

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F307559

ANGELICA VELASQUEZ, EMPLOYEE

CLAIMANT

**CONAGRA FOODS, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT, TPA

RESPONDENT

OPINION FILED NOVEMBER 6, 2006

A hearing in this case was conducted on May 26, 2006, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Russellville, Pope County, Arkansas.

Claimant was represented by Laura J. McKinnon, Attorney at Law, Fayetteville, Arkansas.

Respondents were represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held in this claim on May 9, 2006. A Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to three stipulations. These stipulations are all contained in the Prehearing Order, and were confirmed by the parties at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on November 13, 2002 and at all relevant times.
2. Claimant sustained a compensable low back injury on November 13, 2002.
3. Respondents controvert additional benefits beyond medical expenses previously

paid.

At the May 26, 2006 hearing, the parties discussed the issue set forth in the Prehearing Order. The parties agreed that the sole issue to be litigated and resolved is limited to the following:

1. Whether Claimant is entitled to additional medical benefits.

Claimant contends that she is entitled to reimbursement or payment for certain additional medical treatment. Respondents argue that this medical treatment either was not authorized or was not reasonable and necessary.

DISCUSSION

At the time of the hearing Claimant was forty years of age and had worked for the Respondent employer for longer than five years. She attended school in Mexico for twelve years and testified that she could not read English very well. However, at the time of the hearing Claimant had been in the United States for nineteen years.

On November 13, 2002, Claimant slipped on some ice at work and fell on her backside. On page 9 of Respondents' Exhibit #1, there is a Form N signed by Claimant dated November 25, 2002. It states that she slipped on the ice in the freezer and injured her lower back and tailbone. Claimant was referred to the company doctor on the same date that she signed the Form N.

Claimant presented to Dr. Finley Turner on November 25, 2002. He recorded the following history:

On 11-13-02 she fell on ice and developed pain in her lower back. She has had pain ever since, it just hasn't even gotten better. She states the pain [is] in the lower back, she denies any radiation of the pain into her lower extremities. She has had no weakness in the lower extremities. She denies any numbness or other problems. She has no history of previous back

problems.

Upon examination, Dr. Turner assessed a lumbosacral strain, assigned restrictions, and started Claimant on medication. An x-ray taken at Dr. Turner's clinic that same date produced an impression of "[l]umbar curvature and narrowing of the L5-S1 disc."

Claimant continued a course of conservative treatment with Dr. Turner. A lumbar MRI performed January 6, 2003 produced an impression of "[l]eft anterior lateral disc L4-5, contained, but encroaching on the nerve root axilla." Dr. Turner opined on January 10, 2003 that "this was a nonsurgical problem and that she would do better with therapy." Claimant then began some physical therapy. On February 7, 2003, Dr. Turner recorded that Claimant was "doing very well. No problems." He found full range of motion in her back, without tenderness, upon examination; assessed a lumbosacral strain which seemed to be resolving with therapy; and released Claimant to full duty.

Claimant continued to report problems to the company nurse, and was referred to Dr. Bruce Brown on February 24, 2003. She presented to Dr. Brown on that same date, complaining of low back and right lower extremity pain. Upon examination and review of Claimant's studies, Dr. Brown recorded an impression of "[l]umbar bulging disk L4-5 with anterolateral bulge on the left, no other abnormality is appreciated with low back pain." Dr. Brown opined that Claimant could work her job if she wanted, but he did not believe it would be a good idea for her back in the long run. He recommended that she continue with her physical therapy and prescribed medication.

Claimant continued with physical therapy and conservative treatment. She underwent a nerve conduction study on March 4, 2003; the resulting impression was of a "[n]ormal study of the right lower extremity. Specifically, no electrophysiological evidence

for lumbar radiculopathy or sciatic neuropathy.” Claimant again presented to Dr. Brown on March 10, 2003, reporting that “most of her pain now is in her coccyx.” Upon examination, Dr. Brown found that Claimant had full range of motion in her back, could heel/toe walk without difficulty, and had no spasm; she was tender to palpation over the coccyx. He recommended that Claimant return to her normal job with a cushion to sit on.

Claimant subsequently decided to switch from Dr. Brown to Dr. Russell Allison. She testified at the hearing:

Q. I’ll ask another question. Did you switch from Doctor Brown to Doctor Allison?

A. Yes.

Q. Why did you do that?

A. Doctor Allison, I went there. It wasn’t the company’s doctor, but I switched because I thought the insurance would pay.

Q. Are you talking about workers’ comp insurance or group insurance?

A. My insurance, the one I pay for.

Q. Was Doctor Brown - had he released you?

A. Yes.

At the hearing, Respondents’ counsel noted that they were unaware Claimant presented to Dr. Allison, and underwent subsequent treatment, until May of 2005.

Claimant’s testimony and the medical records demonstrate that, in addition to treatment from Dr. Allison, Claimant subsequently received treatment from a community clinic, Dr. Edward Saer, Dr. Damon Martin, and a chiropractor, Dr. Notto. Among other treatment, she received physical therapy; she has not undergone a surgical procedure to treat her low back complaints. She testified:

Q. Did this treatment help - all of this treatment that we've talked about, did it make it where you were able to show up to work on a daily basis?

A. Yes.

Q. Have you been working while you've been seeing all these doctors?

A. Yes.

....

Q. Did any of the company nurses tell you that you could not go to these new doctors?

A. No.

Q. Did any other boss tell you that you could not go?

A. No.

Claimant recalled that "[t]he nurse Chris," a company nurse, took her when she presented to Dr. Saer.

Apparently, Claimant last sought medical treatment from any doctor in June of 2005. Claimant's Exhibit #1 concludes with Dr. Martin's June 10, 2005 notes; Respondents' Exhibit #1 concludes with an "off-work" slip from Dr. Martin dated June 10, 2005. At the hearing, Claimant testified that she is currently "just taking medicine at home, like Tylenol." She still owes on several bills for medical treatment and physical therapy.

As mentioned above, Claimant signed a Form N on November 25, 2002. Immediately above her signature appears the language: "My signature below also indicates that I have been provided with my rights regarding change-of-physician." Much of the testimony at the hearing concerned whether Claimant received these rights, and if so, whether she understood them. On direct examination, Claimant testified as follows:

Q. When you got hurt, who was the nurse who did the paperwork with you and sent you to the doctors?

A. Her name is Chris, but I don't remember the last name.

Q. Was it Chris Blaylock or Chris Good?

A. Blaylock.

Q. Did she have you fill out some paperwork?

A. Yes.

Q. Did anyone interpret that paperwork for you?

A. No.

Q. Did you know what you signed?

A. No. She just told me to sign the forms.

Q. Did anyone tell you that you had to get permission to go to doctors?

A. No.

Claimant also specifically testified concerning the treatment she received after her visits with Dr. Brown and her one visit with Dr. Saer.

Q. What was your understanding as to whether you were supposed to keep going back to Doctor Brown after that?

A. I didn't have to go back. Chris didn't say anything that I had to go back to Doctor Brown.

Q. What was your understanding as to whether you would have been allowed to keep going to Doctor Brown?

A. I didn't know.

Q. What did Chris tell you about whether you could get any more medical treatment at all?

A. She didn't say anything.

On cross-examination, Claimant conceded that she submitted her physical therapy bills, as well as those received from Dr. Martin, to her group health insurance. She also

conceded that she did not seek permission to see Dr. Allison, Dr. Martin, Chiropractor Notto, or to have tests done at Chambers Hospital. She confirmed that her signature appears on the Form N. She also confirmed that the company nurse, Chris, made her appointments to see Dr. Brown as well as Dr. Saer. As to the writing on the Form N, Claimant indicated that the company nurse completed the form based on information provided by Claimant. As to whether Claimant understood the company nurse, she testified on recross-examination:

Q. Did you have an interpreter present when you were talking to Chris?

A. No.

Q. Did you request that an interpreter be present?

A. No. There was no interpreters there.

Q. Did you request that an interpreter be present?

A. No.

Q. Did you tell Chris that you did not understand what she was asking you?

A. No.

Bertha Kelleybrew, an employee services supervisor, testified on behalf of Respondents. She knew Claimant; she testified that she never had any problems communicating with Claimant and that Claimant never indicated a problem understanding Kelleybrew. Kelleybrew also testified that an interpreter would have been available in November of 2002, in light of the Respondent employer's Spanish-speaking work force. She explained that Chris Good and Chris Blaylock are the same person. She addressed the procedure for returning to a doctor after an initial course of treatment:

Q. Now, if an employee has already completed the initial reporting of a work-

related injury and had the initial visits with the doctor and the claim continues on throughout the months or years, what is an employee ... supposed to do when they feel like they need to go back to the doctor?

A. Report back to the Medical Department and request an appointment.

Q. Is this information made available to the employees as to what they're supposed to do?

A. I would think that it is by the [company nurse] on staff.

On cross-examination, Kelleybrew conceded that she did not have any specific knowledge as to the availability of an interpreter in November of 2002.

Chris Good's August 17, 2005 deposition is in evidence as Respondents' Exhibit #4. She testified concerning her familiarity with Claimant's injury; she recalled that Claimant "reported that to me directly" without an interpreter. Good did not feel the need for an interpreter to be present while she spoke with Claimant, nor did Claimant ever request the presence of an interpreter. Good also testified that employees are instructed on the need to contact the medical department, should they need additional treatment. Good was aware of Claimant's treatment by Dr. Turner, Dr. Brown, and Dr. Saer; she did not know of, or authorize, Claimant's treatment by Dr. Allison or Dr. Martin.

When a claimant seeks a change of physician, she must petition the Commission for approval. See Ark. Code Ann. § 11-9-514(a)(2)(A); Sharp v. Lewis Ford, Inc., 78 Ark. App. 164, 171, 78 S.W.3d 746, ___ (2002). Ark. Code Ann. § 11-9-514(c)(1)-(3) outlines how an employer delivers a form that explains the employee's rights and responsibilities concerning change of physician.

(c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities

concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

Id.; see Sharp, 78 Ark. App. at 171, 78 S.W.3d at ___. Claimant has the burden of proving by a preponderance of the evidence that medical treatment was rendered by an authorized treating physician. See Robinson v. Green Acres Nursing, Full Workers' Compensation Commission Opinion filed September 9, 2005 (F310274). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

I find that Claimant did not sustain her burden of proving by a preponderance of the evidence that the medical treatment she received from Dr. Allison, Dr. Martin, Chiropractor Noto, and Chambers Hospital was authorized. The record reflects that Claimant signed a Form N on November 25, 2002; immediately above her signature, there is the statement: "My signature below also indicates that I have been provided with my rights regarding change-of-physician." Therefore, Claimant was notified of her rights and responsibilities with regard to the change of physician rules. See, Robinson, supra. She did not follow these rules when she sought treatment from Dr. Allison, Dr. Martin, Chiropractor Notto, and Chambers Hospital. Indeed, she conceded that she did not notify the Respondent employer that she sought this treatment; her concession is corroborated by Good's deposition. I further specifically find that there was no lack of understanding on Claimant's part: she has resided in the United States for several years, indicated a sufficient level of

understanding to Good and Kelleybrew, and did not seek the assistance of an interpreter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on November 13, 2002 and at all relevant times.
3. Claimant sustained a compensable low back injury on November 13, 2002.
4. Respondents controvert additional benefits beyond medical expenses previously paid.
5. Claimant did not sustain her burden of proving by a preponderance of the evidence that the medical treatment she received from Dr. Allison, Dr. Martin, Chiropractor Notto, and Chambers Hospital was authorized. Claimant's signature on her Form N demonstrates her knowledge of the change of physician rules. The record demonstrates that she did not comply with these rule. Therefore, Claimant is not entitled to compensation for this medical treatment.

ORDER

Based upon the Findings of Fact and Conclusions of Law recited above, the above claim is respectfully dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml