

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304732

SUSAN CURTIS	CLAIMANT
BIG LOTS, INC.	RESPONDENT
SENTRY INSURANCE INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 5, 2007

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

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondent represented by MICHAEL LEE WRIGHT, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 16, 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 May 9, 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. On August 8, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her upper spine, left shoulder, and left upper extremity on August 8, 2002.

4. The respondents accepted a 9 percent impairment to the whole body.

5. If the claimant's claim is not barred by the statute of limitations she will be entitled to additional medical treatment.

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

1. Additional medical.
2. Statute of limitations defense.

In regard to the foregoing issues the claimant contends that the respondents refused to authorize examination and treatment by the authorized treating physician, Dr. Standefer, scheduled for March 27, 2007.

In regard to the foregoing issues the respondents contend that the claimant's request for additional benefits is barred by the statute of limitations, specifically more than two years after date of the injury and more than one year after the last receipt of benefits. In this regard, respondents contend the claimant's 9 percent impairment rating was paid out as of August 27, 2005. Specifically, respondents contend that even though the impairment rating was not received until June 28, 2005, respondents were obligated to initiate and pay the permanent partial disability benefits effective the date the claimant reached maximum medical improvement and returned to work without limitations which occurred on or about February 13, 2005. Respondents, therefore, made an initial payment bringing current the accrued permanent partial disability benefits and continued thereafter to pay out the 9

percent impairment rating (40.5 weeks) which ended on or about August 27, 2005.

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 records marked Claimant's Exhibit No. 1 and correspondence marked Claimant's Exhibit No. 2. The respondents submitted medical information marked Respondents' Exhibit No. 1. No objections were raised to the introduction of these documents.

DISCUSSION

The claimant testified that she is an assistant manager for the respondent and has been so employed since October 2000. The claimant testified that on August 8, 2002, she suffered a work related injury to her neck, left shoulder, arm, and hand which was accepted as compensable by the respondent and medical treatment was provided. The claimant agreed that she underwent surgery on her neck performed by Dr. Standefer and she was compensated for her time off work by the respondent. The claimant remembered that her neck surgery was December 17, 2004, and that she was off work for approximately five weeks returning to work in February 2005. The claimant testified that she has continued to work for the respondent. The claimant agreed that Dr. Standefer released her from his treatment on June 28, 2005, and that his report indicates that she was still experiencing some pain as a result of her neck injury. The claimant testified that one of the limitations which she has is that she cannot work with her arms out in front of her.

The claimant agreed that she was given a permanent impairment rating of 9 percent which the respondent has paid out, these payments ended on August 21, 2005. The claimant again testified that her physical restrictions resulting from her compensable injury prevented her from working with her head up, her arms above her head, her arms stretched out straight or her head down for a long period of time. The claimant testified that it was her understanding that if she had problems she could return to Dr. Standefer and that it was her further understanding that this would be a life long condition. The claimant testified that it was also her understanding that the plate in her neck would probably need to be removed surgically at some point. The claimant agreed that she had a very significant neck surgery and the only thing that this surgery relieved was the pain and tingling down her arm and into all of her fingers. The claimant testified that she still has pain in her neck and if she does paperwork for any amount of time she begins to have problems. The claimant agreed that on May 24, 2006, she filled a prescription from Dr. Standefer for Flexoril which is a pain reliever and muscle relaxer. The claimant testified that this was a refill of a medication which she had been taking. The claimant testified that this drug was prescribed for her neck discomfort. The claimant testified that it was her understanding that the workers' compensation insurance carrier paid for this May 24, 2006, prescription bill.

The claimant testified that she had an appointment scheduled with Dr. Standefer for March 27, 2007, because she had begun to

experience pain down her arm, tingling in her hand and pain in her neck. The claimant testified that it was like all of her symptoms were coming back. The claimant testified that on the morning of March 27, 2007, she was contacted that her appointment had been canceled because her workers' compensation case had been closed. The claimant agreed that at that time she hired an attorney and on April 3, 2007, she filed a pre-hearing questionnaire asking for a hearing on the issue of additional treatment. The claimant testified that she has gone to see Dr. Standefer on her own remembering that her first appointment was on June 12, 2007, and as a result of this appointment she is currently undergoing physical therapy. The claimant testified that she has a return appointment scheduled with Dr. Standefer for September 18, 2007.

On cross examination, the claimant testified that at the time of her surgery she had the position of assistant manager and that she had had that position for a couple of years prior to that event. The claimant testified that she returned to work approximately five weeks after her surgery. The claimant testified that she is still the assistant manager for the respondent.

The documentary evidence sets forth that the claimant was released by Dr. Standefer on June 28, 2005, with an impairment rating of 9 percent to the body as a whole. Dr. Standefer recommended at that time that the claimant avoid repetitive flexion and extension of the neck if possible. The respondents' records indicate that the claimant last received a permanent partial disability check on November 21, 2005. Claimant's Exhibit No. 2,

page one, indicates that the claimant received medications prescribed by Dr. Standefer on May 24, 2006, and in this same exhibit at page 2 which is a financial log the second entry indicates that the respondents paid for this prescription on June 27, 2006. The claimant has testified that she made an appointment with Dr. Standefer for her developing symptoms in her neck on March 27, 2007, but was contacted that day that the appointment had been canceled due to not being authorized by the workers' compensation insurance carrier. The Commission file indicates that the claimant, by letter dated April 3, 2007, filed a request for a hearing for additional benefits with the Commission. This request was received by the Commission on April 5, 2007.

Ark. Code Ann. §11-9-702(b) sets forth that (1) in cases where any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one year from the date of the last payment of compensation or two years from the date of the injury, whichever is greater. This same code section at (c) sets forth that; a claim for additional compensation must specifically state that it is a claim for additional compensation.

Based on the law as well as the evidence submitted and the Commission's file, I find that this claim is not barred by the statute of limitations. The claimant received her last indemnity check from the respondent on November 21, 2005. Claimant's exhibit, page 2, sets forth that the claimant refilled a prescription from Dr. Standefer on May 24, 2006, which was paid for

by the respondent on June 27, 2006. The claimant filed her request for additional benefits specifically setting out additional medical treatment in a letter dated April 3, 2007, which was received by the Commission on April 5, 2007. The claimant clearly has not gone longer than a year period of time for receiving treatment or benefits from the respondent as a result of her compensable injury. Therefore, based on the agreement of the parties as well as the testimony of the claimant, I find that this claimant is entitled to additional medical treatment for her compensable injuries.

FINDINGS & CONCLUSIONS

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

2. On August 8, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her upper spine, left shoulder, and left upper extremity on August 8, 2002.

4. The respondents accepted a 9 percent impairment to the whole body.

5. The claimant has proven by a preponderance of the evidence that her claim for additional benefits is not barred by the statute of limitations. See discussion above. Also see Ark. Code Ann. §11-9-702.

6. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.

ORDER

The claimant has proven by a preponderance of the evidence that her claim is not barred by the statute of limitations.

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE