

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308055 & F308056

BRANDY LETTERMAN,  
EMPLOYEE

CLAIMANT

EATON CORPORATION,  
EMPLOYER

RESPONDENT NO. 1

OLD REPUBLIC INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

**OPINION FILED OCTOBER 19, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE JASON WATSON, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 were represented by HONORABLE WILLIAM FRYE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on August 2, 2006 in Mountain Home, Arkansas. A prehearing order was entered in this case on January 6, 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 at the start of the hearing and are hereby accepted:

1. The employer-employee-carrier relationship existed on June 23, 2003 and June 30, 2003, and at all times pertinent hereto.
2. The claimant sustained a compensable injury which was accepted by the respondents.
3. That on that date the claimant was earning wages sufficient to be entitled to a temporary and total disability rate of \$260.00 per week and a permanent partial disability rate of \$195.00 per week.
4. The respondents have paid medical totaling \$11,413.39 and four days of temporary total disability benefits.
5. The respondents also paid out \$4,388.00 in permanent impairment based on a 5% rating from Dr. Varela. However, the respondents are not accepting the 5% rating.
6. Any further benefits are controverted.
7. The 5% impairment rating is also now controverted.

8. The respondents have not paid for any of the claimant's education received since her injury.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

Claimant:

1. Additional medical.
2. Wage loss disability.
3. A controverted attorney's fee.

Respondents No. 1

1. Additional medical.
2. Wage loss.
3. Attorney's fees.
4. Permanent impairment rating.

Respondent No. 2:

1. Claimant's entitlement to additional medical treatment.
2. Benefits for permanent impairment.
3. Wage loss.
4. Attorney's fees.

The record consists of the two volume August 2, 2006 hearing transcript and the exhibits contained therein. In addition, I have blue-backed to designate as part of the

record without objection Mr. Frye's August 7, 2006 letter and the eight pages of medical reports which he attached from Dr. Rick Jones.

### **DISCUSSION**

The claimant testified that she became employed at Eaton Corporation in approximately August of 2002. She worked in the rubber plant on eight-hour shifts packaging rubber. On June 23, 2006, Ms. Letterman became injured at work when she was struck in the head by a piece of equipment. On June 30, 2006, Ms. Letterman became injured at work when she fell on an oily floor. Ms. Letterman bid out to a night position in the hose plant in July or August of 2003 working three 12-hour shifts per week.

Following her work injuries to the head and back, Ms. Letterman was treated or evaluated in 2003 by Dr. Burnett, Dr. Adkins and his associates, Dr. Oliver, and Dr. Foster. According to the medical reports in the record, Dr. Burnett released the claimant to full duty work on December 12, 2003. Dr. Foster, an orthopedic specialist, released the claimant to full duty on December 11, 2003, and proclaimed her at maximum medical improvement on January 29, 2004.

In early 2004, the claimant continued to work at Eaton and treated with her family physician, Dr. Adkins, and with

a Mountain Home chiropractor, Dr. Lediner. In April of 2004, the claimant was working full time at Eaton and also began attending classes full time in Springfield, Missouri to complete course work for a medical office assistant diploma. In May of 2004, the claimant took a medical leave of absence from Eaton on the advice of a treating chiropractor in Springfield, Dr. Maria Carter.

The claimant testified that she completed her medical office assistant's diploma in 2004, and that she was terminated by Eaton prior to her contacting them as scheduled on April 6, 2005. The claimant testified that she went to work at Boyers Telecom between June and July of 2005, and that she has also worked at Express Personnel doing various small jobs. In addition, the claimant testified that, after taking a break from school, she returned to school in April of 2006 to become a certified medical assistant.

The claimant testified that the respondents terminated her medical care after April of 2004 when she asked for financial assistance for training toward a job that she felt that she was physically able and capable of performing. The claimant explained that she came under Dr. Carter's care in

April of 2004 in Springfield and paid for Dr. Carter's treatment with her own money and insurance.

In the present claim, the claimant seeks an award of additional medical treatment after the respondents terminated her medical care. In addition, Dr. Charles Varella performed an independent medical evaluation of the claimant on May 26, 2004, and assigned Ms. Letterman a 5% impairment rating to the whole body for her lumbar spine. The claimant seeks a finding that she sustained a compensable permanent anatomical impairment and an award of permanent wage loss benefits in excess of her permanent anatomical impairment.

**1. Additional Reasonably Necessary Medical Treatment**

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). Injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Ark. Code Ann. § 11-9-705(a) (3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924

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S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, Full Workers' Compensation Commission, Opinion filed July 14, 1993 (E107391). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In addition, the Full Commission explained in Wells v. Wal-Mart Associates, Full Workers' Compensation Commission, Opinion filed May 22, 2002 (W.C.C. No. F100849):

[W]e note that an injured worker is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). However, we note that the presence or absence of ongoing objective pathology can be a relevant factor.

In the present case, I find that the claimant has failed to prove by a preponderance of the credible evidence that any medical treatment in this case was reasonably necessary after Dr. Foster pronounced her diagnosed back

sprain injury at maximum medical improvement as of January 29, 2004.

In this regard, although the claimant currently seeks additional benefits for a back injury that occurred on June 30, 2003, I note that the claimant was also seen at her physician's office three days *earlier*, on June 27, 2003, with a history at that time of "aggravation of her lumbar pain." A year earlier, on June 10, 2002, the claimant's Mountain Home medical records indicate that the claimant had been treated by a Springfield physician, Dr. Jones, with narcotic medication, that the claimant requested medication refills, and Dr. Adkins' associate in Mountain Home refused to refill OxyContin in 2002 without further documentation of her problem.

After the June 30, 2003 fall at work, the claimant received treatment for her head and back in 2003 in the form of medication, physical therapy, and diagnostic testing including x-rays and MRIs. Notwithstanding the claimant's complaints of pain and also numbness at times purportedly going down both legs, the only low back abnormality identified in an MRI performed on October 23, 2003 was a probable small facet cyst on the right posteriorly at L3-4, which Dr. Oliver indicated on October 28, 2003 would not

cause the symptoms the claimant was reporting. On November 12, 2003, Dr. Foster interpreted the MRI as "unremarkable" and gave his impression that the injury was a lumbar sprain.

After Dr. Foster pronounced maximum medical improvement on January 29, 2004, the claimant followed with her family physician, Dr. Adkins,, with chiropractor Wolfgang Lediner, and with chiropractor Maria Carter. Their treatment included narcotic pain medication and attempts at therapy.

Chiropractor Gary Martin performed a Peer Review on April 28, 2004. His report concluded that the claimant had reached maximum medical improvement, that the effects of the lumbar strain injury had resolved, and that additional treatment would not be reasonable and necessary. As discussed above, Dr. Charles Varela, an orthopedist, examined the claimant and performed an independent medical evaluation on May 26, 2004. Dr. Varela recommended against the claimant's chronic use of narcotic medication and concluded that the claimant had reached maximum medical improvement, although Dr. Varela did assign a 5% impairment rating based on range of motion testing of the claimant's lumbar spine. Finally, I note that Dr. Darin Wilbourn also performed an examination and independent medical evaluation on January 26, 2005. Dr. Wilbourn's records reference a

lumbar CT myelogram performed on November 15, 2004, which Dr. Wilbourn's report states showed "mild spinal stenosis at L2-3 and L3-4." Dr. Wilbourn opined that the claimant should discontinue the use of narcotic pain medication, that the claimant has reached maximum medical improvement, and that the claimant has unlimited physical capabilities.

In summary, the claimant's treating orthopedist, Dr. Foster, concluded that the claimant sustained a lumbar sprain injury which reached maximum medical improvement on January 29, 2004. The diagnostic tests identified in the record and the independent medical evaluations and peer review in the record persuade me that Dr. Foster's opinions are not based on any mistake of material fact and should be accorded great weight. Based on the opinions of Dr. Foster, Dr. Varela, Dr. Wilbourn and Dr. Martin, I find that the claimant has failed to establish by a preponderance of the evidence that any additional medical treatment after her release by Dr. Foster on January 29, 2004 was reasonably necessary for treatment of her compensable lumbar sprain injury.

## **2. Permanent Impairment and Wage Loss Disability**

The Arkansas Court of Appeals thoroughly discussed the requirements necessary to establish an entitlement to

benefits for a permanent anatomical impairment in Excelsior Hotel v. Squires, 83 Ark. App. 26, 115 S.W.3d 823 (2003).

First, benefits for permanent impairment must be based on an impairment rating using the AMA Guides to the Evaluation of Permanent Impairment (4<sup>th</sup> ed. 1993). The Commission may review the Guides even if the Guides are not in the record, and the Commission may determine its own impairment rating under the Guides, rather than simply assessing the validity of impairment ratings assigned by doctors. Avaya v. Bryant, 82 Ark. App. 273, 105 S.W.3d 811 (2003).

Second, benefits for permanent anatomical impairment shall be awarded only if the claimant's compensable injury is the major cause of the impairment at issue. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). The provisions of Ark. Code Ann § 11-9-102(4)(F)(ii)(b) do not apply in determining a claim for permanent anatomical impairment. Michael v. Keep & Teach, Inc., 87 Ark. App. 48, \_\_\_ S.W.3d \_\_\_ (2004). Major cause means more than 50% of the cause. Ark. Code Ann. § 11-9-102(14).

Third, a determination of the existence and extent of physical impairment must be supported by objective and measurable physical findings. Ark. Code Ann. § 11-9-

704(c) (1) (B). "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16) (A) (i). When determining the permanent physical impairment, neither a doctor nor the Commission may consider complaints of pain. For purposes of assigning impairment ratings to the spine, straight-leg-raising tests and range-of-motion tests do not qualify as objective findings. Ark. Code Ann. § 11-9-102(16) (A) (ii).

In the present case, Dr. Varela appears to have assigned the claimant a 5% permanent anatomical impairment based on abnormal motion of the lumbosacral region applying Table 81 of the AMA Guides to the Evaluation of Permanent Impairment (4<sup>th</sup> ed. 1993). However, Arkansas Code Annotated § 11-9-102(16) (A) (ii) (b) specifically provides that

For the purpose of making physical or anatomical impairments to the spine, straight-leg-raising tests or range-of-motion tests shall not be considered objective findings.

Therefore, I find that Dr. Varela's rating is not supported by objective findings. After reviewing the entire record, I find that the claimant has failed to establish the existence of any permanent impairment caused by her compensable sprain injury with objective findings. The claimant's attorney asserted at the hearing that MRIs and

CTs in the record show structural changes which can form the basis for an impairment rating under the Guides. As discussed, diagnostic tests results contained or referenced in the record do objectively establish the presence of spinal stenosis and the presence of a facet cyst in the claimant's lumbar spine. However, the claimant has failed to establish by a preponderance of the evidence that these objective findings are associated in any way with her compensable lumbar sprain injury.

In addition, in light of the claimant's documented chronic back pain prior to June 30, 2003, and the presence of her facet cyst and lumbar stenosis, the claimant has also failed to establish that her compensable lumbar strain injury is the major cause of any anatomical impairment present in her lumbar spine.

Consequently, for the foregoing reasons, I find that the claimant has failed to establish that she has sustained any degree of compensable permanent physical impairment from her admittedly compensable back injury. In addition, the Arkansas Courts have stated that, in order to be entitled to any wage loss disability in excess of permanent physical impairment, a claimant must first prove by a preponderance of the evidence that the claimant sustained compensable

permanent physical impairment as a result of the compensable injury. Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 278, (1998). Because the claimant in the present case failed to prove by a preponderance of the evidence that she sustained a compensable permanent physical impairment, the claimant's claim for wage loss disability must also be denied in its entirety.

I also find that, in light of applicable Commission precedent, the wage loss disability issue raised by the claimant was not presented and decided prematurely. As I understand applicable precedent, where as here the claimant pays for her own education after a work injury, the claimant is not constrained to await the completion of that education before requesting and receiving a hearing on wage loss disability benefits. Walter F. Kreihn v. Piggly Wiggly, Full Workers' Compensation Commission, Opinion filed October 22, 1996 (E016463).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer-employee-carrier relationship existed on June 23, 2003, on June 30, 2003, and at all times pertinent hereto.

2. The claimant sustained a compensable injury which was accepted by the respondents.

3. The claimant was earning wages sufficient to be entitled to a temporary total disability compensation rate of \$260.00 per week and a permanent partial disability compensation rate of \$195.00 per week.

4. The respondents have paid medical totaling \$11,413.39 and four days of temporary total disability benefits.

5. The respondents also paid out \$4,388.00 in permanent impairment based on a 5% rating from Dr. Varela. However, the respondents are not accepting the 5% rating.

6. Any further benefits are controverted.

7. The 5% impairment rating is also now controverted.

8. The respondents have not paid for any of the claimant's education received since her injury.

9. The claimant has failed to prove by a preponderance of the credible evidence that any medical treatment in this case was reasonably necessary after Dr. Foster pronounced her diagnosed back sprain injury at maximum medical improvement as of January 29, 2004.

10. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable permanent anatomical impairment. Specifically, the claimant has failed to establish the existence of any

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permanent impairment from her compensable back sprain injury with objective findings. In addition, the claimant has failed to establish that her compensable lumbar sprain injury is the major cause of any anatomical impairment present in her lumbar spine.

11. Because the claimant in the present case failed to prove by a preponderance of the evidence that she sustained a compensable permanent physical impairment, the claimant's claim for wage-loss disability must also be denied in its entirety.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied in its entirety.

**IT IS SO ORDERED.**

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**MARK CHURCHWELL**  
Administrative Law Judge