

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502661

CAROLYN GADDY,
EMPLOYEE

CLAIMANT

GALAXI C STORES, INC.,
EMPLOYER

RESPONDENT

TECHNOLOGY INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 10, 2006

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Searcy, White County, Arkansas.

The claimant was represented by HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 25, 2006 in Searcy, Arkansas. A prehearing order was entered in this case on January 31, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. The parties will stipulate that the Commission has jurisdiction over this claim.
2. The employee-employer-carrier relationship existed on January 8, 2005, and at all times pertinent to this claim.
3. The claimant sustained a compensable wrist injury.
4. Mr. Wilson's office never received notice of any appointment for the claimant with Dr. Hixson from either Mr. Murray or from his client.

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

1. Continued care and treatment for wrist injury.
2. Controversion.
3. Attorney's fees.

The record consists of the April 25, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

In the present case, the claimant sustained an admittedly compensable wrist injury on January 8, 2005. The claimant received treatment, including a cast on the wrist. When the claimant's symptoms did not resolve, the claimant ultimately received a change of physician to Dr. Marcia Hixson.

Documentary evidence in the record indicates that Dr. Hixson saw Ms. Gaddy on August 2, 2005 and recommended that Ms. Gaddy obtain an MRI of the right wrist to determine the cause of her continued pain and stiffness. Ultimately, Dr. Hixson's office got approval for the MRI from the respondents' third-party administrator. Dr. Hixson's office scheduled an MRI and a follow up appointment without speaking directly to the claimant to confirm her availability. Clearly however, efforts were made to contact the claimant in order to assure her attendance at the scheduled MRI and follow-up office visit with Dr. Hixson, both to occur on September 13, 2005. The claimant did not attend the scheduled MRI or the scheduled follow-up office visit with Dr. Hixson.

The claimant testified that she did not receive notice of the follow-up appointment which Dr. Hixson's office scheduled on her behalf. Her former employer, Carolyn Layne, testified that she spoke with the claimant on August 30, 2005 and provided her notice of the MRI and follow-up appointment which Dr. Hixson's office had scheduled. The respondents' attorney explained at the hearing that the respondents are denying additional medical treatment in this case on the grounds that Ms. Gaddy has been non-compliant

for having failed to attend the follow-up doctor's office visit and MRI.

For my part, I first note that the respondents are required by law to promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with an injury received by the employee. See Ark. Code Ann. § 11-9-508. I note that a serious dispute of fact exists as to whether or not Ms. Gaddy received timely notice for the appointments which Dr. Hixson's office made on her behalf. I further note that in her September 26, 2005 letter to Mr. Wilson, Dr. Hixson indicates that she would be happy to see Ms. Gaddy back, and I note that Mr. Murray acknowledged at the hearing that the respondents have not been billed for either the MRI appointment or the office visit which Ms. Gaddy did not attend. I further note that at least by September 26, 2005, Mr. Wilson was attempting to contact Mr. Murray in order to reschedule the additional testing which Dr. Hixson had previously proposed.

Under these circumstances, I am not persuaded that the claimant has either abandoned her proposed medical treatment or intentionally engaged in non-compliant behavior. As far as I can tell, the respondents have not been financially prejudiced by the claimant's lack of attendance at the

scheduled MRI and office visit in September of 2005, and the respondents have cited me to no legal authority, nor am I aware of any such authority, which would indicate that the respondents should be relieved of their duty to provide additional reasonably necessary medical treatment under these circumstances. Consequently, I find that the respondents are liable for additional reasonably necessary medical treatment in this case, including but not limited to an MRI and at least one follow-up visit with Dr. Hixson.

Because the claimant's injury occurred after July 1, 2001, I'm without authority to award a controverted attorney's fee on the additional medical benefits awarded herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee-employer-carrier relationship existed on January 8, 2005, and at all times pertinent to this claim.

3. The claimant sustained a compensable wrist injury.

4. Mr. Wilson's office never received notice of any appointment for the claimant with Dr. Hixson from either Mr. Murray or from his client.

5. The claimant is entitled to additional reasonably necessary medical treatment for her admittedly compensable wrist injury, including but not limited to the MRI previously proposed by Dr. Marcia Hixson, and at least one follow-up visit with Dr. Hixson following that MRI.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge