

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM. NO. F508492

KRISTIE J. THRASHER, EMPLOYEE

CLAIMANT

ARK. DEPT. OF CORRECTION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER

RESPONDENT

OPINION FILED NOVEMBER 28, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 15, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On June 27, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date 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 same. The Pre-hearing Order is herein designated Commission Exhibit #1. The testimony of the claimant, coupled with medical reports and other documents along with DVD surveillance comprise the record in this claim.

DISCUSSION

Kristie Thrasher, the claimant, with a date of birth of September 25, 1973, is a high school graduate, who commenced her employment with respondent on July 1, 2001. Prior to working for respondent claimant was employed by Wackenhut when they had the contract with the Arkansas Department of Corrections. Claimant's duties and responsibilities remained the same after Wackenhut lost the contract.

The claimant was employed at the Newport facility of respondent for a period of approximately six and a half (6 ½) years, which covered her employment by Wackenhut and the Department of Corrections. Once the contract of Wackenhut ended claimant reapplied and was employed by respondent on July 1, 2001. Claimant performed the job duties as a Long line rider, which entailed guarding prisoners while riding a horse.

Claimant acknowledged being written up, from a disciplinary standpoint, on one occasion for abuse of sick leave. Claimant explained that the doctor had her off work on sick leave and she went out of town.

The testimony of the claimant reflects that prior to the July 22, 2005, incident, which serves as the basis for the present claim, she had been diagnosed with a herniated disc in her neck and received medical treatment for same. Regarding the prior neck complaint, the claimant's testimony reflects regarding her symptoms:

My left side and my left shoulder, this is like my shoulder blade was giving me some pains and I went to the doctor, and that's when he found the ruptured disk. That's all, I mean my neck nerve hurt. (T. 29).

Claimant explained that she went to the doctor because she was having pain in her left shoulder blade, however she did not recall suffering an injury or incident to bring on the symptoms.

Claimant received medical treatment for the left shoulder/arm symptoms, which was later diagnosed as a “ruptured disk” under the care of Dr. Chan, an Searcy neurosurgeon, in the form of three (3) steroid injections in the neck, the last of which was had in early June 2005.

The testimony of the claimant reflects that the only time she missed from work as a result of the prior neck complaint was when got the injections. Additionally, claimant notified respondent-employer that she was going to the doctor for injections for a ruptured disk. Claimant testified that the treatment was effective and that she was released by Dr. Chan and informed that she did not have to return. Claimant considered herself healed. Claimant denies that she had any problems with her neck or arm between the time of her release and the July 22, 2005, incident.

In describing the July 22, 2005, incident which serves as the basis for the present claim, claimant testified:

I arrived at work and when I arrived at work, I as getting on a horse. When I was mounting my horse, my foot got stuck in the stirrup on the saddle. And the saddle slipped sideways, and the horse started to rear up and acting wild. And I was trying to restrain him and hold him with my stirrup, with my reigns. And just got him calmed down. But to the best of my knowledge, somebody assisted me helping him to calm down. (T.11).

On cross examination, claimant’s testimony reflects regarding the incident:

Just that - - the horses are already saddled for us when we get to work, and the saddle was not tightened. So when I put my foot in the stirrup, the saddle turned sideways. And the horse was already acting up before they even put the saddle on him for me to ride him that day. And just when I put my foot in the stirrups and tried to mount, the saddle went sideways, and he just acted like he got spooked and was going to rearing up and going crazy. So I just tried to hold on and keep him from going out. (T. 16).

The testimony of the claimant reflects that she did not realized until later the evening of July 22, 2005, that she had been injured in the incident when she felt in her right arm. In addition to telling supervisory personnel of her injury claimant noted that they were present at the time of the incident. Claimant filled out an accident report regarding the July 22, 2005, incident.

Regarding the medical treatment growing out of the Friday, July 22, 2005, incident, the testimony of the claimant reflects that she was off work beginning Tuesday, July 26, 2005, and directed by respondents to see Dr. Jerry M. Frankum. Claimant was seen by Dr. Frankum on July 27, 2005, during which time diagnostic studies were ordered. Claimant was later referred by Dr. Frankum to Dr. Ronald N. Williams, a Little Rock neurosurgeon.

The credible testimony of the claimant reflects that at the time of her initial visits with Dr. Frankum and Dr. Williams regarding the July 22, 2005, incident she disclosed her prior diagnosed ruptured disk injury and the medical treatment received relative to same. Further, the testimony of the testimony of the claimant reflects that the symptoms growing out of the July 22, 2005, incident were right shoulder and arm pain. While Dr. Frankum obtained x-rays and an MRI scan of the claimant 's cervical spine, he did not discuss the results of the tests with the claimant, but rather referred her to Dr. Williams. Claimant first learned that she had a neck or disk complaint attributable to the July 22, 2005, incident during her August 16, 2005, visit to Dr. Williams.

Respondents terminated the claimant's employment based on an assertion that she made a false statement when she filed her workers's compensation claim growing out of the July 22, 2005, incident. Specifically, respondents maintained that in responding in a August 8, 2005, statement that she had never had any other condition or injury involving the same part of the

body prior to the July 22, 2005, injury the claimant provided a false answer which warranted termination. As noted above, at the time of the August 8, 2005, statement the claimant's symptoms were pain in her right arm and shoulder. Claimant was not informed by Dr. Frankum the source of her symptoms was a herniated disk in her cervical spine. The claimant had disclosed to respondents that she was receiving steroid injections due to a ruptured disk when she had her left arm/shoulder symptoms prior to the July 22, 2005, work-related incident. Claimant did not learn that her right-sided arm and shoulder symptoms were the product of a herniated cervical disk until August 16, 2005.

Claimant last work for respondent on July 26, 2005. Following her July 27, 2005, visit to Dr. Frankum for complaints growing out of the July 22, 2005, incident, claimant was take off work and referred to Dr. Williams, a neurosurgeon. On September 1, 2005, claimant underwent surgery under the care of Dr. Patrick Chan for the herniated cervical disk. Claimant was released to return work by Dr. Chan on or about October 1, 2005.

Following her October 1, 2005, released to return to work by Dr. Williams, claimant filed for and received unemployment benefits until April 2006. Claimant later secured employment through a temporary employment agency, Manpower, and at the time of the hearing was assigned to duties a at Searcy manufacturer, Kohler.

The medical in the record reflects that on April 7, 2005, the claimant was seen at the McCrory Family Clinic with a complaint of having pulled something in her left shoulder and neck. (RX. #1, p. 1). An MRI scan of the cervical spine was obtain on May 4, 2005, pursuant to a referral by the claimant's primary care physician, Dr. Fred Wilson. The May 4, 2005, MRI scan disclosed a herniated disc at C5-C6 on the right. (RX. #1, p. 2). Claimant was referred by

Dr. Wilson to Dr. Patrick Chan, a Searcy neurosurgeon, following the May 4, 2005, MRI. The claimant's treatment under the care of Dr. Chan consisted of three (3) steroid cervical injections.

There is no evidence in the record to reflect that the claimant continued to complain of neck, upper extremity, or shoulder complaints following the third injection and release by Dr. Chan. Further, there is no evidence to reflect that the claimant was off work due to neck, shoulder, or upper extremity complaints between early June 2005, and July 22, 2005. Finally, there is no evidence in the record to reflect that the claimant was off work between early June 2005, and July 22, 2005, or that she encountered restrictions or limitation on her regular employment duties.

The occurrence of the July 22, 2005, work-related incident is not disputed. There is no a disputed regarding the presence of supervisory personnel of respondents at the time of the July 22, 2005, incident. On Tuesday, July 26, 2005, claimant was seen by respondents' designated medical provider, Dr. Jerry Frankum, for complaints of right arm pain which she attributed to the July 22, 2005, incident involving the horse at work. The July 26, 2005, report of Dr. Frankum reflects that while the July 22, 2005, incident occurred in the morning, the claimant had used a heating pad on it. The report also reflects that the claimant relayed a prior history of a ruptured disk in her neck for which she had received three steroid shots. (CX. #1, p. 5).

The claimant was again seen by Dr. Frankum on July 27, 2005, with complaints of right arm and shoulder pain. (CX. #1, p. 3). As a consequence of the afore, Dr. Frankum arranged for the claimant to have x-rays of her right arm and shoulder by Dr. Mufiz Chauhan. (CX. #1, p. 4). On August 1, 2005, an MRIs of the claimant's cervical spine and right shoulder were obtained at Newport Hospital and Clinic, and "a small herniated disc C5-C6 on the right side" was disclosed.

(CX. #1, p. 6-8).

The record reflect a August 2, 2005, visit by the claimant to the office of Dr. Frankum, for the results of the MRI. The report reflects a diagnosis of "neck C5-C6" and a referral to Dr. Williams. (CX. #1, p. 9).

On August 16, 2005, claimant was seen by Dr. Ronald N. Williams, a Little Rock neurosurgeon, pursuant to the above referral. The August 16, 2005, report of Dr. Williams reflects, in pertinent part:

. . . By written report I am providing this consultative opinion regarding Kristie Thrasher, who is 31 years old and right handed. She injured herself at work on 7/22/05 and has had difficulty with pain radiating from the shoulder down the right arm since. It radiates as far as the thumb and index finger. It has been quite severe. She was not having pain in her neck at the time of her injury. She brings along a MRI of the cervical spine that shows a ruptured disc on the right at C5-6.

On examining her today, she is alert, cooperative, and answers questions appropriately, although she is in a great deal of discomfort. Range of motion in the neck is moderately restricted. Gait is normal. There is no sensory deficit. Reflexes are equal with exception of the right biceps jerk and brachioradialis jerk, which are absent. There is marked weakness in the right biceps muscle and the internal rotators on the right shoulder.

Jerry, I spoke with her about therapy, and she prefers not to do that. She wants to go ahead and have surgery. That is probably not a bad idea considering the degree of motor weakness she has. We are trying to get that approved. I spoke with her about the technical aspects of an anterior cervical fusion, the possible applications, and the expectation for benefits. I will let you know how all of this goes. (CX. #1, p. 11).

In response to an inquiry from the claimant's attorney, Dr. Williams noted in a January 17, 2006, correspondence:

. . . . In her history of August 16, 2005 Ms. Thrasher answered the questions that you have asked. I am enclosing a copy of that. Basically,

Ms. Thrasher said she had some difficulty with her neck in April or May of 2000, and that was relieved by some injections. She had no further neck pain until she injured herself at work on 7/22/2005. That injury should be considered the proximate for her need for medical treatment. (CX. #1, p. 12).

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 22, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On July 22, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$376.00/\$282.00, for temporary total/permanent partial disability.
4. On July 22, 2005, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period July 26, 2005, through October 1, 2005, when she was released to return to work.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 22, 2006.
7. The respondents have controverted the claimant's entitlement to workers' compensation benefits growing out of the July 22, 2005, injury in its entirety.

CONCLUSIONS

The claimant asserts that she suffered an injury to her cervical spine within the course and

scope of her employment on July 22, 2005, which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a period of time. Claimant seeks corresponding medical and indemnity benefits growing out of the injury. Respondents take the position that there is no objective evidence of an injury on the job, and that the claim is not compensable.

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 having sustained an injury subsequent to the effective date of the afore provision. The claimant asserts a specific incident as the basis for her claim for workers' compensation benefits. 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. §19-102 (4)(i).

There is not a disputed regarding the claimant's job duties during her employment with respondent, nor is there a disputed regarding the mechanics of the July 22, 2005, incident which serves as the basis for the present claim. While the claimant was seen on April 7, 2005, for complaints of pain regarding her left shoulder, arm and neck by her primary care physician which resulted in a MRI scan of the cervical spine and a diagnosis of a herniated disc at C5-C6 as well as a referral to a neurosurgeon, there is no evidence in the record to reflect that the claimant was

taken off work as a result of the afore or suffered an incapacitation to engage in gainful employment.

The credible evidence in the record reflects that appropriate supervisory personnel of respondent were aware of the claimant herniated cervical disc and the fact that she was receiving steroid injections under the care of Dr. Patrick Chan for same. The claimant received three (3) steroid injections under the care of Dr. Chan, having received the last one in early June 2005, and was released from the care of same.

On April 7, 2005, claimant was seen by her primary care physician, Dr. Fred Wilson, and relayed complaints of having pulled something in her left shoulder and neck. An MRI scan of the claimant's cervical spine disclosed the presence of a herniated disc at C5-C6 on the right side. The afore was treated by Dr. Patrick Chan with steroid injections. A specific incident occurred on Friday, July 22, 2005, involving the claimant as she attempted to mount a horse. The claimant did not receive medical treatment for complaints growing out of the July 22, 2005, incident until Tuesday, July 26, 2005. Between the incident of July 22, 2005, and the medical visit of July 26, 2005, claimant used a heating pad to address her complaints of right arm/shoulder pain.

On July 26, 2005, the claimant was seen by respondents' designated medical provider, Dr. Jerry Frankum, Jr., in connection with her complaints growing out of the July 22, 2005, accident. In addition to relaying a history of the July 22, 2005, incident and right arm pain growing out of same, the claimant also disclosed her prior diagnosis of a ruptured cervical disk and medical treatment for same. While under the entry "Details of Abnormal Exam" Dr. Frankum's written comments are illegible he did prescribe Indocin and Flexeril for the claimant's right arm and shoulder complaint. (RX. #1, p. 3).

At the time of her July 27, 2005, return visit to Dr. Frankum claimant relayed that her right arm was throbbing and that her right shoulder was hurting. Claimant was continued on her meds and x-rays were ordered of her cervical spine, right shoulder, and right humerus. (RX. #1, p.5). The July 27, 2005, radiology report by Dr. Mufiz Chauhan, reflects, in pertinent part:

CERVICAL SPINE, FIVE VIEWS: Straightening of the cervical lordotic curve is seen. Narrowing of C5-C6 and C6-C7 disk space is seen. Prevertebral soft tissue spaces are WNL. . . .

IMPRESSION: STRAIGHTENING OF THE CERVICAL LORDOTIC CURVE INDICATING MUSCULAR SPASM.

* * *

BECAUSE OF HISTORY OF NECK PAIN AND THE RADICULOPATHY MRI OF THE CERVICAL SPINE IS STRONGLY RECOMMENDED. (CX. #1, p.2)

During a July 29, 2005, visit by the claimant to Dr. Frankum, claimant relayed that her right arm was swollen. Following his examination of the claimant during the afore visit, Dr. Frankum assessed the claimant's complaint as a strain of the right upper extremity and an MRI scan was arranged. (RX. #1, p. 6-7).

The claimant was again seen by Dr. Frankum on August 1, 2005, at which time she relayed that the swelling in the right arm had gone down, however her thumb was numb and had no strength in it.(RX. #1, p. 11). The claimant underwent the a cervical MRI scan on August 2, 2005, which again disclosed the presence of a small herniated disc at C5-C6 on the right side. (RX. #1, p. 10). Thereafter the claimant was referred by Dr. Frankum to Dr. Ronald N. William, a Little Rock neurosurgeon.

Noteworthy in the August 16, 2005, correspondence of Dr. Williams to Dr. Frankum

regarding the claimant is Dr. Williams' comment or concurrence in the claimant's decision to proceed with surgery, "probably not a bad idea considering the degree of motor weakness she has". (RX. #1, p. 13).

The employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 303 Ark. 69, 787 S.w.2d 64 (1990). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

While the claimant had in place a herniated disc at C5-C6 on the right prior to July 22, 2005, and for which she had received conservative treatment, three steroid injections in her cervical disc, the credible evidence in the record reflects that she had been released by her treating neurosurgeon, Dr. Patrick Chan, and was performing her regular duties without restrictions or limitation at the time of the July 22, 2005, incident. Subsequent to the July 22, 2005, incident claimant different symptoms and complaints which required medical treatment and resulted in her temporary total incapacitation.

Claimant experienced left shoulder and arm pain as well as neck pain which caused her to seek medical treatment on April 7, 2005, and ultimately resulted in the diagnosis of a herniated disc at C5-C6 on the right. Claimant underwent the steroid injections under the care of Dr. Chan for the afore and was released from the care of same following the third and final injection in early June 2005. Claimant did not experience further complaints or seek medical treatment until July 26, 2005, following the July 22, 2005, incident with the horse. An August 12, 2005, File

Documentation Note compiled by the claims manager of respondent recites the history of the claimant's July 22, 2005, injury as well as the claimant's appreciation of her injury following the incident. (CX. #2)

The credible medical evidence reflects that the character of the claimant's symptoms following the July 22, 2005, incident was different those following the April 7, 2005, medical treatment. Specifically, radiology findings disclosed the presence of muscle spasms in the claimant's cervical spine as evidence by the straightening of the cervical lordotic curve. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). Claimant was also prescribed Flexeril and Indocin at the time of her initial medical treatment following the July 22, 2005, incident. The claimant experienced severe pain in her right arm and shoulder, numbness and weakness in her thumb, none of which she had experienced in connection with the April 7, 2005, complaint and medical treatment.

At the time of her August 16, 2005, visit to Dr. Ronald N. Williams, the Little Rock neurosurgeon to whom she was referred by respondents' designated medical provider, Dr. Jerry Frankum, Dr. Williams concurred, based on his examination, in the claimant's decision to proceed with surgery. Further, in a January 17, 2006, correspondence Dr. Williams opined that the July 22, 2005, injury was the proximate need for the claimant's medical treatment.

Once the respondents controverted the compensability of the claimant's July 22, 2005, injury on or about August 25, 2005, she no longer had access to medical treatment under the care of Dr. Williams. Claimant returned to Dr. Patrick Chan, a Searcy neurosurgeon, who had provided medical treatment following the diagnosis of the herniated disc at C5-C6 on the right on May 4, 2005. While Dr. Chan's earlier medical treatment of the claimant had consisted of three

steroid injections, upon the claimant's return in August 2005, surgery was recommend, pursued and performed on by him, based on the symptoms presented by the claimant and the findings. The claimant has sustained her burden of proof by a preponderance of the evidence that she sustained either a new injury or aggravation of her pre-existing herniated cervical disc at C5-C6 on the right on July 22, 2005, which caused internal harm to the body requiring medical services and resulting in disability. There is medial evidence supported by objective finding establishing the injury and the injury was caused by a specific incident and identifiable by time and place of occurrence. Respondents have controverted the claimant's claim for workers's compensation benefits growing out of the July 22, 2005, injury.

The claimant was initially seen by a medical doctor in connection with the July 22, 2005, injury on July 26, 2005. Between July 22, 2005, and July 26, 2005, claimant applied a heating pad to the injury area. Upon coming under the care of a physician on July 26, 2005, claimant was not again released to return to work until on or about October 1, 2005, after she had undergone cervical disc surgery on September 1, 2005, under the care of Dr. Chan.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve the condition, the healing period has ended. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

The evidence preponderates that the claimant was temporarily totally disabled and within her healing period as a result of the July 22, 2005, compensable injury from July 26, 2005, until on or about October 1, 2005, and correspondingly entitled to the payment of temporary total disability benefits. While respondents initially accepted the claimant's July 22, 2005, claim as compensable and paid medical and indemnity benefits through the date the claim was controverted in August 2005. The respondents assert as a basis for controverting the compensability of this claim the lack of objective evidence of an injury on the job. As recited above, the record is replete with objective evidence of an injury, to include muscle spasms, prescription medication, and diagnostic studies. The respondents' controversion of the claim necessitated the claimant securing the services of an attorney in order to obtain her workers' compensation benefits. *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998).

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medial procedure or device is reasonable and necessary treatment is a question of fact. Claimant continued to require medical treatment following the respondents' controversion of the compensability of this claim. Prior to the afore Dr. Williams had recommended surgery in the treatment of the claimant's herniated cervical disc. The afore surgery was performed by Dr. Chan after respondents controverted the claim and declined to authorize further medical treatment as a workers' compensation claim. Claimant was released to return to work on or about October 1, 2005, following the September 1, 2005, cervical disc surgery. The claimant's symptoms resolved following the surgery. The medical treatment provided to the claimant by Dr. Chan and other medical providers following

the respondents controversion of compensability was reasonable and necessary and causally related to the claimant's compensable injury of July 22, 2005. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$376.00, for the period beginning July 26, 2005, and continuing through on or about October 1, 2005, as a result of the compensable injury of July 22, 2005. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the afore obligation.

Respondents are further ordered and directed to pay all reasonably necessary and related medical, hospital, nursing and other apparatus expenses growing out of the compensable injury of July 22, 2005, to include medical related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE