

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306632

DEBRA KIRKWOOD, EMPLOYEE

CLAIMANT

AREA AGENCY ON AGING, SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION FILED MARCH 7, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 20, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On October 25, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The testimony of Debra Kirkwood, the claimant, and Jill Johnson, coupled with medical reports and other document comprise the record in this claim.

DISCUSSION

Debra Kirkwood, the claimant with a date of birth of February 6, 1957, is a high school graduate. Claimant commenced her employment with respondent on November 18, 1997, as a transportation driver.

Claimant is a resident of Blytheville, Arkansas. The testimony of the claimant reflects that her job duties in the employment of respondents entailed transporting patients to and from doctor appointments in Jonesboro and Memphis and returning them to their homes. Claimant was furnished a vehicle, van, by respondent.

Claimant asserts that as a result of a June 10, 2003, work-related motor vehicle accident she suffered injuries which continue to require medical treatment and renders her incapacitated from engaging in gainful employment. In the describing the mechanics of the June 10, 2003, accident, claimant's testimony reflects:

I was on the interstate coming back from Denwood, Arkansas, and I was in a wheelchair van, and that - it was a - we had to all - everybody had to merge to the left-hand side because they were working on the right-hand side. At that time, the back tire blew out and I had trouble trying to get it to - if I tried to get me the middle of the grass, it wouldn't have worked, so I had to try to get it over to the right. There was an 18-wheeler behind me. At that time, I seen smoke and fire and stuff as we was trying to tug and pull, and I finally got it over in there. They had the orange barrels and they had concrete, and I ran into all of that. (T. 9-10).

The testimony of the claimant reflects that the vehicle she was driving at the time of the accident was a Chevrolet Astro van, handicapped equipped for wheelchairs. Claimant was alone in the vehicle at the time of the accident having dropped off a wheelchair patient. Claimant testified that she was one mile from Burdette at the time of the accident.

Claimant asserts that as a result of the accident she suffered injuries to her neck, and her

left shoulder, which ultimately required surgery due to a torn rotator cuff. The testimony of the claimant reflects that she first sought medical treatment for her injuries under the care of Dr. Collins, her primary care physician in Osceola, and was directed him to get in touch with the company doctor because injuries were work-related. Claimant asserts that she notified her supervisor, Kay Greenway, of her injuries the same day of the accident. Claimant further testified:

Well, nobody told me nothing to do. They just told me to - Glenn Ray came and got the car and another transportation driver brung me home and the next day I got up - I couldn't move. So, I went and dropped some fo the people off and went straight to the doctor and about 10 o'clock, they called and I called them and told them I was at the doctor's office. So, Dr. Collins, he gave me the medication and the massager, you know, cause he said I had pulled a lot of muscles, and around about 1:00 or 2:00, they called and said that I needed to get up right now and get right up, get up right now and go to Dr. Marcus, cause Dr. Marcus wanted to see me, so I told them that I was full of medications, could they send someone, and they told me no. At the time, I didn't have nobody to take me there. That's how I wound up with the - it's on that pink paper - I can't think - insubordination.

Cause they said that I didn't - abide by their rules, but . . . on the 16th of June, they sent me to a doctor.

I went to see Dr. Lack on the 16th

Dr. Lack - I got a urinalysis test and that was it, and then I came - I kept hurting, so I called Kay again and she told me - she sent me back to him, and he told me to get it straight and get it straight right now that the only thing that was supposed to have been done was a urinalysis and a urinalysis only, with no evaluation.

Kay Greenway called him and that's when I - he told me the medicine he gave me - he told me to go back to work and drive with my left hand. (T. 15-16).

Claimant maintains that she was informed by her supervisor, Ms. Greenway, that she could not

operate the vehicle while she was taking medication. Claimant noted that the pain was such that she could not function with the medication. The testimony of the claimant reflects that as a result of the afore she was referred to Dr. Terrance Braden by Ms. Greenway.

Claimant asserts that Dr. Braden arranged for her to have a MRI scan performed at Baptist Memorial Hospital in Blytheville, as well as physical therapy. Regarding the physical therapy, claimant testified:

It was about three weeks, because I could have had - I had a mass to come up so they said they couldn't stretch my neck anymore. They said the only way my neck was going to be all right, if they did the stretching, so I allowed for them to do that, so my pain would stop, but then this mass came up there full of water, so they sent me back to Dr. Collins to see was it high blood pressure or had they erupted anything, so he checked me out and stuff. He told me I could go back. I went back and I started having the dizzy spells and stuff and throwing up, so they sent me back and they said I might have high blood pressure again. So, after that, they said that they couldn't do nothing else for me because I was having too many problems.

They told me to call my adjuster, which I called her and explained to and was telling her what they was saying about the headaches and the facial pain and everything like that, and she told me that it didn't pertain to my injury, so I asked her what did she mean - she wasn't going to send me to a doctor, or what, and she stated , no. And that was the last time that I talked to her.(T. 17-18).

Claimant identified the claim adjuster as Jill Johnson. Claimant maintains that the above, which was her last contact with Ms. Johnson, occurred in August 2003.

Claimant maintains that respondent did not pay for any of her medical treatment. Claimant testified that she received a bill for the MRI of her shoulder that was performed pursuant to the directions of Dr. Braden as well as a bill from the hospital. Claimant acknowledged that she did not receive a medical bill from either Dr. Braden or Dr. Lack. Additionally, the testimony of the claimant reflects that she did receive two (2) checks of

indemnity benefits from the respondent, one of which contained an overpayment based on her earnings. Claimant testified that she did not work any following the accident.

The testimony of the claimant reflects that she received the two (2) indemnity checks over the course of a month at two week intervals. Claimants' testimony further reflects that at the time she was told by Ms. Johnson that her complaints were not related to her injury she was no longer receiving temporary total disability benefits nor was she working. Claimant testified that at that point she obtained the services of an attorney to represent her in pursuing her workers' compensation claim for benefits.(T. 20).

Regarding the developments in her claim after securing the services of an attorney, claimant testified:

After - I had him a year - almost and a couple of months or so, and every time I talked to him he was telling me that he had got with Jill and that he was going to - he was talking to the lawyers and now it was waiting on our hearing date and I kept telling him how I was hurting and stuff and everything and so he was telling me to go to Dr. Collins and get some more pain pills and stuff and I was telling him that I needed some help - there was something else wrong with me. So, after he said that Jill - since she denied me, I was allowed to go see another doctor. That's how I got Dr. Fields. (T. 21).

The testimony of the claimant reflects that she paid the cost of her office visit to Dr. Rodney Fields, in Covington, Tennessee. Regarding her medical treatment under the care of Dr. Fields, claimant testified:

Well, he had the MRI's and everything set up and everything and the next day - the next two weeks, he had took me off - I went back to him - he stated to me that I needed to go back and see - I needed to go back to work. They needed me at work. That's what he told me. So, after that I - that was it.

They put me back in physical therapy. He said, honey, you've just

got to move your neck you know, so I started moving my neck and I started having all those headaches and stuff again and throwing up and the emergency room - they took care of me. (T. 22)

Claimant testified that she was returned to Dr. Collins due to concerns about her high blood pressure while undergoing the physical therapy per the directions of Dr. Braden. Upon returning to Dr. Collins and relaying history of her complaints and symptoms x-rays were obtained. As a result of the afore, claimant maintains that she was referred by Dr. Collins to Dr. Yoa, a Blytheville orthopedic physician. Claimant acknowledged that the respondent did not pay the medical bills of her treatment under the care of Dr. Collins.

The testimony of the claimant reflects that she underwent surgery on her shoulder under care of Dr. Yoa on October 29, 2003, and that her employment was terminated by respondent on November 3, 2003. Regarding her efforts at finding work since her surgery by Dr. Yoa, claimant's testimony reflects:

I tried to do a little work and stuff, but the shoulder - I can't - Dr. Yoa said if I pick up anything over a - like a gallon of milk or anything like that, that they would have to go back into my shoulder and repair it again because he only sewed up 25% of it. (T. 11).

Claimant's testimony reflects regarding her residual symptoms attributable to her injury muscle spasms and swelling on her left side. Claimant further testified that she has pain that runs down her left arm into her fingers. Claimant testified regarding her continuing symptoms:

It's swelling and the majority of the swelling comes under here - it swells my breast, and just a muscle spasm that they said a lot of nerve damage - to have it with pains and stuff. But, I haven't seen a doctor since I had cause Dr. Yoa took care of me for that moment. At the time, I never had insurance. What I do, I go to the emergency room and they'd just give me some medication there cause I don't have insurance. They took that, too. (T. 12).

Claimant denies that she experienced any problems with her shoulder or neck prior to the June 10, 2003, accident in the employment of respondent.

The testimony of the claimant reflects that she last saw Dr. Yoa in January 2004 for a post-op check and removal of her bandage. Claimant testified that prior to the June 10, 2003, accident she suffered from stomach complaints for which she received medical treatment under the care of Dr. Collins. Claimant denies that she suffered from high blood pressure prior to the June 10, 2003, accident or afterwards.

Claimant testified regarding her actions during the June 10, 2003, accident:

After then, I was losing control. See, I thought if I could get it over to like, the grass pavement, I could be secured, you know, because that was closer. But it was oncoming traffic from the other way, so I said if I didn't get it right, I was going to run in to it, because like people was getting off work. So I said the best thing I could do is try to get it over to the right, you know, before all the other traffic behind cause I had an 18-wheeler behind me, so I kept sticking with it and it got over there - it came on over there to the right. (T. 29).

Claimant attributes her injuries to using the steering wheel during the accident:

Trying to motivate it, yeah, because see I've got all that wheelchair - I've got all that baggage - back there, you know, it was heavy equipment and when you drive one of those wheelchair vans, it's got one of these high hoods and in the back of it is nothing but heaviness because that's all you put up in there is wheelchairs, you know. It's not that light. I have had blow-outs in the Astro before, but, you know, they're just little mild where you could just go over, but with that van, that's why they have these vans you can drive, you know, and then having a blowout, too. (T. 30).

Claimant testified that she was wearing a seatbelt at the time of the accident. The testimony of the claimant reflects:

Nothing hit me. I just ran into the barrels and the concrete, you know, trying - and tugging, trying to get it over there. (T. 31).

Regarding her initial complaints attributable to the June 10, 2003, accident at the time she first sought medical treatment, claimant testified:

Well, I couldn't move my neck and my shoulder kept hurting and then across here, it kept hurting, you know, and I kept telling them something is wrong and stuff. So, they would take an x-ray or my back or of my neck and they would say there was some spurs or something like that, you know, and I kept telling them that I thought I was having a stroke, because this whole side now - I have dentures - I don't have rotten teeth in my mouth - I never have - and it feels like now I've have toothaches and stuff, you know, and, they say it's the nerve that was messed up in the left side of my face. (T. 31).

The testimony of the claimant reflects that during the accident the side of her face hit the steering wheel:

I'm trying to explain to you. When the tire blew, okay, I was on gravel and concrete, you know, concrete and gravel. The whole tire went out, so I'm trying to steer this and at the time and stuff, I'm looking back cause there's a 18-wheeler behind me and I'm seeing him going like this here. When I looked back and turned again, yes, I did - I hit my head. I had a big knot up there, you know, but I didn't think nothing of it. I just thought that, well, it's just a know, you know. I didn't know that it was going to affect me all like that - I really didn't. (T. 32).

Claimant maintains that when she went to Dr. Lack she relayed complaints of having problems with her neck and shoulders. Claimant asserts that both of her shoulders were aching, "pains coming from one side to the other". (T. 32). Contrary to the report of Dr. Lack limiting her pain to her right shoulder and arm, claimant testified:

No. This pain was coming from one side to the other. That's what I was telling him. That's when he was asking me - he asked me how did my neck feel and I told him it felt like, you know, it was stretching, and so he didn't get it, so I said well, just like a giraffe. He said, well, I wouldn't know, you know, so that's what I was telling him - the pain was rotating from both sides. I didn't know which side of my shoulder was hurting me, but both of them - it was like rotating and then it really - it got bad on my left and the side of my left face. (T. 33).

Claimant maintains that she did receive treatment relative to her neck complaint in the form of physical therapy.

Claimant acknowledged giving a statement to a claims adjuster in which she was asked what was hurt in the accident. Claimant relayed during the statement that she injured her right shoulder, neck and right side in the accident. In explaining that the surgery she had under the care of Dr. Yoa was on the left shoulder, claimant's testimony reflects:

Yes, because I didn't know where the pain - the pain would just rotate. I was having - Dr. Bickerstaff told me that I had pulled so many muscles that, you know, it was just - I needed to go see a doctor. That was at the emergency room and stuff. When they started doing - when he did the x-ray on my right shoulder, there was nothing wrong, and he said the pain - now, this is what Dr. Yoa told me - he said the pain can go from side to side, because they even tried to stick the needles up in there for, you know, to stop the aching and stuff, but it made it worse. It make it worse on my right side, see, it was on my left side, see. I still have pains with right side, but then it was - it kind of like subsides after they found out, you know. (T. 35).

Regarding the onset of problems with her left shoulder, claimant testified:

Sir, I was having problems from the first time this happened to me - when I was laying in the bed - and so I kept telling them that my neck, my shoulders was hurting me, you know, and stuff, and they was saying that well, there's nothing wrong with me neck - there wasn't nothing wrong, you know, with my shoulders and stuff. (T. 36).

Claimant denied that the physician continued performing diagnostic studies until they found something wrong:

No, the two workers' comp. - Dr. Braden and Dr. Lack - them were the ones that did that - Dr. Braden stated that I kept telling him - complaining to him about my shoulder. It's in one of his reports that I did tell him about my shoulder - that it was bothering me. (T. 36).

Claimant maintains that she was hurting "all over" following the accident. (T. 36). Claimant

concedes that she had a number of MRI's and that no other problem was identified. Claimant's only surgery has been to her left shoulder. Claimant testified with respect to the results of the surgery:

It stopped it. It stopped all that pain. It don't go from one side to the other like it used to.

My right shoulder? Yes, I do, because I do most of my lifting - this is what I do, you know. I have one arm to work with, so I have to use this arm, so, therefore, it makes it weaker - yes. (T. 37-38).

Claimant attributes her current pain in her right shoulder to overuse due to the physical limitations on her left side. Claimant's testimony reflects regarding residuals attributable to the June 10, 2003, accident:

I had pain from both sides of my shoulders - all that came and bothered that - my neck, my head, the migraines I have now - the nerve in my neck - I have all that. All that came from that. (T. 38).

Claimant testified regarding the swelling in the left side of her face:

When does it happen? It happens at any time. I can wake up and my face is swolled. If it's not swolled, it's the pulling or back here or either it's the ear - I can't hear out of it, so, or ear drops - I go see Dr. - go to emergency room and find out what's wrong - do I have a ear infection? No, it's not your ear infection - they say it's the muscles in my neck. (T.39).

Claimant acknowledged that respondent paid workers' compensation benefits relative to the June 10, 2003, accident. The testimony of the claimant reflects that while she did receive two (2) checks, she denies receiving payments through August 10, 2003. Claimant testified that she has not received anything from respondent after August 10, 2003. On August 19, 2005, claimant wrote to the Commission and requested a hearing on her claim. The testimony of the claimant reflects that between the time of her last receipt of workers' compensation benefits and the

request for a hearing she had been talking with an attorney.

Claimant testified that she later learned that the attorney had never filed her claim with the Commission:

Yes, that's right. I didn't find that till after that, you know, because, like I was saying, I had called to talk to another lawyer and he was saying that I shouldn't be - they should be helping me and stuff like that. I explained it to him and so then, that's when I called and tried to talk to him and stuff. He didn't know nothing about me. He couldn't even tell me about my case or anything, but, as I got papers back - what he sent me back and telled that I had to pay him, I found out that him and Jill was communicating real good, but he couldn't tell me nothing. He was telling me that we was going to Court. See, he got away from under them and he's talking to the lawyer - we're ready for Court and stuff. It's over a year-and-a-half that I have no income. I'm losing stuff, you know. I'm still hurt, but then I'm supposed to - what was I suppose to have did?

I filed a claim after I found out that he didn't. I filed it myself. (T. 40-41).

Claimant's testimony reflects that she filed a complaint against her former attorney:

Yes, I did, because I - yes, I did, because this is what he was telling me - he was lying to me. He told me that we was going to Court. He told me that we were going - that he was going to send me to a neurologist and he didn't. And I sit there and I hurted. (T. 41).

Claimant asserts that at the time she was released by Dr. Yoa on January 12, 2004, she was told she was as good as she was going to get. Claimant further testified regarding her release by Dr. Yoa:

Yeah, that's what he told me. He said I could do another surgery, but he told me just pretend that he just did like, set the arm up there, because if I mess this up, they're going right back in my arm again and I don't want that to happen no more because I feel if they had of caught that and stuff, that I probably would have been more better off and then I could have been working. I ain't never sat on my tail like this here and stuff. I've worked all my life. I had stuff. I always have had stuff. I never tried to use nobody to get nothing. (T. 42).

The testimony of the claimant reflects that prior to the termination of her employment by respondent she had group health insurance. Claimant is uncertain if any of her medical bills were paid by the group health insurance carrier.

The parties stipulated that if called to testify Mr. Courtney Mullins, the claimant's son, and Ms. Velma Jefferson, would provide testimony corroborative of the claimant with respect to her physical difficulties since the June 10, 2003, accident, as well as her inability to work and earn wages.

Ms. Jill Johnson, a six year employee of the third party administrator of respondent, testified that she handled the claimant's June 10, 2003, claim. Ms. Johnson's testimony reflects that workers' compensation benefits were paid to and on behalf of the claimant relative to the June 10, 2003, accident. Ms. Johnson maintains that temporary total disability benefits were paid to the claimant through August 10, 2003. Ms. Johnson's testimony reflects that any bills paid relative to the claimant's claim after August 10, 2003, was for date of services prior to August 10, 2003. Thereafter, Ms. Johnson testified that she closed her file.

Ms. Johnson testified that after she closed her file regarding the claimant's claim she received a letter from an attorney, Tom Mickle, who wanted a copy of the claimant's medical records. Ms. Johnson's testimony reflects that the afore was provided to the attorney. Ms. Johnson testified that if Mr. Mickle filed a Form C on behalf to the claimant she was not aware of it nor did she receive a copy of it.

Ms. Johnson testified that she had no indication that there was any claim being made by the claimant prior to August 19, 2005. Regarding a telephone conversation that she had with the claimant following the claimant's complaints of head, neck and shoulder pain growing out of

physical therapy and the relatedness of same to the June 10, 2003, accident, Ms. Johnson responded:

Well, what I always say, and I have to assume that I said this to you because what I always say is, that doesn't sound like that's related. If you want to go check it out, we will reconsider it if the doctor says it's related, but I can't authorize it prior to knowing whether or not it's related, because you were talking about your blood pressure, you thought you had an ear - you thought you might have an ear infection, and in that conversation, those were the two things you told me, and that's when I said, well, I can't authorize treatment for that, but if you get there and get it checked out and you find out that it's related, we will reconsider paying those bills. (T. 51).

Ms. Johnson testified that the bills of Dr. Michael Lack and Dr. Terrence Braden were paid by respondent. Ms. Johnson's testimony reflects that while she is not certain if the claimant completed the physical therapy which was recommended by Dr. Braden, the cost of same should have been paid pursuant to the workers' compensation program of respondent because both Dr. Lack and Dr. Braden were authorized under the workers' compensation claim.

The testimony of Ms. Johnson reflects that respondent paid eight (8) weeks of temporary total disability benefits to the claimant relative to the June 10, 2003, accident. Further, Ms. Johnson testified that the claimant was released by Dr. Braden as having reached maximum medical improvement in a report of August 10, 2003. The report reflected that the claimant would have no permanent impairment and was released to return to work.

Ms. Johnson's testimony reflects that she did not handle the claimant's claim from its inception but only after it became a lost-time claim resulting in the payment of indemnity benefits. Ms. Johnson testified that she was not aware that the claimant had undergone surgery under the care of Dr. Yoa:

No. I knew she was going to see Dr. Yoa, because I believe

either in a conversation or a - with her attorney - or in a letter - he had told me that he had told her not to go see Dr. Yoa because he was unauthorized, but I didn't know that she had ever gone. That was the only mention of Dr. Yoa I had in my file. (T. 53).

Ms. Johnson testified that she last had any communication with the claimant on August 10, 2003.

Ms. Johnson added that she received notice of the claimant's representation by Mr. Mickle on August 13, 2003.

The evidence in the record reflects that a Form N, Employee's Notice of Injury, was completed by the claimant on June 11, 2003. Claimant listed "neck arm right side" as the parts of her body injured in the accident. (CX. #1). On June 11, 2003, claimant received a "written warning" for failing to follow the policy of respondent-employer regarding work-related injuries because she failed to keep an appointment with a physician selected by her supervisor. (CX. #1).

The evidence in the record reflects that the claimant was seen by Dr. Michael Lack pursuant to the directions of respondent on June 16, 2003. A urine sample was collected during the June 16, 2003, visit. There is no evidence to reflect that medical treatment was rendered to the claimant relative to complaints growing out of the June 10, 2003, accident during the June 16, 2003, visit to Dr. Lack.

The medical evidence in the record reflects that the claimant was seen by Dr. Lack on June 25, 2003. The office note relative to the visit reflects, under a description of the injury:

PT states that she went to physical therapy yesterday and that wasn't good. She states that she went to the ER last night because her neck and shoulder was hurting really bad. She states that the Dr. in the ER told her that all the muscles in her neck were messed up. She states that she had a pulling pain in her neck and shoulder. She states that the pain was on both sides of her neck. She states that the Darvocet constipates her and she was constipated, having sever pain in her stomach. She states that the Skelaxin only works for about 3 hours, then she is right back where

she started. She is not taking the Vioxx, because it makes her sick to her stomach. She states that she is having severe headaches. She states that none of the medication she was given here works for her. She states that she needs an MRI or referred to someone that will hep her. (CX. #1)

Following the June 25, 2003, visit, claimant was released to return to work “left handed job only”.

A Certification of Health Care Provider authored by Dr. S.R. Cullom, the claimant’s primary care physician, reflects that the claimant’s complaint of “cervical strain” had an onset of August 6, 2003. The document further reflects that the claimant was referred to a neurologist on September 3, 2003. (CX. #1).

The evidence in the record reflects a Family and Medical Leave Request that was signed by the claimant on October 22, 2003. The request was for eight (8) weeks of leave while claimant undergo surgery on her left shoulder. That part of the document completed by the claimant’s primary care physician, Dr. S R Cullom, reflects the onset of the claimant’s complaints of pain and numbness in the left shoulder as September 29, 2003. (CX. #1).

On October 29, 2003, claimant underwent left shoulder surgery under the care of Dr. Joseph M. Yoa, a Blytheville, Ark., orthopedic surgeon. The pre-operative diagnosis of the claimant’s complaint is reflected as “left shoulder impingement syndrome”. The post-operative diagnoses were left shoulder impingement syndrome, left shoulder rotator cuff tear involving the under surface supraspinatus tendon, and left shoulder labral tear. The operative report relative to the claimant reflects, in pertinent part:

46 year left handed black female, patient of Dr. Collum. Bilateral shoulder pain since 6/10/03 auto accident. Continued pain despite subacromial steroid injections, NSAID medications, rehab exercises. 10/16/03 MRI left shoulder demonstrated a prominent medial acromion extending inferior

to the distal clavicle. . . . (CX. #1).

The evidence reflects that the claimant filed a grievance against her former attorney with the Supreme Court Committee on Professional Conduct on or about August 22, 2005, relative to the handling of her workers' compensation claim. The filing reflects that the claimant secured the services of her attorney on August 13, 2003. In her letter to the Supreme Court Committee of Professional Conduct claimant noted that she terminated the services of her attorney on November 19, 2004. (CX. #2).

There is no evidence in the record to reflect that the claimant requested a hearing in her claim prior to August 19, 2005. Further, the record does not reflect that a hearing was requested in the claimant's claim during the time that she was represented by an attorney.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriated statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 10, 2003, the relationship of employee-employer existed between the parties.
3. On June 10, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$174.00/\$154.00, for temporary total/permanent partial disability.
4. On June 10, 2003, the claimant sustained an injury to her left shoulder, as well as her neck and right shoulder, arising out of and in the course of her employment.

5. Respondent last paid compensation benefits to or on behalf of the claimant relative to the compensable June 10, 2003, accident on August 10, 2003. A claim for additional benefits growing out of the June 10, 2003, accident, was not filed with the Commission until the August 19, 2005, hearing request of the claimant.

6. The present claim for additional workers compensation benefits growing out of the June 10, 2003, compensable accident is barred pursuant to Ark. Code Ann. §11-9-702 (b) (1).

CONCLUSIONS

On June 10, 2003, the claimant suffered injuries in a motor vehicle accident in the employment of respondent which were accepted as compensable, and for which workers' compensation benefits were paid. Claimant asserts entitle to additional workers' compensation benefits. Respondent denies the compensability of the claimant's claim for benefits based on a lack of objective medical finding to substantiate an injury, and a bar to the claim based on the statute of limitations.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence.

Ark. Code Ann. §11-9-102 (4)(A)(i) (Repl. 2000).

In the instant claim, claimant was employed by respondent as a driver from November 18, 1997, through her June 10, 2003, motor vehicle accident. The occurrence of the June 10, 2003, accident is not disputed, nor is there a dispute regarding the mechanics of the accident. There is no evidence, medical or otherwise, to reflect that the claimant experienced difficulties, limitations, or restrictions relative to her neck or upper extremities prior to the June 10, 2003, motor vehicle accident. Further, it is clear from the evidence in the record that the claimant successfully discharged her job duties without complaints prior to June 10, 2003.

The credible evidence in the record reflects that the claimant did not encounter any disciplinary complaints in the performance of her job duties or regarding the policies of respondent prior to June 10, 2003. Claimant received a written warning from respondent-employer when she failed to attend a doctor appointment which was scheduled by her supervisor under unreasonable circumstances. Claimant was on medication and unable to drive when she received the directions from the supervisor, who declined to furnish transportation.

Claimant received medical treatment from sanctioned medical providers for complaints growing out of the June 10, 2003, compensable accident. Further, respondent paid eight (8) weeks of temporary total disability to the claimant relative to her compensable injuries. Claimant was released to return to work by Dr. Terence Braden on or about August 5, 2003.

Respondent last paid workers compensation benefits to the claimant on August 10, 2003. The credible evidence in the record reflects that while the claimant continued to register complaints attributable to the June 10, 2003, accident, she was informed by the representative of respondent that the complaints were not related to the accident and that respondent would not pay

for further medical treatment. Thereafter the claims adjuster closed her file regarding the claimant's claim. After her file was closed, the claims adjuster received a August 13, 2003, letter for an attorney representing the claimant requesting a copy of the claimant's medical records. While the claimant's attorney was furnished the requested medical records there is no evidence that a Form C was filed on behalf of the claimant by her attorney.

Although respondent terminated the payment of workers' compensation benefits to and on behalf of the claimant on August 10, 2003, the evidence reflects that claimant treated with several physicians thereafter. Claimant was seen by Dr. Rodney Fields, a Memphis neurosurgeon, and pay the cost of the office visit. Claimant was also seen by her primary care physician, Dr. S.R. Cullom, who referred her to Dr. Joseph M. Yoa, a Blytheville orthopedic surgeon. Dr. Yoa performed surgery on the claimant's left shoulder on October 29, 2003.

The evidence reflects that the claimant's employment was terminated by respondent on November 3, 2003. Claimant acknowledged that respondent did not pay any of the medical bills relative to her treatment after her release by Dr. Braden in August 2003, nor did she receive any indemnity benefits after August 10, 2003.

The testimony of the claimant reflects that she terminated the services of her attorney on November 19, 2004. Claimant asserts that she wrote to the Arkansas Workers' Compensation Commission and requested a hearing in her claim on August 19, 2005. Claimant maintains that prior to that time she was under the impression that her attorney had filed everything and was waiting for a hearing date.

Ark. Code Ann. §11-9-702 (b)(1) provides, in pertinent part:

(b) Time for Filing Additional Compensation .

(1) In cases where any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation, or two (2) years from the date of injury, whichever is greater.

In the instant claim the evidence preponderates that respondent accepted as compensable the injuries of the claimant growing out of the June 10, 2003, accident, and paid medical benefits on behalf of the claimant as well as indemnity benefits to the claimant. Accordingly, the August 19, 2005, hearing request of the claimant was for additional benefits.

The evidence reflects that at the time claimant secured the services of an attorney on or about August 13, 2003, she was no longer receiving workers' compensation benefit.

Respondent, through its third party administrator, had been informed that claimant had been released to return to work without restrictions by Dr. Braden on or about August 10, 2003.

Further, the evidence reflects that claimant had been informed by the claims adjuster, Ms. Johnson, that respondent would not pay for further medical treatment. There is no evidence to reflect that a hearing was requested by the claimant or on her behalf following the August 10, 2003, decision by the respondent.

The evidence reflects that the claimant terminated the services of her attorney on or about November 19, 2004. Claimant had undergone surgery relative to her left shoulder under the care on Dr. Yoa on October 29, 2003, and her employment had been terminated by respondent on November 3, 2003. Nevertheless a Form C was not filed by her or on her behalf, nor was a hearing requested in her claim prior to August 19, 2005. The greater of the limitations periods set forth in Ark. Code Ann. §11-9-702 (b) (1) barred the claimant's claim subsequent to June 10, 2005, two (2) years from the date of injury. The claimant's claim for additional benefits relative

to the June 10, 2003, compensable accident is barred by the statute of limitation. This claim is respectfully dismissed and denied.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge