

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E913515

VIVIENE CUMBIE	CLAIMANT
BOST HUMAN DEVELOPMENT SERVICE	RESPONDENT
AIG CLAIM SERVICE INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 1, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondent represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 19, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 2, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. Prior opinions are res judicata and the law of this case.

3. The claimant sustained a compensable injury to her hip on June 11, 1998.

4. Medical expenses have been paid to January 1, 2007.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to continuing reasonable and necessary medical treatment provided or recommended after January 1, 2007. Specifically, the claimant's recognized treating physician, Dr. Capocelli, has referred the claimant to Dr. Long for further treatment. Dr. Long has recommended continuing steroid injections which have provided the claimant with relief. The respondents have initially accepted the injections as compensable, however despite assurances that the treatments would not be denied, the claimant has had several appointments canceled due to the respondents failing to authorize payments for the treatment. This court should order and direct the respondents to forthwith be responsible for such payments for such injections.

In regard to the foregoing issues the respondents contend that they have provided all benefits the claimant is entitled to.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The parties submitted the deposition of Dr. Long marked Joint Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1, No. 2, No. 3, No. 4, and No. 5. The respondents also submitted the Form N marked Respondents' Exhibit No. 6. All of these exhibits were admitted without objection.

## DISCUSSION

The claimant testified and it has been stipulated that on June 11, 1998, while working for the respondent she suffered an injury to her left hip. The claimant testified that this injury occurred due to a motor vehicle accident. The claimant testified that currently she is 65 years old. The claimant stated that she has not been able to return to work since June 11, 1998, and that she has continued to have problems with her hip since the date of her accident. The claimant agreed that she has been treated by numerous doctors for problems with her back, the latest being Dr. Capocelli. The claimant agreed that she has undergone numerous procedures and diagnosis from a variety of doctors to determine if her hip problem is related to her back problems which apparently, based on the records, it is not.

The claimant testified that Dr. Capocelli referred her to Dr. Long and that Dr. Long has treated her with injections and pain mediation. The claimant agreed that since 1998 this is the first treatment that has alleviated some of her pain. The claimant testified that she cannot recall how many of these injections she has undergone noting that she has these injections every two to six weeks. The claimant testified that the respondent has refused to authorize further injections and she is asking for the continued treatment which is the only pain relief that she has been able to get since 1998.

On cross examination the claimant agreed that she has undergone nine years of continuous treatment. The claimant

testified that she received medical treatment the day of her accident and was referred to Dr. Holder. The claimant agreed that Dr. Holder treated her for over a year and her condition never improved. The claimant testified that she has undergone physical therapy and has been issued a TENS unit. The claimant testified that while being treated by Dr. Holder she underwent a bone scan of her hip and a total body bone scan as well as underwent three MRIs. The claimant testified that she has also had a CT scan. The claimant testified that she has had several appointments with Dr. Long and when she would arrive for her appointments she would be informed that the appointment was not authorized. The claimant testified that after she was sent to Dr. Capocelli she was seen by Dr. Swicegood who treated her with injections to her back for three years or more. The claimant testified that these injections did not help her at all. The claimant testified that there is nothing wrong with her except for the one area where she was hit in the motor vehicle accident and it has not changed since the date of that accident.

In an opinion from the Full Commission dated October 13, 2000, it was found that the claimant was entitled to continuing medical treatment including prescriptions for her compensable injury. The parties have stipulated that medical expenses for this claimant's compensable injury have been paid by the respondents up to January 1, 2007.

Dr. Long writes on August 4, 2006, that he has seen the claimant for her complaints of pain in her low back and over her

buttocks on the left. Dr. Long notes that the claimant was referred to him by Dr. Capocelli. Dr. Long notes that the claimant has had extensive treatment as well as diagnostic evaluations but none of these modalities have resulted in much improvement of her symptoms. Dr. Long injected the claimant with medications. The doctor writes that the claimant states that she is much improved more so than she has gotten from any other injections given into the low back area. Dr. Long notes that she might benefit from the injections into the iliac spine and from injections into the hip area. On October 17, 2006, Dr. Long writes that the claimant was distinctly helped by the injection into the left greater trochanter. Dr. Long injected the claimant with medications and notes that she had good initial improvement. The doctor continued the claimant on medications and recommended that she use an ice message. The claimant was seen by Dr. Long on November 9, 2006, where it is noted that she got distinct improvement from her injection into the left greater trochanter but she is again having symptoms at the left posterior superior iliac spine. Dr. Long writes that the claimant does not have symptoms in the lumbosacral area which indicates that her symptoms arise from the gluteal area of the left buttock and is not low back pain. Dr. Long writes that the claimant was long treated for low back pain which was of no benefit. The doctor writes that the claimant gets much more improvement out of the injections and focus at the hip area. Dr. Long injected the claimant at the left posterior superior iliac spine, it was recommended that she continue her exercise program

and her medications were refilled. Dr. Long writes on March 3, 2007, to the claimant's attorney noting that he last saw the claimant on December 7, 2006. Dr. Long writes that the claimant has had extensive work up and treatment since her motor vehicle accident in 1998 but that none of these injections were given into the trochanteric area/hip on the right. Dr. Long writes that the series of injections which he administered to the claimant have demonstrated that her pain seems to arise from a chronic greater trochanteric, post traumatic tendinitis/tendinosis. The doctor recommends that the claimant's treatment plan consists of injections, therapy, and exercises. Dr. Long writes that it may be that eventually the claimant may require surgical treatment such as a debridement of the bursa and diamond excision of the iliotibial band or even total hip might be an option.

In Dr. Long's deposition taken on March 21, 2007, the doctor stated that he began treating the claimant in August 2006 at the recommendation of Dr. Capocelli. Dr. Long testified that the claimant was referred to him for treatment of pain in her left buttock. Dr. Long testified that when he initially treated the claimant, she was already eight years into a pain syndrome for which there was no lesions defined. Dr. Long testified that he gave her an injection into her left greater trochanter which the doctor explained was over her left hip joint and that this injection made her notably better. Dr. Long stated that the claimant reported that these injections into her trochanter and into her upper buttock area are the only thing that has eased her

pain from the date of her injury. Dr. Long testified that he has diagnosed the claimant with chronic left gluteal pain with trigger points of the greater trochanter and posterior superior iliac spine with no evidence of radiculopathy. Dr. Long testified that the claimant reacted to these injections like a person who had trochanteric bursitis. Dr. Long was asked what was the most common treatment for the claimant's diagnosis and he responded, "Injections." Dr. Long explained that injections help break the pain so that the claimant can do exercises and strengthening which makes her less susceptible to bursitis and that hopefully she will get better. The doctor testified that surgery is the last resort. Dr. Long agreed that as long as the injections are working they would stay with the program. The doctor stated that when a person has had nearly a decade of treatment it gets to be a real difficult problem to try to make the symptoms better. Dr. Long was asked if he attributed the claimant's left hip problems to her motor vehicle accident and the doctor responded, "well, that's when it all began." Dr. Long stated that the claimant had been treated for approximately eight years and undergone numerous tests and it was not until his treatment began that the claimant experienced some relief from her symptoms. Dr. Long stated that the treatment plan for the claimant was to try and make her better nonsurgically. Dr. Long testified that all the claimant's previous treatment had been directed at her back and he was the first to directly treat her hip. Dr. Long testified that the injections alleviate the pain so that the claimant can eventually begin therapy.

On cross examination, Dr. Long testified that there was no test to verify bursitis that he was aware of. Dr. Long testified that whatever the cause of the claimant's pain she was enthusiastic about the improvement that she was getting from her injections. Dr. Long testified that the claimant has been able to get off of her narcotic medications due to the benefits from the injections she had been receiving.

On redirect examination, Dr. Long was asked if the treatment the claimant is receiving could result in improvement to the point where there would be no disability. Dr. Long responded that certainly it could result in distinct improvement in her pain and it would be goal to do that without having to undergo surgery.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that the treatment which she is receiving for her compensable left hip injury is both reasonable and necessary. The claimant has testified that this treatment has been beneficial to her and it is her desire to continue with the injections. Dr. Long has indicated that these injections according to the claimant's reports alleviate her discomfort and this should and can lead to her being able to undergo therapy which hopefully would resolve her problem ideally. It has also been the testimony of Dr. Long that the claimant's current treatment program will alleviate any possibility of more invasive treatment.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. Prior opinions are res judicata and the law of this case.

3. The claimant sustained a compensable injury to her hip on June 11, 1998.

4. Medical expenses have been paid to January 1, 2007.

5. The claimant has proven by a preponderance of the evidence that the treatment program being administered by Dr. Long is both reasonable and necessary for the treatment of her compensable left hip injury. See discussion above.

6. The respondents have controverted this claimant's entitlement to additional benefits.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

#### ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment as prescribed by Dr. Long.

The respondents should pay for the recommended medical treatment from Dr. Long.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE