

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F502199

ANGELA ACOSTA, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT
TYNET CORPORATION, Carrier	RESPONDENT

OPINION FILED AUGUST 29, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by M. MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

On August 2, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 26, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to her low back on May 28, 2004.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment for her compensable back injury.

The claimant contends she is entitled to additional medical treatment.

The respondents contend the claimant is not entitled to additional medical treatment.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 26, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury.

FACTUAL BACKGROUND

The claimant is a 52-year-old woman who began working for the respondent on December 21, 1998 on a line breeding chicken. Claimant performed this job for approximately one and a half years before she was moved to a packing line where she was working on May 28, 2004, the date of her compensable low back injury. Claimant testified that her job required her to pack chicken into boxes. Once a box was packed she had to lift it and place it on a line. Claimant testified that the boxes weighed 11 - 19 pounds and she lifted some 15 to 20 boxes an hour.

On May 28, 2004, the claimant suffered a compensable injury to her back when she slipped and fell on a wet floor. Claimant reported the injury and was sent to Dr. Berestnev for an evaluation on June 15, 2004. Dr. Berestnev diagnosed claimant's condition as a lumbar strain. He prescribed medication and stretching exercises and released the

claimant to return to work with no restrictions. On June 25, 2004, Dr. Berestnev ordered physical therapy for two weeks. When claimant's complaints continued she underwent an MRI scan which revealed a minimal broad based disc protrusion at L4-5 with no significant neuroforamina or central canal stenosis noted. In a report dated July 21, 2004 Dr. Moffitt indicated that in his opinion claimant primarily had a muscular S1 strain. He recommended that claimant treat her condition with home exercises and lose weight. Dr. Moffitt also released the claimant to work at full duty.

At some point in 2004 the claimant sought medical treatment from Dr. Huntington, a chiropractic physician. On October 22, 2004, Dr. Huntington referred claimant to Dr. Michael Morse, neurologist, for an evaluation. In a report dated November 16, 2004, Dr. Morse indicated that his review of the MRI scan did not reveal any significant pathology and he noted that claimant had no objective physical findings. However, Dr. Morse in order to give the claimant the benefit of the doubt proceeded to order a SPECT bone study. This study was performed on January 13, 2005 and returned as unremarkable. In a report dated February 1, 2005, Dr. Morse indicated that claimant had reached maximum medical improvement and that she could return to work with no restrictions.

Claimant was subsequently evaluated by Dr. Tomlinson, an orthopaedic surgeon, who diagnosed claimant's condition as lumbar spondylosis with no signs of radiculopathy. Dr. Tomlinson recommended a spinal stabilization program for treatment of claimant's injury. While claimant was being evaluated by Dr. Tomlinson she was again evaluated by Dr. Morse who continued to opine that claimant had reached maximum medical improvement and that no further medical treatment was necessary. In a report dated June 22, 2005, Dr. Tomlinson noted that claimant had attended eight physical therapy sessions with no significant improvement. As a result, he referred her to Dr. Knox, neurosurgeon.

Claimant was evaluated by Dr. Knox on June 30, 2005, at which time he noted that claimant's MRI scans were more consistent with degenerative age-related conditions than

an acute injury. He noted that the MRI scans did not reveal any evidence of compressive pathology. Dr. Knox opined that claimant had reached maximum medical improvement for her compensable injury.

Since claimant's evaluation by Dr. Knox on June 30, 2005, she has been treated by Dr. Plummer, chiropractic physician, and she has also been evaluated by Dr. Cooper for various complaints.

It should be noted that in addition to her compensable low back injury, the claimant also had a compensable injury to her shoulder. It is unclear from a review of the evidence as to exactly when this injury occurred. However, respondent accepted a shoulder injury as compensable and paid some compensation benefits including surgery. Claimant is making no claim for benefits associated with the shoulder injury, but instead contends that she is entitled to additional medical treatment for her compensable low back injury. Some of the medical reports introduced in this case relate solely to the claimant's shoulder injury, while other medical reports refer to both the shoulder and low back injuries.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury.

As previously noted, claimant received her initial medical treatment from Dr. Berestnev on June 15, 2004. While Dr. Berestnev diagnosed claimant as suffering from a lumbar sprain, he also noted that claimant had an "exaggerated response to palpation

of her back,” and that with respect to his diagnosis he would “suspect non-organic component.” In a subsequent report dated June 25, 2004, Dr. Berestnev again noted that claimant had signs of a non-organic component to her lumbar pain.

Claimant was subsequently released from the care of Dr. Moffitt and Dr. Berestnev and she sought medical treatment from Dr. Huntington, a chiropractic physician. Dr. Huntington referred claimant to Dr. Morse for evaluation. Dr. Morse reviewed the claimant’s MRI scan and indicated that he saw no significant pathology. He also noted that claimant exhibited some pain behavior during his examination.

This patient had a slip and fall almost six months ago. She has no objective physical findings. There is some reference in the physical therapy notes and physician notes that there may be issues of secondary gain and/or symptom magnification. There seems to be some pain behavior on today’s exam.

Dr. Morse ordered a SPECT bone study which was performed on January 13, 2005 and was read as unremarkable. Following his review of that report, Dr. Morse stated in a report dated February 1, 2005:

IMPRESSION: Chronic back pain with issues of secondary gain. At this time, given her normal testing and normal exam, she is released from my care. She has reached maximum medical improvement as of today’s date. She can return to work with no restrictions.

Claimant subsequently sought medical treatment from Dr. Tomlinson for both her compensable back injury and her compensable shoulder injury. While claimant was being evaluated by Dr. Tomlinson she also continued to return to Dr. Morse. In a report dated April 7, 2005, Dr. Morse noted that claimant’s symptoms were the same as before and that her examination was normal with the exception of some symptom magnification. He again indicated that claimant was released from his care with no permanent impairment, no

permanent restrictions, and no additional evaluation necessary. Dr. Morse went on to give this same opinion in a report dated May 17, 2005.

Dr. Tomlinson recommended that claimant receive treatment in the form of a spinal stabilization program. In a letter dated July 13, 2005, Dr. Tomlinson indicated that he had treated claimant with physical therapy which did not produce a favorable result. Therefore, he stated "I think I am declining care for Angela Acosta and recommending that she see a spine specialist." Although the letter mentions a referral to Dr. Morse, the referral had already been made to Dr. Knox who had evaluated claimant.

Claimant was evaluated by Dr. Knox on June 30, 2005. Dr. Knox reviewed the claimant's MRI scans and indicated that they were more consistent with a degenerative condition than an acute injury. He went on to note that there was no evidence of compressive pathology present. Most importantly, Dr. Knox stated that claimant had reached maximum medical improvement for her compensable injury.

Since claimant's visit with Dr. Knox, she has also been evaluated by Dr. Cooper. Dr. Cooper in a report dated February 9, 2007 noted that claimant had various complaints of pain involving her left neck, shoulder, and right ankle. He also stated that "Late in the exam she mentioned her back." Dr. Cooper went on to note:

Her back was not formally examined, but that was not brought up until late in the exam. She had no pain when moving around, getting in and out of the exam chair, while examining her shoulder and lower extremity, or while getting x-rays.

On March 1, 2007, Dr. Cooper released claimant from his care and indicated that she should continue to receive treatment from Dr. Tomlinson for her left neck and shoulder pain. No mention of additional treatment for her back was made by Dr. Cooper at that time.

In summary, claimant has been treated by several physicians for her compensable

low back injury. Two of those treating physicians, Dr. Berestnev and Dr. Morse, have indicated in their reports that claimant was exaggerating her complaints of pain. In addition, Dr. Morse, neurologist, and Dr. Knox, neurosurgeon, have both opined that claimant had reached maximum medical improvement for her compensable back injury. I find that the opinions of Dr. Morse and Dr. Knox are entitled to great weight based upon the evidence presented in this case. Based upon their opinions as well as the remaining evidence presented, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable back injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable back injury. Therefore, her claim for additional benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$425.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE