

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304608

DEBRA L. EDINGTON, EMPLOYEE	CLAIMANT
HART'S MANUFACTURING COMPANY, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 17, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on March 9, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by Mr. David Landis, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 9, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on January 24, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced without objection as "Commission's Exhibit 1."

The claimant has, at various times, been advised of her right to legal representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without approval of this Commission; that fees were

normally awarded only out of benefits obtained in her behalf, and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised that she had the burden of proving her claim; that she was only entitled to one hearing; and that, for any reason, if she was unsuccessful, she could not request a second hearing maintaining that the reason for the failure to prove the claim was lack of legal representation. The claimant elected to proceed in her own behalf.

It was stipulated that the employment relationship existed between the parties at all relevant times, including June 8, 2002; that the claimant sustained a compensable injury to her low back on said date; that her average weekly wage was \$497.00, entitling her to compensation rates of \$331.00 per week for temporary total disability and \$248.00 per week for permanent partial disability; that the claimant's healing period ended on March 19, 2003; that the claimant was assigned a nine percent (9%) impairment by Dr. Maurice Smith which has been paid in full; that the last payment for permanent impairment benefits was on or about February 10, 2004; and that respondents last paid medical for treatment on or about October 19, 2004; and that respondents have controverted all benefits beyond those previously paid.

By agreement of the parties, the following issues were presented for determination:

- 1) Respondents' responsibility, if any, for additional medical treatment.
- 2) Claimant's entitlement to wage-loss disability.

- 3) Whether the claim is barred by statute of limitations.

Claimant contended, in summary, that after respondents terminated medical treatment, she received medical treatment through her health insurance, but that respondents should be held responsible for additional and continued reasonably necessary medical treatment. The claimant further contended that she was entitled to wage-loss disability in excess of her impairment rating in an amount to be determined by this Commission.

The respondents contended that the claimant was not entitled to additional benefits beyond those previously paid. As an affirmative defense, respondents contend that the claim was barred by statute of limitations.

The claimant was the only witness to testify. The record is composed solely of the transcript of the March 9, 2007, hearing containing a joint medical exhibit consisting of thirteen (13) pages, together with a summary of all benefits paid in the claim which simply supports the stipulation concerning benefits paid, to date.

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this

claim.

2. The stipulations of the parties are hereby accepted as fact.
3. The within claim is not barred by time. Specifically, the claimant filed a claim for additional benefits on or about January 6, 2005, which was within one (1) year from the date of last payment of benefits.
4. The claimant has proven, by a preponderance of the credible evidence, that she sustained a fifteen percent (15%) wage-loss disability as the result of her June 8, 2002, admitted compensable injury.
5. The claimant has proven, by a preponderance of the credible evidence, that respondents remain responsible for reasonably necessary follow-up care by the claimant's authorized treating physician, Dr. Maurice Smith with the Semmes Murphy Neurologic and Spine Institute in Memphis, Tennessee.

DISCUSSION

_____The facts in this claim are basically undisputed. I found the claimant to be an extremely credible witness. The claimant's course of conduct and work history following the admitted injury supports this observation. The claimant is fifty (50) years old. She completed nine (9) years of formal schooling and subsequently received her GED. The claimant did not have any additional vocational training. Her primary work experience has consisted of factory work. The claimant sustained an injury arising out of and during the course of her employment with Hart's Manufacturing Company on June 8, 2002, when she slipped and fell on her tail bone,

injuring her low back. Respondents showed good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt, reasonably necessary medical treatment. The claimant was initially seen by Dr. Hobby at the Corning Medical Center. The employer next sent the claimant to its company physician, Dr. Michael Lack. Following diagnostic studies, including a MRI, which revealed a herniated disc, the claimant was referred to orthopedic surgeons, Dr. Schechter and Dr. Roy E. Cooper. The claimant was treated conservatively with medications and steroid injections and permitted to continue working. The claimant was next sent to Dr. Maurice M. Smith, a neurosurgeon with the Semmes Murphy Spine Institute in Memphis, Tennessee. Dr. Smith began treating the claimant during the later part of 2002. He has remained the claimant's primary treating physician since that time. The record reflects that the claimant continued working at all times following her June 8, 2002, injury while receiving medical treatment on an as needed basis. Although back surgery was considered at various times, Dr. Smith has continued to treat the claimant conservatively. Dr. Smith did place permanent restrictions on the claimant's work activities. The claimant continued working for the employer herein through on or about March 8, 2005. The claimant has not been gainfully employed since that time. The record does reflect that the claimant was involved in two (2) separate incidents at her home, the first on or about October 18, 2004, and a second on or about March, 2006, which aggravated or exacerbated her pre-existing condition. However, the claimant is not

making a claim for additional temporary total disability for either the October 18, 2004, or March, 2006, incidents. Further, Dr. Smith has not increased the claimant's permanent impairment rating of nine percent (9%) to the body as a whole which respondents have paid, and has not increased the claimant's permanent work restrictions as will be set out further below.

As previously pointed out, the record reflects that the claimant continued working at all times after June 8, 2002, with permanent restrictions. The claimant's undisputed testimony was that because of her permanent restrictions, she was required to change jobs which resulted in an hourly reduction in her wages. In addition, the claimant was required to reduce her work to a forty (40) hour work week following her work-related injury after Dr. Smith placed permanent restrictions on her activities on or about March, 2003. (Tr.18-20, 32-34)

As reflected by the stipulations, respondents terminated all benefits following an incident at the claimant's home on October 18, 2004. Although respondent did not clearly articulate its reasons for terminating benefits, it appears that respondent maintained that the incidents at home were independent intervening causes which extinguished its liability for additional benefits. At the hearing, respondent attempted to clarify its position, maintaining that the claimant's injury was not the major cause of claimant's need for treatment and/or disability. In addition, respondent asserted an affirmative defense that the claim was barred by statute of limitations. The respondent's contentions are simply not supported by the record as a whole.

STATUTE OF LIMITATIONS

It is undisputed that the respondents last paid permanent impairment benefits on February 10, 2004, and last paid medical treatment on or about October 19, 2004. After respondents terminated all benefits, the claimant sought the services of an attorney, Mr. Jim R. Burton, who filed a claim for additional benefits. The Commission file reflects that a claim for additional benefits was filed on January 6, 2005. Although the claim form indicated that the claim was for *initial benefits* (no previous benefits having been received), it was apparent that the claim was for additional benefits. In fact, although a hearing was never conducted to determine the claimant's entitlement to additional benefits, claimant's former attorney submitted a proposed final settlement, and a Joint Petition hearing was conducted in May, 2005. However, at the hearing, the claimant decided that she did not wish to settle her claim, but, rather, keep her claim open. Thereafter, claimant's attorney withdrew from the case. (Tr.25-26)

In all claims where compensation has been paid, the claim for additional compensation, including disability or medical, will be barred unless filed within one (1) year from the date of last payment of compensation or two (2) years from the date of the injury, whichever is greater. Ark. Code Ann. §11-9-702(b)(1) (Repl. 2002). When a claimant files a timely request for additional benefits that is never acted upon, the statute of limitations is tolled. *Eskola v. Little Rock School District*, 93 Ark. App. 250, ___ S.W.3d ___ (2005); *Dillard v. Benton County Sheriff's Office*,

87 Ark. App. 379, ___ S.W.3d ___ (2004); *Spencer v. Stone Container Corporation*, 72 Ark. App. 450, 38 S.W.3d 309 (2001).

The claimant filed a claim for additional benefits within one (1) year from the date of last payment of benefits. Accordingly, the statute of limitations was tolled when said claim was filed.

WAGE-LOSS DISABILITY

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage-loss, such as the claimant's age, education, and work experience. *Emerson Electric v. Gaston, supra*.

In determining wage-loss disability, the Commission may take into consideration the worker's age, education, work experience, medical evidence, and any other matters which may reasonably be expected to affect the worker's future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). A claimant's lack of interest in pursuing employment with her employer and negative attitude in looking for work are impediments to our full assessment of wage-loss.

Emerson Electric v. Gaston, supra.

The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982).

Finally, Ark. Code Ann. §11-9-102(4)(F)(ii) (Repl. 2002) provides:

- (a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.
- (b) If any compensable injury combines with a pre-existing disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

“Major cause” is defined as more than fifty percent (50%) of the cause. Ark. Code Ann. §11-9-102(14) (Repl. 2002).

The record reflects that the respondents exercised good faith in paying its obligations for permanent impairment benefits based upon the assessment of permanent impairment issued by Dr. Maurice M. Smith on March 19, 2003. (Jt. Ex. A, pp. 3-4) Thereafter, respondents continued to meet its obligations under our workers’ compensation laws by providing the claimant with follow-up medical treatment until the claimant was involved in an incident at her home on October 18, 2004, when she bent down to put a tub of butter into the refrigerator at which time she felt her back pop, causing her additional physical problems requiring follow-up

medical treatment.

I feel compelled to point out that after respondents terminated medical treatment, the claimant returned to Dr. Smith and received follow-up care under her health insurance policy. Dr. Smith described the incident as an exacerbation of the claimant's previous problem. On March 2, 2005, he released the claimant to return to work on March 8, 2005, with no restrictions. (Jt. Ex. A, pp.10-11)

The record reflects that the claimant had disc herniations at multiple levels which were directly and causally related to the June 8, 2005, injury. The only logical conclusion that can be drawn for Dr. Smith's subsequent release without restrictions is that the claimant was released without any additional restrictions. Accordingly, it is clear that the major cause of the claimant's disability and need for medical treatment was the June 8, 2002, injury. Ark. Code Ann. §11-9-102(4)(F)(ii)(a).

I, likewise, recognize that under A.C.A. §11-9-102(4)(F)(iii), benefits are not payable for a condition which results from a non-work related independent intervening cause following a compensable injury which causes or prolongs disability or need for treatment. However, our Supreme Court has held that the enactment of §11-9-102 did not repeal case law regarding the issue of independent intervening cause, and that if a causal connection exists between a primary, compensable injury and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity of the claimant that is unreasonable under the circumstances. See, *Davis v. Old Dominion Freight Lines, Inc.*, 341 Ark.

751, 20 S.W.3d 326 (2000); *see, also, Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

After consideration of the claimant's age, education, and work experience, together with the claimant's nine percent (9%) impairment rating, and other matters which may reasonably be expected to affect the claimant's future earning capacity, I find that a fifteen percent (15%) wage-loss disability fairly and accurately reflects the extent of claimant's entitlement to wage-loss disability.

CONTINUED MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I find that respondents were not justified in terminating the claimant's medical treatment. As previously noted, following the in-home incidents, the claimant received medical treatment under her health insurance. However, it must be noted that the claimant began having additional problems in August, 2004, prior to the

October 18, 2004, incident at home. Following a course of additional conservative medical treatment, the claimant's physical condition appeared to return the pre-existing condition. At the time of the within hearing, she was taking the same medications as she was taking following her original release in March, 2003. (Tr.28-29)(Jt. Ex. A, p.7)

The claimant has proven that she continues to require follow-up care. Respondents remain responsible for continued reasonably necessary medical treatment.

AWARD

_____Respondent, Risk Management Resources, is hereby directed and ordered to pay, to the claimant, wage-loss disability in the amount of \$248.00 per week, beginning the date permanent impairment benefits were terminated and continuing for 67.5 weeks, representing the fifteen percent (15%) wage-loss disability awarded herein.

All benefits having accrued, respondent is to pay same in lump sum and without discount.

Additionally, respondents remain responsible for continued reasonably necessary medical treatment provided by claimant's authorized treating physician, Dr. Maurice Smith.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge