

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510789

HELEN F. FRAZIER, EMPLOYEE

CLAIMANT

ELECTROLUX HOME PRODUCTS, INC., EMPLOYER

RESPONDENT

**ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 13, 2007

Hearing before Administrative Law Judge S. Dale Douthit on May 17, 2007, at Hope, Hempstead County, Arkansas.

Claimant represented by Mr. J. Sky Trapp, Attorney-at-Law, Hot Springs, Arkansas.

Respondents represented by Mr. Edward W. McCorkle, Attorney-at-Law, Arkadelphia, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on May 17, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on March 7, 2007, and a Prehearing Order was filed on March 12, 2007. The parties agreed the Prehearing Order would be admitted into the record as "Commission's Exhibit 1," subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including June 15, 2005.
- 3) The claimant's applicable compensation rates are \$303.00/\$227.00 per week

for temporary total disability and permanent partial disability, respectively.

- 4) On June 15, 2005, the claimant sustained a compensable pelvic injury for which respondents paid some medical benefits.

The parties agreed the following issues would be presented for determination:

- 1) Whether the claimant is entitled to additional medical treatment from Dr. Hutson.
- 2) Whether the claimant is entitled to three (3) weeks of temporary total disability benefits plus attorney's fees.

The claimant contended at the full hearing that she did not receive proper medical attention or treatment, and was released from the physician's care before she was fully rehabilitated. Claimant contended she was harassed, coerced, and intimidated by the respondent/employer throughout this process. Claimant contended she was forced to use vacation time during the recovery process, was laid off without the option of unemployment benefits due to the pending workers' compensation action, and was forced to take a medical leave of absence for optional finger surgery during a time when she was experiencing such pain that she could not work and was receiving no wage compensation benefits due to inadequate medical support and treatment.

Respondents contended at the full hearing that the claimant is not entitled to any temporary total disability benefits or permanent partial disability benefits; that the claimant is not entitled to a change of physician; and that respondents have provided all appropriate medical care under these facts and circumstances.

Respondents contend they have not harassed the claimant as she has alleged.

The claimant, her husband, Wayne Frazier, Rebecca Frazier, Kristie Ackley, Sheila Smith, and Carol Kissman all testified at the full hearing. The record is composed of the transcript of the May 17, 2007, hearing containing numerous exhibits. Additionally, "Respondents' Exhibit No. 3, which is a video surveillance tape, has been blue-backed to be included in 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 witnesses and to observe their 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 agreed to by the parties are hereby accepted as fact.
- 3) The claimant has failed to prove, by a preponderance of the evidence, that she is entitled to additional medical treatment from Dr. Hutson.
- 4) All treatment by Dr. Hutson contained in the record herein was unauthorized medical treatment and not the respondents' responsibility.
- 5) The claimant has failed to prove, by a preponderance of the evidence, entitlement to three (3) weeks of temporary total disability benefits.

DISCUSSION

The claimant sustained an admitted, compensable injury on June 15, 2005, when she was struck by a forklift. After the incident, the claimant testified she went to the nurse's station and then asked to return to her job. The next day, June 16, 2005, the claimant was sent to Dr. Joe King by her employer.

Dr. King gave the claimant some work restrictions, but returned the claimant to work per his June 16, 2005, report that same day. (Resp. Ex. 1, p.3) The claimant testified she went to physical therapy and was prescribed medications under Dr. King's recommendations. On July 11, 2005, Dr. King's report shows that the claimant actually requested to return to full duty, but that Dr. King suggested she remain on light duty. (Resp. Ex. 1, p.7) During the claimant's treatment with Dr. King, her complaints of back pain continued to increase.

Ultimately, a change of physician was requested in writing from the claimant as evidenced in Respondents' Exhibit 3, page 6. As a result, a Change of Physician Order was entered by Ms. Pat Capps Hannah on November 8, 2005, changing the claimant's physician from Dr. King to Dr. Kenneth Rosenzweig. (Resp. Ex. 3, pp. 7-8)

The medical records indicate Dr. Rosenzweig began treating the claimant on August 30, 2005, and continued through June 5, 2006. During his course of treatment, Dr. Rosenzweig conducted diagnostic tests and numerous evaluations, but, ultimately, concluded he had nothing to offer the claimant in the way of surgical intervention. Dr. Rosenzweig released the claimant to full duty in his January 9, 2006, report. (Resp. Ex. 1, pp.36-37) Not feeling that she was at maximum medical improvement, the claimant, on her own accord, went to Chiropractor Terry Hutson

on November 27, 2006. It is Dr. Hutson's treatment that claimant argues should be the financial responsibility of the respondents.

MEDICAL TREATMENT BY DR. HUTSON

The Workers' Compensation Act requires employers to provide such medical services as may be reasonable necessary in connection with an employee's injury. Ark. Code Ann. §11-9-508. Treatment rendered to solely address subjective pain complaints, which are over-exaggerated and not supported by any objective or measurable findings is not reasonable and necessary medical treatment. *Patrick Gossage v. Hardaway Construction Corp.* AWCC #E515832, Full Commission Opinion filed February 6, 1998.

In the present matter, respondents argue that whether claimant's treatment from Dr. Hutson is reasonable, necessary, and related to her compensable injury is moot because the treatment was unauthorized and, therefore, claimant's financial responsibility. I must agree. The facts are that company doctor, Joe King, was initially the claimant's authorized treating physician and did in fact treat the claimant for some time. Ultimately, the claimant requested, in writing, that her doctor be changed to Dr. Kenneth Rosenzweig. (Resp. Ex. 3, p.6) Claimant's request was honored by the Commission and on November 8, 2005, a Change of Physician Order was entered changing claimant's physician from Dr. King to Dr. Rosenzweig. (Resp. Ex. 3, p.8) The Change of Physician Order specifically stated that:

"This approval of a change of physician represents claimant's one-time only change of physician pursuant to A.C.A. §11-9-514(a)(3)(A)(ii)."

Ark. Code Ann. §11-9-514, in section (6) goes on to state:

“Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the claimant’s expense.”

The claimant did not show that her treatment from Dr. Hutson was an “emergency” and, therefore, pursuant to the Change of Physician Order and A.C.A. §11-9-514, all treatment from Dr. Hutson was unauthorized and not the financial responsibility of the respondents. After the Change of Physician Order was entered, the claimant treated with Dr. Rosenzweig for some ten (10) months. By claimant’s own admission, she was just driving by Dr. Hutson’s sign and wondered if he could help her. The claimant did not comply with the Act in seeking treatment from Dr. Hutson and, as such, Dr. Hutson’s treatment was unauthorized.

TEMPORARY TOTAL DISABILITY

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. App. 244, 613 S.W.2d 392 (1981). Based on my review of the entire record, I find the claimant has failed to prove that she is entitled to temporary total disability after the June 15, 2005, compensable injury. The medical records clearly show the claimant was never taken completely off work after her injury.

On the day of the injury, the claimant stated she asked to go back to work and, in fact, did. Claimant did not go to the doctor until the next day (June 16, 2005) and, at that time the doctor did not take her off work, but in fact said she could work

with restrictions. (Resp. Ex. 1, p.3) Nothing shows the claimant's wages were reduced due to the light duty restrictions while under the care of Dr. Joe King. After the change of physicians to Dr. Rosenzweig, nothing in Dr. Rosenzweig's reports indicate he ever changed claimant's light duty restrictions and in fact the claimant herself testified Dr. Rosenzweig returned her to her pre-injury job. The medical documentation shows the claimant has simply failed to prove entitlement to temporary total disability benefits.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that she is entitled to the additional benefits she has requested. Accordingly, the within claim is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge