

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609155

RHONDA GRAY	CLAIMANT
FORT SMITH PUBLIC SCHOOLS	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 4, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES FILYAW, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 6, 2007, in Fort Smith, Arkansas. A pre-hearing order had been entered in the case on October 26, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. On March 8, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$466.00 for total disability and \$350.00 for permanent partial disability.

3. On March 8, 2005, the claimant sustained a compensable injury to her thoracic and lumbar spine.
4. There is no dispute over accrued medical expenses.
5. There is no dispute at present over temporary total disability benefits.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant also sustained TMJ in the employment related accident of March 8, 2005.
2. The claimant's entitlement to the payment of expenses incurred for medical services for TMJ.
3. The claimant's entitlement to medical services for her compensable spine injuries as recommended by Dr. Wolfe.

In regard to these issues, the claimant contends:

"Claimant contends that she has sustained a job related injury to her back, neck and shoulders, the extent of which has not been determined because the respondents have refused to accept responsibility for recommended diagnostic testing; that until such testing and evaluation is done, the extent of the claimant's injuries cannot be determined. The claimant further contends that it is highly likely that she has sustained injuries of a temporary and total nature."

In regard to these issues, the respondents contend:

"The respondents will contend that the claimant's only compensable injuries supported by objective findings were temporary aggravations of preexisting thoracic and lumbar conditions; that the claimant did not miss sufficient work to qualify for any temporary total disability benefits; that the respondents provided reasonably necessary medical evaluation and treatment for her compensable injuries; that the claimant reached maximum medical improvement on or before November 14, 2005 and has sustained no permanent impairment as a result of her compensable injuries. The respondents specifically deny that the claimant's TMJ symptoms meet the definition of

compensable injury under the Arkansas Workers' Compensation Act."

DISCUSSION

I. TMJ

The first issue to be addressed concerns the claimant's contention that she also experienced an injury to her jaw, in the employment related accident of March 8, 2005, in the form of TMJ (temporomandibular joint syndrome). Histories contained in the medical evidence would also indicate that the claimant had previously contended she was experiencing TMJ as a consequence or complication of cervical traction that she received in physical therapy as part of her treatment for her admittedly compensable spinal injuries. In any event, the burden rests upon the claimant to prove that her alleged TMJ is "compensable". In order to meet this burden, she must prove all of the necessary elements to establish a "compensable injury".

In order to prove a "compensable injury", in the form of TMJ, the claimant must satisfy the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant establish by medical evidence the actual existence of TMJ. Further, she must show that the actual existence of this condition is supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

After consideration of all the medical evidence presented, I find that the claimant has failed to establish by medical evidence, which is supported by objective findings, the actual existence of

the alleged TMJ. The majority of the medical evidence indicates that it is the claimant and not the medical experts, who has diagnosed the presence of TMJ.

The evidence further shows that when this condition has been diagnosed by a medical expert, this diagnosis is based solely on the claimant's subjective complaints.

In his report of April 18, 2006, Dr. Monte L. Butler states:

“Ms. Gray was originally evaluated in my office on June 9, 2005, to rule out a fracture in relation to a fall sustained while at work. At this time she had no fracture, but did show signs of possible temporomandibular joint pain and was referred to Dr. Steven Kilpatrick for further treatment.”

However, Dr. Butler does not indicate what these “signs of possible temporomandibular joint pain” were. Clearly, no support was given to the existence of this condition by the x-rays taken during his examination.

The only report of Dr. Kilpatrick that was offered is a one page record, which is dated August 8, 2005. No where in this report does he diagnose the existence of TMJ or note any “objective findings” to support the existence of this condition.

As the claimant has failed to prove that her alleged TMJ satisfies the statutory requirement of Ark. Code Ann. §11-9-102(4)(D), she has failed to prove that her alleged TMJ, if it does exist, represents a “compensable injury” as that term is defined by the Act. Thus, she would not be entitled to any benefits for this alleged condition.

II. ADDITIONAL MEDICAL SERVICES FOR THE CLAIMANT'S ADMITTEDLY
COMPENSABLE SPINAL INJURIES

The only remaining issue is the claimant's entitlement to additional medical services for her admittedly compensable spinal injuries. In regard to this issue, the burden rests upon the claimant to prove that the additional medical services she now seeks represent "reasonably necessary medical services", as that term is used in the Act.

In order to represent "reasonably necessary medical services", the medical services in question must be necessitated by or connected with the compensable injury. Further, the evidence must show that the medical services in question have a reasonable expectation of accomplishing their intended purpose or goal.

It is somewhat difficult in the present claim to determine exactly what medical benefits the claimant is seeking. She has had two primary treating physicians for her compensable spinal injuries. The first of these physicians was Dr. Terry Clark, a general practitioner and the company physician. The second of these physicians was Dr. Michael Wolfe, an orthopaedic surgeon. In his office notation of November 14, 2005, Dr. Wolfe states that all of the necessary testing had been performed on the claimant's spine and showed only relatively minor degenerative changes. He opined that there was nothing shown that required surgical intervention.

The records show that the claimant has had an extensive period of conservative treatment that consisted of oral medication (in the form of anti-inflammatories and pain medication) and extensive

physical therapy. According to the claimant's subjective complaints, none of this treatment has resulted in any significant improvement. On November 14, 2005, Dr. Wolfe discharged the claimant from continued medical care to return only on an as needed basis.

The only additional medical service that has been recommended by Dr. Wolfe and has not been provided, is neurological evaluation of the claimant's continued severe headaches. As the claimant's entitlement to medical services for her alleged TMJ has previously been addressed, it would appear that the only additional medical treatment remaining in dispute for the claimant's compensable spinal injuries would be this neurological evaluation.

The medical evidence shows that the claimant was complaining of occipital headaches, immediately following her employment related accident on March 8, 2005. Although the claimant attributed these headaches to the accident. The medical record further shows that the claimant was also complaining of severe headaches shortly prior to the accident. These headaches were sufficiently severe to require the claimant to seek medical treatment and to result in the performance of an MRI of the claimant's brain on January 4, 2005. The claimant continued under active medical treatment for these headaches through at least January 17, 2005. At that time, the claimant appears to have been suffering from high blood pressure. The MRI also showed abnormalities consisted with deep white matter ischemic changes.

The only evidence of any injury to the claimant's head or brain, in the employment related accident of March 8, 2005, is her own testimony. There is no "objective findings" in the medical evidence to support the occurrence of a physical injury to the claimant's head or brain in this employment related accident. The medical records do not note any contusion, abrasion, laceration, swelling, etc. involving the claimant's head, particularly in the occipital area. Subsequent x-rays and a CT scan of the brain also failed to show any "objective findings" supportive of the occurrence of a recent traumatic injury to this part of her body.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that the neurological evaluation, as recommended by Dr. Wolfe, is necessitated by or connected with the claimant's compensable injuries of March 8, 2005. Therefore, she has failed to prove that these particular medical services represent "reasonably necessary medical services", within the meaning of Ark. Code Ann. §11-9-508, and the respondents cannot be held liable for the expense of these services.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On March 8, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On March 8, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$466.00 for total

disability and \$350.00 for permanent partial disability, should such benefits have been appropriate.

4. On March 8, 2005, the claimant sustained a compensable injury to her thoracic and lumbar spine.

5. There is no dispute, at present, over the payment of accrued medical expenses.

6. There is no dispute, at present, over the payment of temporary disability benefits.

7. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury, in the form of TMJ, either directly as a result of the employment related accident of March 8, 2005, or as a result of a compensable consequence or complication of her admittedly compensable spinal injuries. Specifically, the claimant has failed to prove by medical evidence, which is supported by objective findings, the actual existence of TMJ.

8. The claimant has failed to prove that the neurological evaluation recommended by Dr. Wolfe represents "reasonably necessary medical services" for her admittedly compensable injuries. Specifically, she has failed to prove that this recommended neurological evaluation is necessitated by or connected with her admittedly compensable injuries.

9. The respondents have denied that the claimant sustained a compensable injury in the form of TMJ and have controverted her entitlement to all benefits attributable to this alleged condition.

The respondents have also controverted the claimant's entitlement to the neurological evaluation recommended by Dr. wolfe.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny the present claims for benefits attributable to the alleged TMJ and for the neurological evaluation recommended by Dr. wolfe.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE