

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202082

LOIS WASHINGTON, EMPLOYEE	CLAIMANT
UNIVERSITY OF ARKANSAS, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 15, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 12, 2004 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

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

ISSUES

The Commission remanded this case to the Administrative Law Judge pursuant to their authority under Ark. Code Ann. §11-9-704(b)(7), to determine if the claimant is entitled to additional medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant suffered an independent intervening event relieving the respondents of liability for a compensable injury pursuant to Ark. Code Ann. §11-9-102(F)(iii).

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 15, 2002 at which time the claimant sustained a compensable injury at a

compensation rate of \$154.00/\$154.00. Medical expenses and temporary total disability benefits were paid until August 12, 2002. The claimant was involved in a motor vehicle accident on July 26, 2002. The claimant's group insurance carrier, Qual-Choice has paid some benefits on this claim.

The claimant injured her neck and back in a fall down a flight of stairs on February 15, 2002. After treatment she was released by Dr. Safman on August 12, 2002 with a 0% impairment. The claimant returned to work for a couple of months but remained symptomatic. Her family physician, Dr. Maxwell referred her to Dr. Ward for pain management. The claimant contends she is entitled to payment of continuing treatment with Dr. Ward and payment of medical expenses, additional temporary total disability benefits from July 8, 2002 to August 21, 2002 and from October 21, 2002 to December 12, 2003 and attorney's fees.

The respondents contend all appropriate benefits have been paid. Further treatment with Dr. Ward is unauthorized, unreasonable and unnecessary. Alternatively, the claimant's MVA on July 26, 2002 constitutes an independent intervening cause breaking the chain of liability.

The following comprise the evidence of record: The Administrative Law Judge's opinion of November 24, 2004; the Commission's opinion of August 1, 2005 and Order of June 16, 2006; the Court of Appeals decision of May 10, 2006 and correspondence from the attorney's dated June 29, 2006.

The claimant, age 60 (D.O.B. November 18, 1945) worked for the respondent-employer about one year before the accident on February 15, 2002. She was carrying a vacuum cleaner up and down the stairs when she tripped over the electrical cord and fell down ten or twelve steps. The claimant developed

headaches and pain in her neck, shoulders, back and legs.

The claimant received medical treatment at the emergency room (ER) before coming under the care of Dr. Maxwell, Dr. Simpson, Dr. Safman and Dr. Ward. Dr. Maxwell made the referral to Dr. Ward and the respondents have controverted his treatment.

The claimant returned to work at light duty from June and July and from mid August to October 21 before she was laid off work.

The claimant was involved in a MVA on July 26, 2002 and was treated by Dr. Maxwell, however, she stated she wasn't hurt. She doesn't recall mentioning the MVA to either Dr. Safman or Dr. Ward. The claimant also notified the respondent-carrier that she reinjured her back at work on August 15, 2002.

The claimant has not worked since October 2002 and remains symptomatic with pain in her shoulders and lower back.

MEDICAL EVIDENCE

After the accident at work diagnostic testing (x-rays, CT scans, an MRI scan) revealed degenerative changes in the cervical, thoracic and lumbar spines. The claimant was treated conservatively and released to return to work at light duty on May 2, 2002. She remained symptomatic and returned to her physicians for medical care in June and July, 2002.

On July 24, 2002 Dr. Safman examined the claimant with plans to reassess her condition in two weeks to determine maximum medical improvement (MMI). He found no evidence of muscle spasm or objective pathology. Two days later, the claimant was involved in a motor vehicle accident.

The claimant went to Dr. Maxwell who opined that the MVA caused a cervical

and thoracic strain but had no effect on the work-related injury. The claimant saw him again on August 2, 2002 for complaints related to the MVA and Dr. Maxwell opined that her strain had resolved, see his letter dated October 8, 2003.

The claimant then returned to Dr. Safman on August 12, 2002 with complaints of pain and an inability to work. Dr. Safman released the claimant to return to work with no permanent anatomical impairment rating.

The claimant returned to Dr. Maxwell on August 16, 2002 and August 30, 2002 with neck and back complaints. He referred her to Dr. Ward for pain management beginning October 21, 2002.

Dr. Maxwell found evidence of decline in the claimant's musculature with involuntary contractures affecting the hands, neck, arms and legs based on a physical examination. The claimant was treated with medication, physical therapy and injections for "symptomatic torsional dystonia as a direct complication in the aftermath of her February 15, 2002 falling injury." Dr. Ward assessed a 14% impairment rating on December 21, 2003 for multilevel degenerative arthritis and spondylolisthesis of the cervical and lumbar spines.

FINDINGS AND CONCLUSIONS

Under the Workers' Compensation Act, benefits are not payable for a medical condition resulting from a non work-related independent intervening cause following a compensable injury which causes or prolongs disability or the need for medical treatment, Ark. Code Ann. §11-9-102(4)(F)(iii).

The test for determining the existence of an independent intervening cause is discussed in Georgia-Pacific Corporation v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), and reaffirmed in Davis v. Old Dominion Freight Line, Inc., 341 Ark.

751, 20 S.W.3d 326 (2000), in light of Act 796 of 1998:

The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Construction Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984).

Based on the evidence of record I find the claimant has remained under the continuous care of a physician since the date of the compensable injury with unrelenting symptoms until the non work-related MVA. According to Drs. Maxwell and Ward the claimant's present symptoms are related to the compensable injury. The activity of driving a car did not exceed any physical limitations or medical restrictions. Therefore, the MVA was not unreasonable under the circumstances and does not constitute an independent intervening cause.

Accordingly, I find the claimant has met her burden of proof by a preponderance of the evidence of record and is entitled to benefits.

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed among the parties on February 15, 2002 when the claimant sustained compensable injuries in a fall at work at a compensation rate of \$154.00. Medical expenses and temporary total disability benefits were paid until August 12, 2002.
2. The activity of driving a car was not unreasonable under the circumstances of this case. The MVA was not an independent intervening cause.

3. Dr. Ward was a valid referral from an authorized physician, Dr. Maxwell. Dr. Ward's treatment was reasonable and necessary for pain management related to the compensable injury. The respondents are directed to pay Dr. Ward's medical expenses.
4. The claimant is entitled to additional temporary total disability benefits from July 8, 2002 to August 21, 2002 and from October 21, 2002 to December 12, 2003 as she remained in her healing period, unable to work.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington

Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515,
988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge