

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F603572**

<b>CELESTINE COLLIER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CHENAL HEALTHCARE, INC., EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>ACE AMERICAN INSURANCE COMPANY c/o ESIS, INC. (TPA), INSURANCE CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT NO. 2</b>

**OPINION FILED JULY 6, 2007**

Hearing before Administrative Law Judge S. Dale Douthit on April 10, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Everett O. Martindale, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. E. Diane Graham, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2, Second Injury Fund, was excused from the hearing.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas, on April 10, 2007. A prehearing conference was held on February 21, 2007, and a Prehearing Order was filed on February 22, 2007. A copy of the Prehearing Order was marked as Commission's Exhibit No. 1 and made a part of the record without objection, subject to any modifications made on the record at the full hearing.

At the full hearing the parties stipulated to the following:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including March 19, 2005.

3. Claimant's compensation rates are \$245.00 per week for temporary total disability and \$184.00 per week for permanent partial disability benefits.

4. Claimant sustained a compensable aggravation to her left shoulder on March 19, 2005.

5. All issues not addressed herein are reserved.

6. Respondent No. 2, Second Injury Fund, was excused from the April 10, 2007 hearing as additional medical treatment is the only issue.

The parties agreed at the full hearing that the sole issue would be whether claimant is entitled to additional medical treatment from Dr. Bud Dickson.

At the full hearing, the claimant contended she is entitled to additional medical treatment from Dr. Dickson and reimbursement for all related travel expenses.

At the full hearing, respondents No. 1 contended in summary that the claimant sustained a temporary aggravation of her pre-existing condition on March 19, 2005; and that claimant returned to her pre-injury state effective April 12, 2005. Respondents No. 1 contended that it has paid all benefits to which the claimant is entitled and contended claimant's current condition is due to her pre-existing problems. Respondents No. 1 also contended that any additional medical treatment now requested by the claimant is unreasonable, unnecessary, and unrelated to the claimant's March 19, 2005 compensable injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704:

1. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment from Dr. Dickson is reasonable, necessary or related to the claimant's March 19, 2005, compensable injury.

### **DISCUSSION**

The parties agree claimant sustained a compensable injury to her left shoulder on March 19, 2005. The claimant testified as follows regarding the incident which caused her injury:

A. I was putting a patient in the bed. She's – went like this, and she pushed. And then she had one side of her hip on the bed, and then she was about to roll on the concrete. I reached out and pulled out of that –

Q. She was about to roll where?

A. Roll on the floor.

Q. Roll off the bed?

A. On the floor, because –

Q. And so you –

A. – just had part of her hip on the bed.

Q. So you – what, you caught her or –

A. I caught her with this arm and came up.

Subsequent to her left shoulder injury, the claimant began treating with Dr. Scott Carle. In his March 24, 2005, report, Dr. Carle assessed the claimant with “shoulder strain” / “Muscular strain without evidence of internal derangement.” Dr. Carle also assessed “Pre-existing chronic shoulder pain.” (RX 2 p. 177) Dr. Carle then scheduled the claimant for physical therapy and prescribed Naproxen.

Claimant continued to treat with Dr. Carle after her initial visit, and Dr. Carle’s reports indicated improvement of the claimant’s condition. (RX 2 pgs. 189, 191, 193, 195, 198) In fact, in Dr. Carle’s April 11, 2005 report, the only pain for which the claimant complained was in her “left bicep muscle.” (RX 2 p. 201)

Ultimately, Dr. Carle released the claimant to her regular job duties and found her at maximum medical improvement on April 12, 2005. (RX 2 p. 207) Dr. Carle’s April 12, 2005 report indicated that claimant’s compensable shoulder strain had “resolved” (RX 2 p. 205) and Dr. Carle recommended a re-evaluation of the claimant’s “prior” shoulder problems. (RX 2 p. 206) On the date Dr. Carle released the claimant, Dr. Carle reported that “left shoulder is about at the point before this last injury.” (RX 2 p. 205)

The respondents introduced multiple medical reports that were generated prior to the claimant’s March 19, 2005 compensable shoulder injury. Some of these reports do show the claimant had pre-existing complaints regarding her left shoulder. (RX 2 pgs. 7, 14, 35, 44, 45, 56)

The claimant requested and was granted a change of physician from the Arkansas Workers’ Compensation Commission. The Commission changed the claimant’s physician from Dr. Carle to Dr. Bud Dickson. On September 19, 2006, the claimant was seen by Dr. Bud Dickson. In his September 19, 2006, report, Dr. Dickson x-rayed the claimant’s left shoulder and stated “X-rays of the left shoulder

including an AP and a lateral are essentially negative related to the glenohumeral joint, but it does have a good deal of irregular changes in the AC joint consistent with early osteoarthritis.” (CLX 1 pgs. 37, 38) Dr. Dickson also indicated that claimant did not bring with her any prior medical records so that he could comment on claimant’s ability to return to work. Claimant is requesting that she be allowed to return to Dr. Dickson for additional medical treatment. Claimant asserts that if she were allowed to return to Dr. Dickson, she would take with her all prior medical records she would be able to acquire.

Ark. Code Ann. § 11-9-508(a) provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, 90 Ark. App. 248, 205 S.W.3d 181 (2005). What constitutes reasonably necessary treatment is a question of fact for the Commission.

In the case at hand, claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable, necessary or related to her March 19, 2005, compensable injury. First, Dr. Carle opined that the claimant had reached maximum medical improvement for her compensable injury and that any additional treatment needed by the claimant would be for pre-existing conditions. Second, Dr. Dickson in his September 2006 report never actually recommends any particular treatment for the claimant. Claimant argues that if she were able to return to Dr. Dickson for another evaluation (and bring her prior medical reports), Dr. Dickson may very well recommend a course of treatment. However, for this Administrative Law Judge to award additional treatment from Dr.

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Dickson, it would require speculation and conjecture on what Dr. Dickson might do. Speculation and conjecture does not substitute for proof. At this point, all Dr. Dickson has diagnosed the claimant's left shoulder with is osteoarthritis. Dr. Carle has opined claimant's left shoulder problems are pre-existing and nothing in Dr. Dickson's report contradicts Dr. Carle's findings.

When looking at the record as a whole, I find the claimant has failed to meet her burden of proof in order to receive additional medical treatment from Dr. Dickson.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment from Dr. Dickson is reasonable, necessary or related to her March 19, 2005 compensable injury. Therefore, the request for additional medical treatment from Dr. Dickson is respectfully denied and dismissed.

IT IS SO ORDERED.

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S. DALE DOUTHIT  
Administrative Law Judge