

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F114325

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| ARDENA CHANDLER, Employee | CLAIMANT |
| STEPHENS GROUP, INC./THE MORNING NEWS, Employer | RESPONDENT |
| FEDERAL INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED MAY 19, 2006

Before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by DAVID JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

This case comes on for review upon a stipulated record. At the time of a pre-hearing conference conducted on April 12, 2006 the parties agreed to submit this issue on a stipulated record. The stipulated record includes the stipulations contained in the pre-hearing order, documentary evidence submitted by the respondent in conjunction with its pre-hearing questionnaire, and the November 20, 2005 letter of Dr. Boylan. This documentary evidence along with my letter of April 13, 2006 has been blue-blackened and is considered as the record in this claim.

At the time of the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her right knee on September 15, 2001.
4. Respondent has paid some compensation benefits, including permanent partial

disability based upon a 10% rating to the right knee.

5. The claimant was earning an average weekly wage of \$625.00 which would entitle her to compensation at the weekly rates of \$417.00 for temporary total disability benefits and \$313.00 for permanent partial disability benefits.

6. Claimant had a one-time change of physician to Dr. Thomas Boylan by Commission order of July 2, 2004.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to an evaluation by Dr. Ryan as recommended by Dr. Boylan in his letter of November 20, 2005.

The claimant contends she is entitled to an evaluation by Dr. Ryan as recommended by Dr. Boylan.

The respondents contend that claimant is not entitled to an evaluation by Dr. Ryan.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 12, 2006, and contained in a pre-hearing order filed April 13, 2006, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to an evaluation by Dr. Ryan as recommended by Dr. Boylan in his letter of November 20, 2005.

FACTUAL BACKGROUND

The claimant apparently injured her right knee while working for the respondent on

September 15, 2001. After some initial medical treatment claimant came under the care of Dr. Mark Powell, an orthopaedic surgeon who performed surgery on December 10, 2001 to repair a torn medial meniscus and a torn anterior cruciate ligament. After her surgery the claimant continued to have problems and a second surgical procedure was performed by Dr. Powell on February 8, 2002 to address an infection and possible reflex sympathetic dystrophy.

The medical records indicate that claimant continued to have problems with her right knee following this second procedure in February 2002. Claimant was diagnosed as suffering from reflex sympathetic dystrophy ("RSD")/ complex regional pain syndrome ("CRSP") of the right knee. As a result, claimant received medical treatment from Dr. Cannon in addition to her medical treatment with Dr. Powell. On July 9, 2002, Dr. Powell stated that claimant had reached maximum medical improvement from an orthopaedic standpoint. He stated that he would set claimant up for an impairment rating and a functional capacities evaluation. He also noted that claimant should continue treating with Dr. Cannon for her RSD. The functional capacities evaluation was performed on July 15, 2002 and indicated that claimant was capable of performing light to medium work. In a letter from August 2002 Dr. Powell indicated that claimant had suffered a permanent physical impairment rating in an amount equal to 10% to the body as a whole as a result of her compensable knee injury. Dr. Powell noted that this rating took into consideration orthopaedic impairment only and that he would defer to Dr. Cannon for the effects of the RSD.

The medical records indicate that claimant continued to receive medical treatment from Dr. Cannon until she moved to Colorado in August 2003. At some point in time the claimant requested a change of physician to Dr. Boylan which was granted by the Commission on July 2, 2004. Since that time the claimant has been evaluated and treated by Dr. Boylan on several occasions for her RSD/CRPS.

Most recently, in a letter dated November 20, 2005, Dr. Boylan indicated that he did not have the medical expertise and training with regard to medical impairment ratings; therefore, he referred claimant to Dr. Ryan for the assignment of an impairment rating.

Claimant has filed this claim contending that she is entitled to the medical treatment as recommended by Dr. Boylan.

ADJUDICATION

Respondent contends that claimant is not entitled to the evaluation by Dr. Ryan because the evaluation is for the purpose of assigning an impairment rating associated with the claimant's RSD/CRPS. Respondent contends first that claimant's RSD is not causally related to her compensable knee injury and second that the treatment is not reasonable and necessary.

First, I find that claimant has met her burden of proving by a preponderance of the evidence that the RSD was a result of her compensable right knee injury. First, I note that Dr. Powell in his letter of August 2002 noted that claimant had post-operatively developed RSD and that she was undergoing treatment by Dr. Cannon. In addition, my review of Dr. Cannon's medical records indicate that he attributed claimant's RSD or complex regional pain syndrome to claimant's right knee injury. Finally, I note that the medical records of Dr. Boylan also support a finding of causation. In his report of September 22, 2004, Dr. Boylan stated:

Specifically, in this particular case, we can delineate Mrs. Chandler's condition to complex regional pain syndrome type II (previously referred to as causalgia). My rationale regarding this is that the patient had no symptoms of sympathetically maintained pain until her surgery.

Dr. Boylan again reiterated his opinion as to causation in a report dated January 13, 2005, when he noted that the claimant suffered from complex regional pain syndrome and

stated, "Evidently, this is a result of her prior surgery on her right ACL."

Based upon these medical opinions which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that her RSD/CRPS is causally related to her compensable right knee injury.

To the extent that respondent contends that there are no objective findings to support a diagnosis of RSD, I note that in his medical report of November 26, 2002, Dr. Cannon noted swelling in the claimant's right knee. Furthermore, in a report dated September 22, 2004 Dr. Boylan noted mild swelling and discoloration of the skin around claimant's knee. These findings constitute objective evidence of injury and have previously been recognized by the Commission as objective evidence of RSD. See *Potocki v. St. Edward Mercy Medical Center*, Full Commission Opinion filed February 3, 2004 (F004149), affirmed in opinion not designated for publication (Court of Appeals, January 26, 2005).

Even though I have found that claimant's RSD is causally related to her compensable right knee injury, I nevertheless find that claimant has failed to prove by a preponderance of the evidence that she is entitled to an evaluation by Dr. Ryan for the purpose of assigning an impairment rating for that condition. The facts in this case are almost identical to the facts in *Potocki v. St. Edward Mercy Medical Center, supra*. In *Potocki*, an administrative law judge found that claimant had met her burden of proving by a preponderance of the evidence that she developed RSD as the result of a right ankle fracture. The administrative law judge also found that claimant was entitled to additional medical treatment for her reflex sympathetic dystrophy; specifically, the administrative law judge held that claimant was entitled to return to her treating physician for an evaluation to determine whether she was entitled to an impairment rating for her RSD. While the Full Commission found that claimant had met her burden of proving by a preponderance of the evidence that her RSD was causally related to her compensable injury, the Full Commission found that claimant was not entitled to an evaluation for the assignment of a

permanent physical impairment rating attributable to the RSD because there is no criteria in the *AMA Guides* which would support an impairment for that condition under Arkansas law. In reaching its decision in *Potocki*, the Full Commission relied upon the decision in *Wal-Mart Stores, Inc., v. Connell*, 340 Ark. 475, 10 S.W. 3d 822 (2000). In addition, the Commission stated:

The Full Commission subsequently found that there was no evidence to assign an impairment rating for reflex sympathetic dystrophy under the Guides in Henderson v. Riverside Furniture, Workers' Compensation Commission F104235 (June 3, 2003), citing Connell, *supra*.

The Full Commission went on to find that the claimant in *Potocki* was not entitled to an evaluation by a physician for the purpose of assigning permanent impairment attributable to RSD.

In the present matter, we likewise agree that there is no criteria in the Guides for assignment a permanent impairment rating for the claimant's reflex sympathetic dystrophy. The Full Commission therefore does not affirm the administrative law judge's finding that the claimant should present to Dr. Swicegood for an evaluation of permanent impairment attributable to the claimant's RSD.

In this particular case, claimant was granted a change of physician to Dr. Boylan in Colorado. Dr. Boylan is a pain management specialist and has treated claimant for her RSD/CRPS. When asked to assign claimant a permanent physical impairment rating, Dr. Boylan by letter dated November 20, 2005 indicated that he did not assign impairment ratings, but instead would refer claimant to Dr. Ryan. The impairment rating by Dr. Ryan would be attributable to the claimant's RSD/CRPS since she has already received a permanent impairment rating from an orthopaedic standpoint from Dr. Powell.

In short, pursuant to the Full Commission's decision in *Potocki*, a claimant is not

entitled to an evaluation by a treating physician for permanent impairment attributable to reflex sympathetic dystrophy. Given the decision in *Potocki*, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to the evaluation by Dr. Ryan for the assignment of an impairment rating associated with her reflex sympathetic dystrophy.

ORDER

Claimant has proven by a preponderance of the evidence that her reflex sympathetic dystrophy is causally related to her compensable right knee injury. However, claimant is not entitled to an evaluation by Dr. Ryan for the assignment of an impairment rating associated with her reflex sympathetic dystrophy. Claimant's claim for the evaluation by Dr. Ryan is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE