

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513485

CHRISTINA MCCLUNG,  
EMPLOYEE

CLAIMANT

FULTON COUNTY NURSING REHAB CENTER,  
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
TPA

RESPONDENT

**OPINION FILED NOVEMBER 30, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Batesville, Independence County, Arkansas.

The claimant was represented by HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

The respondent was represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 5, 2006 in Batesville, Arkansas. A prehearing order was entered in this case on July 27, 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 in the prehearing order and are hereby accepted:

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

2. The employee-employer relationship existed on June 11, 2005, and at all relevant times.
3. The claimant sustained admittedly compensable injuries to her shoulder and chest on June 11, 2005.
4. The respondents controvert any claim for a neck or back injury allegedly sustained on June 11, 2005.

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

1. Compensability of alleged cervical injury.
2. Additional medical treatment (including MRI of neck).
3. Attorney's fees.

The record consists of the September 5, 2006 hearing transcript and the exhibits contained therein.

### **DISCUSSION**

#### **1. Background**

The respondent has accepted liability for admittedly compensable injuries to the claimant's shoulder and chest that occurred on June 11, 2005, as a result of moving a resident. The claimant explained that her chest burned a little after moving the resident, and she filled an incident

report. By the next day, she felt like she had pulled muscles to her back.

The claimant treated at the Fulton County Hospital Emergency Room on June 14, 2005, and later came under the treatment of Dr. Jeffrey Angel, an orthopedist who performed and ordered testing, and prescribed physical therapy. In addition to Dr. Angel's treatment prescribed for the claimant's shoulder, Dr. Angel ordered an MRI of the claimant's cervical spine on November 30, 2005, which the respondent refused to authorize.

The two issues necessitating the scheduled September 5, 2006 hearing were (1) whether the claimant in fact sustained a cervical injury on June 11, 2005 and (2) whether an MRI of the claimant's neck was reasonably necessary medical treatment. At the start of the September 5, 2006 hearing, the claimant sought to withdraw her request for a hearing seeking a cervical MRI, and to instead refer this matter for a change of physician for her thoracic/shoulder girdle injury. The respondent objected to canceling the September 5, 2006 hearing, absent an agreed order dismissing the cervical injury claim with prejudice. I took the claimant's motion under consideration and directed the parties to

present their evidence on the remaining hearing issues to avoid possible piecemeal litigation.

**2. Claimant's Motion for Voluntary Dismissal Without Prejudice Made at the Start of the September 5, 2006 Hearing**

The Commission has previously interpreted the granting or denial of a motion for voluntary dismissal as a discretionary matter. Bertha Marie Cox v. Town & Country Discount Foods, Full Workers' Compensation Commission Opinion filed November 3, 1987 (W.C.C. No. D514450). Arkansas Code Annotated § 11-9-705(a) provides that the Commission may conduct the hearing "in a manner as will best ascertain the rights of the parties." The prehearing order which I filed on July 27, 2005 provided, in part, that a request to cancel a hearing must establish good cause for the cancellation.

The claimant's attorney explained his client's request to cancel the hearing as based on the claimant's current desire to abandon her request for authorization for a cervical MRI at this time, and as an alternative to a hearing, to seek a change of physician for her admittedly compensable shoulder injury instead. (T. 4). However, the claimant was not willing to permanently abandon her claim for a possible cervical injury. (T. 5-6). Under these

circumstances, I find that the claimant has failed to provide me good cause for canceling the September 5, 2006 hearing whose primary purpose was to determine the merits of her claim for an allegedly cervical injury, which she was unwilling to abandon with prejudice.

### **3. Compensability of Alleged Cervical Injury**

To prove the occurrence of 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: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find that the preponderance of the evidence presented at the hearing establishes that the claimant did not experience a cervical injury, in addition

to her compensable shoulder and chest injuries on June 11, 2005 while moving a resident with a co-worker.

I note that Dr. Angel's clinic notes in the record reflect his impression throughout his treatment of a left shoulder rotator cuff syndrome. The claimant, a registered nurse at the time of the September 5, 2006 hearing, testified that she would prefer to see a different doctor who listens to her. The claimant explained that her problem is in her muscle, not the joint. (T. 16). The claimant testified that when Dr. Angel ordered an MRI of the cervical spine on November 30, 2005, she was not having any kind of problems in her cervical spine at that time. (T. 14). To the extent that Dr. Angel's report reflected a decreased right lateral flexion in cervical range of motion that day, the claimant testified "I didn't know I was having any trouble with that." (T. 20).

Dr. Angel's November 30, 2005 report also references pain radiating into the patient's arm in addition to neck pain. When question at the September 5, 2006 hearing about her arm and hand, the claimant testified that her arm and hand do go numb, and that this can happen when she is just driving. (T. 16). The claimant testified that she does not

know if she ever had this problem before June of 2005, but she does not recall having it before June of 2005. (T. 22).

Finally, the claimant testified at the September 5, 2006 hearing that her treating physical therapist had performed therapy on her neck, and had advised her that she had knots on her neck. (T. 19). Although the therapist's letters to Dr. Angel make no specific reference to the claimant's neck or cervical spine, I note that on October 21, 2005, the therapist did record that the claimant displayed muscle spasms that day after treatment and required gentle stretch and massage after treatment. (Jt. Exh. 2 p. 6).

In summary, as the claimant's attorney noted at the September 5, 2006 hearing, Dr. Angel did not explain in November of 2005 why Dr. Angel was requesting a cervical MRI. Nor did Dr. Angel ever indicate that the claimant sustained an injury to her cervical spine or neck in the incident on June 11, 2005. Furthermore, the claimant, a registered nurse, did not identify in her September 5, 2006 hearing testimony any medical complaints in her arm, shoulder, hand, or neck, which she attributes to any possible neck injury occurring on June 11, 2005. To the contrary, the claimant seems determined that she has

sustained a muscle injury in an area that she describes below her neck, and her conviction appears to me consistent with her therapist's letter to Dr. Angel dated in the hearing record as October 31, 2005. (Jt. Exh. 2 p. 19). Consequently, the preponderance of the credible evidence in the record indicates that the claimant did not sustain a neck or cervical spine injury on June 11, 2005. Under these circumstances the preponderance of the evidence establishes that the cervical MRI proposed by Dr. Angel in November of 2005 is not reasonably necessary for the claimant's work related injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee-employer relationship existed on June 11, 2005, and at all relevant times.
3. The claimant sustained admittedly compensable injuries to her shoulder and chest on June 11, 2005.
4. The respondents controvert any claim for a neck or back injury allegedly sustained on June 11, 2005.
5. The claimant failed to provide good cause at the start of the September 5, 2006 hearing to cancel the September 5, 2006 hearing.

6. The claimant's motion for a voluntary dismissal without prejudice made on September 5, 2006 is respectfully denied.

7. The claimant has failed to establish by a preponderance of the evidence that she sustained a compensable neck or cervical injury on June 11, 2005. Therefore, the claimant has also failed to establish by a preponderance of the evidence that the cervical MRI proposed by Dr. Angel in November of 2005 is reasonably necessary for treatment of the claimant's work related injury.

**ORDER**

For the reasons discussed herein, this claim for additional benefits for an alleged neck injury must be, and hereby is, respectfully denied. If the claimant desires a change of physician from the Commission, the claimant's attorney is directed to contact the Commission's Medical Cost Containment Division to proceed on that request.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge