no pain was due to the fact that the burn scars

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were not causing as much pain then as they currently do. She explained that the burn sites and scars continue to cause her discomfort.

B. Medical Records

Medical records reflect that the claimant was seen by emergency room personnel immediately following the work-related incident on November 4, 2003. She was stabilized and transferred on the same day to the Burn Center at Arkansas Children's Hospital. She was diagnosed with ten percent total body surface area partial-thickness burns, including 2nd degree burns to the bilateral buttocks and left posterior thigh and a small area of 3rd degree burn to the right upper extremity. Wound care was begun immediately with Silvadene applied to the effected burn sites and wrapped with pressure dressing, She was administered oxycodone or pain control. She was discharged on the second day and home health was arranged for dressing change. Follow-up was scheduled for two weeks and additional oxycodone and docusate were prescribed. She returned on November 20, 2003. Doctor's notes reflect that silvadene was applied to all burn sites and a follow-up was scheduled for three weeks. On December 11, 2003, she returned to the Burn Center for follow-up. Clinic notes reflect that Silvadene was continued and Atarax was prescribed for reported

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itching. The claimant was also given prescriptions for Oxycodone and Tramadol for pain control and scheduled for a follow-up in one month with a notation that the claimant "may not return to work". On January 15, 2004, the claimant returned to the Burn Center for her scheduled follow-up. Clinic notes reflect that claimant was diagnosed and treated for "probable staph infection" in connection with the burn sites. Prescriptions were refilled and she was scheduled for follow-up in three weeks. On January 20, 2004, the claimant was seen by her family physician, Dr. Norman Pledger complaining of burns, bee sting, and chronic depression. On February 5, 2004, the claimant returned to the Burn Center. Clinic Notes reflect an open burn on claimant's left thigh. Medications were refilled and she was referred to physical therapy for scar management. On February 26, 2004, the claimant was measured for compression garments to decrease "hypertrophic scarring". Burn Clinic notes from the same date reflect that the claimant had healed burns to the right upper arm and right leg. In addition, notes reflect that she has "2 small open wound areas at medial right thigh". The assessment was that claimant was "Healed. Mild hypertrophy in scars." The treatment plan at that time was "Atarax, Oxcodone, Silvadene to open area, May bathe, Return to work without restrictions 3/22/04." On April 29,

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2004, the claimant returned for follow-up at the Burn Center. Notes reflect that claimant reported painful scars at right medial thigh and that pain control was adequate. Assessment was "Mild hypertrophy at right posterior arm and right medial thigh other scars flat and maturing." Treatment included an increased dosage of Hydroxyzine for itching and massage therapy for desensitization. On June 24, 2004, the claimant returned for a follow-up evaluation. At that time, claimant was observed to be "doing well". Clinic notes reflect that her scars were mature and use of compression garments were discontinued. The doctor noted that pain control would be with Aleve and refilled the prescription for Atarax only. Follow-up would be scheduled on an as needed basis. On July 27, 2004, the claimant underwent an Independent Medical Examination by Dr. Earl Peebles.

His report notes

She has approximately 10% partial thickness burns as calculated by Children's Hospital. She has healed with some residual scarring due to the deep partial thickness burns. Her most prominent difficulty is in the right medial thigh. Her burn scars have not had time to become fully pliable. They will leave her with very minimal difficulty and the position the right medial thigh burn causes trouble in is not one that is commonly necessary

On October 21, 2004, the claimant returned to the Burn Center. Clinic notes reflect that the burn wounds were healed, almost one year out. Treatment

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included a change of prescription to address observed dryness of the wounds and claimant was to return on an as needed basis. On May 24, 2005, the claimant was evaluated by Dr. Julio Hochberg, Professor of Surgery, Division of Plastic Surgery at UAMS. At that time, doctor's notes reflect that claimant's burn sites were completely healed, flat, with minimal contracture, no deficit in function, and not causing pain. The doctor assessed claimant's condition as "Sequela from burns on the right lower extremity and upper extremity". Dr. Hochberg noted that there was no indication for surgery present and that "the patient's expectations for surgery are unrealistic". On October 10, 2005, the claimant presented to Dr. Pledger for high blood pressure and reporting pain in her right thigh scar and numbness in her right upper arm. The doctor observed that her burn areas were chronic and controlled. At that time, he assessed the claimant with a permanent impairment rating of 10% to the arm/leg (noting pain(R.thigh)/numbness(R.arm). On February 23, 2006, the claimant returned to Dr. Hochberg's Clinic for evaluation of her burn sequelae. The doctor observed that the more severe scar measured a triangular shape on the right thigh posteriorly, medially. "When she bends her knee she develops scar contracture which creates hypersensitivity to the area." The notes further indicate that

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“Besides the one on the right thigh, her remaining ones [scars] are without any symptomatology, just a change in discoloration of the skin.” Dr. Hochberg concludes

There is not indication for surgery at present. The scars are of permanent nature. They are 20% weaker than the normal skin. She has to avoid bruising over the scar areas and use extreme caution when around very hot surfaces.

C. Healing Period

The claimant is entitled to temporary total benefits if she can satisfy a two-prong test: (1), claimant must be within her healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994).

The evidence in this case is undisputed that the claimant was released to return to work on March 22, 2004. The claimant testified that she did in fact return to work at the same location and is now working full time in a better job with better pay. Although claimant continued to seek medical treatment for

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pain, the claimant's medical condition had stabilized and claimant was able to resume earning wages. *Arkansas State Hwy. & Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Moreover, the medical evidence reflects that her burn areas were healed in February of 2004. Therefore, I find that claimant reached the end of her healing period on March 22, 2004, the date accepted by Respondents.

D. Permanent Partial Disability

This is a scheduled injury pursuant to A.C.A. Section 11-9-521(a)(14) which provides in pertinent part:

an employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits . . . weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule: (1) Arm amputated at the elbow, or between the elbow and the shoulder, two hundred forty-four (244) weeks; (3) Leg amputated at the knee or between the knee and the hip, one hundred eighty-four (184) weeks.

This is not a disability apportioned to the body as a whole pursuant to A.C.A. Section 11-9-522. A.C.A. Section 11-9-521(f) further provides that compensation for permanent partial loss or loss of use of a member shall be for the proportionate loss or loss of use of the member". The Act further provides that

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the assessment shall be by the adopted impairment rating guide and shall not include pain as a basis for the impairment.

Claimant has not lost the use of her arm or leg. At worst, the evidence would suggest that claimant has intermittent pain in her thigh when sitting in a certain cross-legged position from the scar on her thigh and numbness in her upper arm. These findings are based on the clearly subjective responses of the claimant and not supported by objective medical findings. All of the treating physicians have concluded that complainant's wounds are completely healed and claimant has returned to full-time work without restrictions. Moreover, claimant has failed to prove by a preponderance of the evidence that she is entitled to partial permanent benefits or that the permanent impairment rating assigned by Dr. Pledger conforms to the AMA Guides to the Evaluation of Permanent Impairment, 4th Edition, since his rating was based solely on subjective responses from the claimant. The only observed permanent condition is scarring which is only compensable if the scars are to her face or her head. Based on the preponderance of the evidence, I find that the medical and other credible evidence in the case fails to support the rating of 10% as assessed by Dr.

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Pledger or a finding that claimant is entitled to permanent partial disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The Arkansas Worker's Compensation Commission has jurisdiction of this claim.
3. That the employer/employee/carrier relationship existed on November 4, 2003, and at all relevant times.
4. That the claimant sustained a compensable injury which arose out of and during the course of her employment.
5. That the claimant's temporary total disability rate is \$60.00 per week.
6. That the claimant was awarded a change of physician in March of 2005, and that her current authorized treating physician is Dr. Julio Hochberg.
7. That claimant's healing period ended on March 22, 2004, when she was released to return to work without restrictions.

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8. That the preponderance of the evidence demonstrates that claimant has failed to prove that the permanent partial disability rating of 10% is supported by objective medical findings and that claimant is entitled to permanent partial disability benefits as a result of the permanent scars to her right thigh and right arm.
9. The claimant's attorney is not entitled to statutory attorney's fees herein.

ORDER

For the reasons discussed herein, this claim for permanent partial disability benefits and attorneys fees is respectfully denied.

IT IS SO ORDERED.

**HONORABLE BARBARA WEBB
Administrative Law Judge**