

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F407120**

**MARY S. FRANKS**

**CLAIMANT**

**CITY OF HOT SPRINGS**

**RESPONDENT EMPLOYER**

**MUNICIPAL LEAGUE WC TRUST**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED JULY 27, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES S. STREET, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on July 16, 2006. A prehearing conference was held on May 23, 2006 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on May 22, 2004.
2. The temporary total disability rate is \$401.

The claimant contends she sustained a compensable injury on May 22, 2004, and is entitled to medical benefits, temporary total disability benefits from June 15, 2004, to a date to be determined and to attorney's fees.

Respondents contend the claimant did not sustain a compensable injury and further contend the claim has been controverted in its entirety. Respondents also contend the statute of limitations bars the claim.

### **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Statute of limitations
5. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on May 22, 2004.
2. The temporary total disability rate is \$401.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment.

4. Respondents are responsible for reasonable and necessary medical treatment the claimant has pursued from June 9, 2004 through at least January 31, 2005.

5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from June 15, 2004 through at least May 9, 2005.

6. The claim is not barred by the statute of limitations. Ark. Code Ann. §11-9-702.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

## **DISCUSSION**

The claimant, 47 years old, began her employment as a patrol officer in October 1996. On May 22, 2004, the claimant worked the midnight to 8:00 a.m. shift. According to the claimant, she pulled a small compact car over for loud music playing. The driver did not have a driver's license and the name and date of birth he gave did not match up in the data base and the social security number did not match. The claimant had called for back up. The claimant handcuffed the driver of the vehicle and got him out of the car and began a search of his person. Upon emptying the suspect's pockets, the claimant saw crack fall out. The suspect bolted to the right and a scuffle ensued with the suspect, the claimant and the backup officer on the ground. Pepper

spray finally curtailed the scuffle and the suspect was placed in the patrol car. The claimant noticed blood on her hands from being scrapped. The claimant took the suspect in for booking.

The claimant did report to Sgt. Williams that she had some hand injuries and that she was feeling a little sore but did not think she needed to go to the doctor. The claimant's shift was finished and she went to Jack's Restaurant and met her friends for breakfast.

The claimant returned to work the next day but had a bad headache and was sore and stiff. The claimant had two days off and returned to work about May 26, 2004. According to the claimant, she talked to Sgt. Everton about her neck and back being sore and her headaches. She first saw a doctor on June 9, 2004. The claimant had a CT of her head because of the headaches and then a MRI of the lower back. The claimant participated in physical therapy for about two months and next had a MRI of the cervical area. The claimant's last doctor's visit was February 20, 2006, with Dr. Steve Bodemann.

The claimant described her current problems as more pain down the right side of her neck and shoulder area, down to right by her arm and limited use of her hands. Standing or walking or sitting too long causes her back to hurt and she has a headache each day.

Shawn Stillian, patrolman for the respondent, testified that he arrived as backup to the claimant on May 22, 2004, and he assisted in handcuffing a suspect. A scuffle ensued and all three parties were on the ground at one point, but the suspect was successfully subdued and placed in the vehicle for transporting to booking. Mr. Stillian

testified that he saw the claimant had abrasions on her hands but she did not mention other injuries to him.

Larry Williams, desk sergeant for the respondent employer in May 2004, testified that the claimant did casually mention to him that she had gotten into a scuffle with a suspect and had injured her hands. A formal report was not made by the claimant. Mr. Williams advised that the policy is to send the person to City Hall to complete a workers' compensation claim.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant case, the claimant has proved by a preponderance of the evidence that she did sustain a compensable injury arising out of and in the course of her employment on May 22, 2004. The claimant presented a credible account of an incident involving a scuffle while making an arrest. The claimant's account was

corroborated by the back up officer Shawn Stillian. The claimant presented to Dr. C.W. Peebles on June 9, 2004, with headaches and low back pain and x-rays of the lumbar and cervical spine were made. Dr. Steve Bodemann, in his May 9, 2005, deposition explained the “straightening of the cervical spine,” as noted in the June 9, 2004, report, as follows:

That’s an objective finding. That usually gives us an indication that patients have a significant amount of muscle spasm as it causes the vertebrae to line up rather than the normal curvature that we would expect to see there. (D., p. 6, lines 20-23.)

Dr. Bodemann was asked about the August 16, 2004, evaluation of the claimant and he elaborated:

On her follow up on that occasion when I did evaluate her, she had a significant amount of muscle spasticity in her cervical spine as evidenced by decreased range of motion and pain with range of motion. And with a six to seven degree rotation, which is about two-thirds ( $2/3$ ) to three-fourths ( $3/4$ ) of what we would expect to be normal on range of motion. (D., p. 10, lines 1-7.)

Dr. Bodemann further outlined his treatment:

At that point in time, we, I initiated physical therapy and because of the increase in spasm that she’d had again started her on some, on additional anti-inflammatory regimen and anti-spasmodics. (D., p. 10, lines 11-14.)

The contemporaneous medical reports provide the objective findings required by Ark. Code Ann. §11-9-102(16).

The medical evidence indicates the claimant first sought treatment on June 9, 2004, with Dr. Peebles and has continued to see Dr. Bodemann with the last medical record being January 31, 2005. The claimant has undergone some diagnostic testing

and some conservative treatment, to include some physical therapy but has not seen a specialist at the time of the hearing. Since the claimant has prevailed on proving she sustained a compensable injury, I also find the respondents are responsible for the reasonable and necessary medical treatment the claimant has pursued from June 9, 2004, through at least January 31, 2005. See, Ark. Code Ann. §11-9-508.

The claimant next contends that she is entitled to temporary total disability benefits from June 15, 2004, to a date to be determined. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in her healing period, she is entitled to temporary total disability. *Id.* The healing period is defined as that period for healing of an injury resulting from an accident. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Crabtree, supra*. The question of when the healing period has ended is a factual determination for the Commission.

In the present case, the claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to work from June 14, 2004 through at least May 9, 2005. The medical evidence supports the claimant's contention that she remained in her healing period and was unable to work during that

time frame. While the last medical report in evidence is a MRI on January 31, 2005, Dr. Bodemann testified in his May 9, 2005, deposition that without further treatment, he found the claimant to be disabled for the present time. The claimant has not returned to work; however, there was not admitted into evidence medical records beyond January 31, 2005.

Respondents have contended the statute of limitations bars the claim. Ark. Code Ann. §11-9-702 provides a claim shall be filed within two years from the date of the compensable injury or it will be barred. I find the claim is not barred by the statute of limitations. The claim was filed within two years of the injury and judicial notice was taken of a Form AR-C filed on August 2, 2004. Further, the claim was previously set for a hearing but taken off the docket for more medical discovery. The claim has been in the hearing process since late 2004.

### **ORDER**

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment. Respondents are responsible for reasonable and necessary medical treatment the claimant has pursued from June 9, 2004 through at least January 31, 2005. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from June 15, 2004 through at least May 9, 2005. The claim is not barred by the statute of limitations.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be

paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

---

**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**