

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F500358**

**RUTH ROWLAND, EMPLOYEE** **CLAIMANT**

**REMINGTON ARMS COMPANY, EMPLOYER** **RESPONDENT**

**AMERICAN HOME ASSURANCE CO./  
GALLAGHER BASSETT SERVICES (TPA),  
INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED FEBRUARY 28, 2006**

Hearing before Administrative Law Judge Cynthia Estes Rogers on November 30, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

A hearing was held on November 30, 2005, to determine the compensability of claimant's alleged mental injury as well as her entitlement to temporary total disability (TTD) benefits under Ark. Code Ann. § 11-9-113(b)(1).

The parties stipulated to a compensable hand injury that occurred on January 7, 2005. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$379.00 for temporary total disability and \$284.00 for permanent partial disability benefits, based on an average weekly wage of \$567.92. The parties additionally stipulated at the hearing that claimant's salary was

continued through April 13, 2005, and that all appropriate medical expenses were paid through that time period. They further stipulated at the hearing that claimant was offered a light-duty, one-arm job by respondents.

Claimant modifies her contentions noted in the prehearing order filed October 17, 2005, to assert simply that she sustained a mental injury as a result of her compensable hand injury of January 7, 2005, and that she is entitled to treatment for her mental injury, as well as TTD benefits under Ark. Code Ann. § 11-9-113(b)(1), and attorney's fees. She requests that all issues with regard to her hand injury (*i.e.*, additional medical treatment and/or issues of permanency) be held in abeyance.

Respondents controvert the claimant's alleged mental injury in its entirety. Respondents contend that they initially accepted the hand injury, that claimant was released on restricted light duty, which respondents had available but which claimant refused, and that claimant has received all benefits to which she is entitled. Respondents controvert claimant's entitlement to any further medical treatment for her alleged mental injury as neither being reasonable nor necessary in connection with her compensable hand injury of January 7, 2005, and controvert claimant's entitlement to TTD benefits under Ark. Code Ann. § 11-9-113(b)(1).

### **STATEMENT OF THE CASE**

Claimant testified that she is a thirty-two-year-old highschool graduate. She testified that she began working for respondent-employer on June 7, 2004, as a

ballistics tester, or “gunner.” Claimant testified that a ballistics tester, “gunner,” tests the ammunition to make sure it is the correct accuracy, velocity, and pressure for the public. Claimant testified that she had prior experience in dealing with guns, which is why she was initially hired by respondent-employer.

The facts were undisputed that on January 7, 2005, claimant sustained an injury to her left hand while performing her duties as a ballistics tester for respondent-employer. She testified as follows:

I put the shell in the chamber and loaded the magazine. When I closed it and put the protective shield down and pulled the trigger, it exploded.

She testified that she pulled the trigger with her right hand, then the gun exploded, tearing the forearm of the gun “completely up.” She stated, “It was no longer left.” However, she testified that, although she pulled the trigger with her right hand, she sustained injury to her left hand. She admitted that she was wearing safety glasses, earplugs and ear mufflers, as well as safety gloves at the time of injury. Claimant was shown a pair of safety gloves at the hearing, which she identified as the very gloves she was wearing at the time of the accident. She admitted that there was absolutely no damage to the gloves.

She testified that she was taken to the hospital emergency room and was subsequently seen by Dr. John Slater, a hand specialist. The parties stipulated at the hearing that claimant’s salary was continued through April 13, 2005, and that all

appropriate medical expenses were paid through that time period. They further stipulated at the hearing that claimant was offered a one-arm, light-duty job by respondents.

The respondents' offer of this job was purportedly based on Dr. Slater's report releasing claimant to return to a light-duty, one-arm job; however, claimant testified that Dr. Slater's release of February 8, 2005, indicated the job should be in an office setting, where it would be quiet, but that the job she was offered was out in the plant, where she would have to wear ear plugs and ear muffs. Claimant testified that she could not remember who offered her the job because she was "real upset that day," but she remembered that someone had called her on the phone about the job and that she had to have her husband call them back.

Carolyn Douglas, company nurse for respondent-employer, testified that she contacted claimant and told her to come out to the plant. Ms. Douglas testified that they were planning to put claimant to work in the office area, which is completely away from the other area, and have work brought to her. Claimant did not show back up for light duty with respondent-employer, and was eventually terminated from respondent-employer on July 29, 2005. Instead of returning to the light duty position offered to her, claimant began seeing Dr. Joe Bradley, a psychiatrist, for nightmares and "flashbacks" she was allegedly experiencing.

Claimant testified that Dr. Slater had already suggested that she see, and had referred her to, Dr. Bradley, but that it was not until that day that she was “real upset” that she wound up making an appointment to see Dr. Bradley. She began seeing Dr. Bradley on February 10, 2005. Dr. Bradley has kept her off work due to her psychological condition which he deems to be post-traumatic stress disorder. Dr. Bradley has continued to see claimant and prescribed medication to her. Claimant testified that Dr. Bradley conducted no tests; rather, he simply listened to claimant talk and discuss her history and prescribed medication.

In a letter written by Dr. Bradley to Dr. Slater on February 10, 2005, Dr. Bradley stated as follows:

I saw Ms. Rowland on for an initial evaluation on February 10, 2005. After reviewing her history and her symptoms, and performing a mental status examination, she has been confirmed to have a diagnosis of post traumatic stress disorder, acute, severe. She was placed on Paxil 20mg at bedtime and a follow-up visit was scheduled for a week or two, (2/23/2004 at 10:10.) Hopefully, this will be approved as she has had a pretty severe reaction to the stress she experienced, and at this point I am not able to predict when she will be well enough from a psychiatric standpoint to return to work. If any further information is necessary, please do not hesitate to contact me.

Dr. Bradley made no mention of or reference to any issue of the Diagnostic and Statistical Manual of Mental Disorders, in regard to his diagnosis of claimant’s condition.

Claimant testified both in her deposition and at the hearing that the treatment she has received from Dr. Bradley has not really helped her. She testified, “It’s not getting any worse, but it’s not getting better.” She admitted in her testimony that she would discuss many things with Dr. Bradley besides her work-injury experience of January 7, 2005, including her nightmares, her relationship with her children and her husbands. She admitted that she has had problems with personal relationships. She testified that she has had two husbands but has been married three times – twice to the same husband. She admitted that she had experienced some tragedies in her life where one of her step-sons committed suicide and another son had some health problems requiring hospitalization.

On February 18, 2005, according to the medical records, Dr. Slater wrote to Dr. Bradley, expressing concern that claimant was “calling in for a lot of hydrocodone.” He asked if Dr. Bradley would be comfortable managing claimant’s medications. A clinic note from Dr. Slater of March 1, 2005, states that Dr. Bradley “is going to manage the phychotropic drugs but not the pain medication.” Dr. Slater referred claimant to Dr. Lovett for pain management but kept her in physical therapy.

Dr. Bradley’s notes indicate that claimant is tearful, shows signs of depression and anxiety, that she fears loud noises and has nightmares of being killed, which she claims she did not have prior to the January 7, 2005, incident. Dr. Bradley’s notes, as well as claimant’s testimony, indicate that she has trouble even leaving her house

and no longer is able to do and enjoy many things she did before. She testified that her husband is disabled and that their only source of income has been her son's survivor benefits. She admitted that a number of the things she claims she can no longer do are because of her hand injury, however, and not because of any alleged "flashbacks" of the incident.

Respondents requested an independent medical evaluation (IME) from Dr. Winston Wilson, which was conducted on March 17, 2005. Claimant admitted that Dr. Wilson visited with her briefly and put her through various different tests in order to make his evaluation. His notes reflect that the following tests were conducted: the Hooper Visual Organization Test (HVO); the Bender-Gestalt (B-G); Trails A and B, the Wechsler Memory Scale (WMS); the Minnesota Multiphasic Personality Inventory (MMPI-2); the Symptom Check-List 90 -R (SCL-90-R); and the Million Behavioral Health Inventory (MBHI). Claimant admitted that as of the date of the hearing, her condition was about the same as it was when Dr. Wilson did his evaluation.

Dr. Wilson's findings indicated no significant post-traumatic stress syndrome. His findings further indicate that it appeared to him that claimant was being less than truthful and malingering, based on the testing. His notes state as follows:

I recommend that she follow Dr. Slater's recommendations to return to work, light-duty, one-handed. *I expect her compliance level to be low and remain that way.* I recommend that her current

psychotherapeutic relationship with Dr. Bradley be shortened and termination be made within the next 4 weeks. *I believe Mrs. Rowland is using her therapy as a delaying factor in her rehabilitation. I do not believe that she is experiencing the degree of psychological disturbance that she is reporting.*

[Emphasis added.] Dr. Wilson's notes indicate that claimant has a low desire to return to any type of work. He states:

*She said that she was comfortable with Dr. Bradley, that she had no idea how long it would take her to go back to work, that the (sic) never considered getting a lawyer, and that she had no idea what kind of work she might be interested in pursuing. I pointed out (several times) that she was only 31 and had to (sic) children and a disabled husband to support, but these areas did not seem to be core concerns.*

[Emphasis added.] Claimant denies being untruthful with Dr. Wilson and further denies that he ever mentioned her returning to work.

Following claimant's evaluation by Dr. Wilson, Dr. Slater ceased prescribing narcotics for her problem. Claimant continued seeing Dr. Bradley and testified that he has been seeing her for free, pending the outcome of this case. Claimant admitted that in May of 2005 she saw Dr. Bradley and discussed her ten-year-old son losing his father, as well as her step-son's suicide. She also discussed having gone to Toad Suck Days in Conway with her family. She admitted that in June of 2005 she discussed with Dr. Bradley her concern over having to give a deposition. On July 5, 2005, she went back to Dr. Bradley and discussed how it made her feel to have to have her

neighbors take her children to see the fireworks on the 4<sup>th</sup> of July, rather than her taking them herself as she always had in the past.

Claimant testified that she “sometimes” cries when discussing what happened to her on January 7, 2005, at respondent-employer. She admitted that she did not even tear up at the deposition of this matter, when discussing the accident. She stated, “[I]t seemed like it was just a tape recording, just playing back what actually happened like a robot.”

Claimant testified that her last visit with Dr. Bradley was on September 8, 2005. Claimant testified that she is only on two medications now, to be taken at night to help her sleep. She admitted that even though she is now only taking two of the many medications she was on previously, as she can now no longer afford the other medications, her condition has “stayed about the same.” She admits that she is not returning to work for respondent-employer, as she was terminated there for not returning to the available light duty, and that she has not filled out any applications for any other employment. She stated, “I have looked in the newspaper at the different types of employment,” but she has not applied for anything.

Claimant admitted that she has had made previous workers’ compensation claims for various alleged work-related injuries in the past, including an alleged knee injury, as well as an abdominal strain. She testified that she settled those cases. She

also admitted that she had been terminated from her previous job for missing too many days.

### **FINDINGS OF FACT**

1. The stipulations agreed to herein by the parties are accepted as fact;
2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that her alleged mental injury is compensable.

### **DISCUSSION**

Arkansas Code Annotated § 11-9-113 states, in pertinent part, as follows:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) *No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.*

(b)(1) Notwithstanding any other provision of this chapter, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits.

[Emphasis added.]

In this case, Dr. Bradley makes no mention in his diagnosis of claimant's condition of any issue of the Diagnostic and Statistical Manual of Mental Disorders.

Moreover, claimant testified that Dr. Bradley conducted no tests, but rather just listened to her history, as she explained it to him, made a diagnosis, and prescribed medication to her. Furthermore, claimant testified that no treatment with Dr. Bradley or medication prescribed by him has really helped her.

In contrast, claimant admitted that Dr. Wilson conducted a number of varying tests and interviewed her in order to make his evaluation. The evidence of record further reveals that claimant has had a number of personal tragedies and personal problems in her life, including failed relationships and outside stressors such as financial problems, which have clouded the diagnosis, in this examiner's opinion.

A claimant must prove by a preponderance of the evidence that medical treatment is reasonably necessary in connection with any compensable injury. *See Cox v. Aeroquip*, Full Workers' Compensation Commission Opinion filed September 10, 2003 (F010474). Further, the Arkansas Court of Appeals has held that evidence as to whether or not a claimant's symptoms improve post treatment is a relevant factor in deciding whether the treatment is reasonable and necessary. *See Hill v. Baptist Medical Center*, 74 Ark App. 250, 48 S.W.3d 544 (2001). Clearly, in this case, claimant has admitted that her treatment with Dr. Bradley has not really helped her. Furthermore, she also admitted after not having seen Dr. Bradley since September and only now taking two of the numerous medications she was on previously, her condition has "stayed about the same" and has not worsened.

Notwithstanding, because Dr. Wilson's diagnostic testing revealed symptom magnification and malingering, this calls into question the claimant's credibility in this case. After considering the claimant's history and credibility, as well as her testimony that any treatment she has received for her alleged mental injury has ultimately not really been helpful, it is this examiner's opinion that she has failed to meet her burden of proof by a preponderance of the evidence of record. As such, this case is respectfully denied and dismissed as to the issues regarding claimant's alleged mental injury.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge