

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F507020

DONNA BOWLING, Employee	CLAIMANT
WAL-MART STORES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED JULY 5, 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 TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 30, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 25, 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 stipulation:

1. The prior Administrative Law Judge opinion of February 2, 2006 is final.

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

1. Claimant's entitlement to additional medical treatment from Dr. Arnold.

The claimant contends that she is entitled to additional medical treatment from Dr. Arnold as a result of her compensable injury. In response to respondent's contention that the only objective finding with respect to claimant's injury was a bruise, claimant contends that Dr. Mitchell's notes indicate that there was an abraded rotator cuff which claimant contends is part of her injury and is now causing her current problems.

The respondent contends that claimant is not entitled to additional medical treatment from Dr. Arnold. Respondent contends that claimant's prior injury caused at

most a bruise to claimant's rotator cuff tissue. That injury has now healed and claimant is not entitled to additional medical treatment.

The record in this case includes the hearing transcript from May 30, 2007, as well as the hearing transcript from January 4, 2006, and a blue-backed report from Dr. Mitchell dated September 12, 2005. Respondent requested at the time of the most recent hearing that the prior hearing transcript be incorporated by reference as a part of the record.

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 witness and to observe her 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 prior administrative law judge opinion of February 2, 2006 is final.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Arnold.

FACTUAL BACKGROUND

The claimant is a 55-year-old woman who began working for the respondent as a cashier in October 2004. After approximately two and a half years the claimant was transferred to the respondent's deli department where she was working on July 1, 2005. A prior hearing was conducted in this case on January 4, 2006, and an opinion filed February 2, 2006, at which time I found that claimant had suffered a compensable injury to her right shoulder on July 1, 2005. I awarded payment of reasonable and necessary medical treatment; temporary total disability benefits from September 12, 2005 through October 27, 2005; and a controverted attorney fee. That opinion was not appealed and respondent paid various compensation benefits including surgery.

The claimant's medical history with regard to her injury began on July 2, 2005 when she was sent by the respondent to Washington Regional Medical Center. X-rays were taken and read as revealing no acute pathology. Claimant was diagnosed as suffering from a contusion and was released to return to work with a three-pound lifting restriction and no arm raising above her shoulder. On July 5, 2005, the claimant was evaluated by Max Beasley, nurse practitioner, at the request of respondent. Beasley assessed claimant's condition as a contusion to the right shoulder, prescribed medication, and returned claimant to work with restrictions.

Respondent subsequently controverted compensability of claimant's right shoulder injury and as a result she sought medical treatment from her family physician who ordered an MRI scan which revealed degenerative changes of the AC joint and no evidence of a rotator cuff tear. Claimant was also referred to Dr. Mitchell, orthopaedic surgeon. After an attempt with conservative treatment, Dr. Mitchell recommended that the claimant undergo an arthroscopic procedure in order to determine whether she had some cuff pathology that was not visualized on the MRI scan. This surgery was performed on September 12, 2005. Dr. Mitchell's post-operative report dated September 12, 2005 indicates that his diagnosis following the surgery was right subacromial impingement and AC atrophy. He also noted that while claimant's rotator cuff was abraded, there was no tear. Dr. Mitchell's medical report subsequent to the surgery indicates that claimant's condition had improved and that she had almost full passive range of motion. In a report dated April 19, 2006, Dr. Mitchell noted that claimant still had some difficulty working above her shoulder, but that she did little of those movements at work. He also noted that the claimant still had some deltoid weakness on her right side as compared to her left. Finally, he noted that claimant's range of motion was full and assigned her a four percent whole body impairment. In a letter dated May 17, 2006, Dr. Mitchell noted that the four percent impairment rating assigned was secondary to pre-existing degenerative conditions in the

AC joint. He noted that the impairment was not related to the claimant's compensable injury.

Claimant testified that she continued to have problems with her right shoulder involving weakness and a limited range of motion above her shoulder after her release by Dr. Mitchell. As a result, she filed for a change of physician request to Dr. Arnold which was granted by the Commission. Claimant was evaluated by Dr. Arnold on August 17, 2006, and his report indicates an impression of right shoulder weakness. Dr. Arnold has recommended further medical treatment in the form of an MRI scan to determine whether claimant's rotator cuff is torn. It is this recommendation of Dr. Arnold for which claimant seeks approval at this time.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Daulton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). Furthermore, what constitutes reasonably necessary medical treatment is a question of fact. *White Consolidated Industries v. Galloway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

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 additional medical treatment by Dr. Arnold, specifically an MRI scan, is reasonable and necessary medical treatment for her compensable injury.

As previously noted, claimant was evaluated by Dr. Arnold on August 17, 2006 and he recommended an MRI scan. First, I believe it is important to note that Dr. Arnold notes that the claimant's MRI scan was normal at the time of her surgery. More importantly, Dr. Arnold's medical report seems to indicate a concern that claimant has suffered another injury to her rotator cuff which has resulted in a tear.

.... and I am concerned that she may have had more injury to the cuff and possibly could have a complete tear now. (Emphasis added.)

It is clear from a review of Dr. Mitchell's medical records that claimant did not have a tear of her rotator cuff as a result of her work related injury. First, the MRI scan which was performed on July 15, 2005 showed "no evidence of rotator cuff tear." Furthermore, Dr. Mitchell's operative report indicates that during the arthroscopic procedure he performed on September 12, 2005 he specifically examined the claimant's rotator cuff and observed no tear.

There was quite a bit of impingement on the cuff. It is injected and somewhat abraded, however it is not torn.

Recheck of the cuff was performed and no pathology noted.

Subsequent to claimant's surgery she still complained of some weakness in the deltoid area of her right arm. In a report dated April 19, 2006, Dr. Mitchell noted that: "Since we know that her cuff is intact, that can't be an explanation for this and it must be related to her deltoid." (Emphasis added.)

Finally, I believe it is important to note that although Dr. Mitchell assigned the claimant a four percent impairment rating as a result of her shoulder condition, he related that impairment to claimant's pre-existing degenerative condition in her AC joint, not to her compensable injury.

In summary, claimant requests additional medical treatment from Dr. Arnold in the form of a recommended MRI scan to determine whether claimant has a tear of her rotator cuff. The medical evidence indicates that a prior MRI scan performed on July 15, 2005 revealed no evidence of a rotator cuff tear. Furthermore, Dr. Mitchell performed an arthroscopic procedure on claimant's right shoulder on September 12, 2005 and found no

tear of the claimant's rotator cuff. This is confirmed in his operative report of September 12 as well as a subsequent report dated April 19, 2006. Given this evidence that there was no tear in claimant's rotator cuff at the time of her surgery by Dr. Mitchell, I do not find that any potential rotator tear which might exist as of this date would be causally related to claimant's original compensable injury. Therefore, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that additional medical evidence in the form of an MRI scan as recommended by Dr. Arnold is reasonable and necessary for treatment of her compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Arnold for her compensable right shoulder injury. Therefore, her claim for compensation benefits is hereby denied and dismissed.

The respondent is liable for payment of the court reporter's fee for preparing the hearing transcript in the amount of \$212.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE