

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F702283**

MAE H. HARRIS, EMPLOYEE

CLAIMANT

IC CORPORATION, SELF-INSURED EMPLOYER

RESPONDENT

**OPINION FILED NOVEMBER 2, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by THE HONORABLE ADRIENNE K. MURPHY, Attorney at Law, Fayetteville, Arkansas.

Respondent was represented by THE HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on October 22, 2007, in Little Rock, Arkansas. A Prehearing Order was entered in this case on August 27, 2007. This Prehearing Order sets out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing, along with the parties' respective contentions.

**STIPULATIONS**

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer relationship existed at all relevant times, including January 23, 2004.

3. The claimant sustained a compensable back injury on January 23, 2004.

4. The claimant has been provided some medical care through March of 2006, and additional medical treatment thereafter by way of the respondent's company doctor. (The latter part of this stipulation was modified by the parties at the time of the hearing).

#### **ISSUE**

By agreement of the parties, the sole issue to be presented at the hearing is as follows:

Whether the claimant is entitled to additional medical care after March of 2006.

#### **CONTENTIONS**

Claimant contends that on January 23, 2004 she did suffer a compensable, accidental injury to her back while lifting school bus seats. Immediately after she felt her back pop, she went to the plant doctor, Dr. Long, and completed an accident report. The respondent paid for related medical treatment until approximately March of 2006, when it controverted the claimant's entitlement to additional medical treatment. The claimant contends that her injuries were caused by a specific incident at work and that she is entitled to additional reasonable and necessary medical treatment. The claimant reserves her right to any and all additional benefits associated with this claim, including, but not limited to an

anatomical impairment rating, permanent disability benefits, and/or wage loss. The claimant contends that she is entitled to a controverted attorney's fee.

The respondent contends that the claimant is not entitled to additional medical treatment. On March 12, 2007, Dr. Steven Cathey indicated that the claimant's chronic low back pain was secondary to long-standing degenerative disc disease and associated osteoarthritis. Following receipt of this report from Dr. Cathey, further medical treatment was suspended. The respondent contends that claimant's attorney is not entitled to a controverted fee.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order, the claimant's response to the Prehearing Questionnaire, and the respondent's response to the Prehearing Questionnaire, which were all marked as Commission's Exhibit No. 1. The claimant filed a post-hearing brief, which has been blue-backed and marked as Commission's Exhibit 2. The parties filed a joint medical packet, which has been marked as Joint Exhibit No. 1.

The following witness testified at the hearing: the claimant.

### **DISCUSSION**

The claimant, age 53 (3/07/54), sustained an admittedly compensable injury to her back while working for the respondent on January 23, 2004. The claimant has worked for the respondent approximately 14 years, her most recent job duties entailed that of a puller. According to the claimant, at the time of her back

injury, she was lifting a school bus seat that weighed approximately 25 to 30 pounds. She further testified she immediately felt something in her back pop. The claimant essentially testified she promptly reported the incident to management and was referred to the company doctor for treatment. The claimant admitted to undergoing extensive conservative treatment, which included, a medication regimen, physical therapy treatment, steroid injections, and a TENS unit. The claimant testified that after having received all of this treatment, which went on for two approximately years, she did not receive any significant relief.

According to the claimant, she continues with low back pain. The claimant denied any prior problems with her back.

A review of the medical evidence shows that on January 23, 2004, the claimant saw Dr. Stephen Long due to right side pain and right lateral side pain after lifting seat frames, for which he prescribed medication and directed her to return for a follow-up visit.

The claimant saw Dr. Long for follow-up care on January 26, 2004, due to continued right-side pain, and pain to the lower thoracic area, for which he prescribed medication and therapy, twice per week for a period of four weeks.

On February 17, 2004, the claimant returned to see Dr. Long due to persistent complaints of back pain. His assessment was "acute lumbar strain, persistent," for which he ordered a chiropractic consultation with Dr. Clay Lamey. The claimant

received seven chiropractic treatments from Dr. Lamey from February 18, 2004, through February 27, 2004.

An MRI of the lumbar spine was taken on March 2, 2004, with the following impression, "Diffuse degenerative disk disease, worse at L4-L5, with a mild broad-based disk protrusion. There was no significant neural foraminal narrowing at any level."

The claimant continued to treat with Dr. Long. On March 4, 2004, he noted that the claimant's back was improving. Dr. Long assessed the claimant with "degenerative disc disease with facet arthritis." The claimant's restricted work duty was continued.

On April 22, 2004, the claimant was seen by Dr. Sunder Krishnan pursuant to referral from Dr. Long. Dr. Krishnan assessed the claimant with "L4/L5 HNP," for which a series of lumbar epidural steroid injections were performed.

Dr. Krishnan noted on June 23, 2004 that the claimant had not responded well to the epidurals. Dr. Krishnan's assessment was "L4/5 disk bulging and lumbosacral spondylosis." Dr. Krishnan reported that the only other alternative at this point and time would be some diagnostic facet medial branch nerve injections, and if good benefit was gained from that then continue with rhizotomies. On June 29, 2004, Dr. Long reported that the claimant had refused this treatment, as she wanted to wait to see if her back would improve with time.

On July 13, 2004, Dr. Long directed the claimant to resume therapy, which was done. The therapist issued the claimant a portable TENS unit.

The claimant, on August 17, 2004, and September 21, 2004, underwent fluoroscopically guided diagnostic right L2, L3, L4 and L5 facet medial branch nerve injections, which she had previously refused, as these were performed by Dr. Krishnan. He reported on November 10, 2004 that the facet rhizotomies targeting the right L2, L3, L4, and L5 facet medial branch nerves provided the claimant with 50% improvement in her condition. Dr. Krishnan essentially recommended that since the claimant was doing better now, she was better off being managed conservatively with trunk stabilization exercises. The claimant continued to treat with Drs. Krishnan and Long. On February 16, 2005, Dr. Krishnan reported that the claimant continued to be happy with the rhizotomy treatments, as she had 50-60 percent pain reduction. Dr. Krishnan's assessment was, "lumbosacral spondylosis, disk bulging, currently doing well."

On March 1, 2005, the claimant reported to Dr. Long continued complaints of low back pain, for which he ordered occupational therapy.

The claimant underwent an MRI of the lumbar spine on November 3, 2005, which demonstrated the following:

IMPRESSION:

1. DEGENERATIVE DISC DISEASE AT T12/L1 AS WELL AS FROM L2/3 THROUGH L4/5.
2. MILD CENTRAL CANAL STENOSIS AT L3/4 AND L4/5.  
MODERATE BILATERAL FORAMINAL NARROWING FROM L2/3 THROUGH L4/5.

On November 10, 2005, the claimant saw Dr. Long for a follow-up visit. He noted that the claimant's MRI was essentially unchanged from the previous one, and that it showed degenerative

disc disease as well as arthritic changes.

Dr. Long reported on December 13, 2005 that the claimant continued to have chronic low back pain, without any improvement with physical therapy.

The claimant underwent evaluation with Dr. David Arnold on December 14, 2005 due to complaints of neck pain, low back pain, left lower extremity pain, and right lower extremity neurological symptoms. He reported the following, "Based on the patient's history and clinical evaluation, the current problem is a work related injury that is consistent with the work injury described by the patient." In a letter to Dr. Long on this same date, Dr. Arnold reported that he had scheduled the claimant for electrodiagnostic testing of her lower extremities. He wrote, "I will see her back thereafter for final diagnosis and treatment recommendations but do not believe surgery would be of any benefit at this time." Dr. Arnold also reported he would consider an aggressive functional restoration program for the claimant, but did not believe any other injections were indicated at this time. He also recommended that Dr. Long continue with his medical management.

The claimant underwent an EMG on January 5, 2006, which revealed the following, impression:

**IMPRESSION:**

The above electrodiagnostic study reveals evidence of mild to moderate acute more than chronic L5 and S1 radiculopathies on the right and left. She did not tolerate the needle examination well which limited the quality of the data. She might also have involvement of the T4 root at least on the right. Despite the limited

nature of the study, there is definite evidence of denervation in multiple myotomes bilaterally.

On January 10, 2006, Dr. Arnold stated:

Test Results: Lower extremity electrodiagnostic testing: positive right L5, positive right S1, positive left L5, positive left S1, consistent with radiculopathy, acute changes were observed and chronic changes were observed.

He recommended the claimant continue her medications and undergo the MedX program at the next available date. Dr. Arnold also noted that the claimant's present problem was not surgical in nature.

Dr. Arnold made the following assessment on March 22, 2006, "Overall, somewhat worse. Maximally medical improved."

On March 28, 2006, Dr. Long reported that the claimant's back was at MMI according to Dr. Arnold.

The claimant continued to complain of back problems. On May 10, 2006, Dr. Long ordered additional physical therapy treatment.

On November 29, 2006, the claimant returned to see Dr. Long. He noted that the claimant had some improvement with her low back pain with physical therapy. Therefore, he continued the claimant on physical therapy for two more weeks.

Dr. Long reported on January 3, 2007, that the claimant had chronic low back pain, which was worsening and not improving with physical therapy treatment. He wrote, "I think she needs reevaluation by Dr. Arnold and may need pain management."

On March 12, 2007, Dr. Steven Cathey, reported in, pertinent part, to Dr. Stephen Long:

I am writing to bring you up to date on Mrs. Harris. As you recall, she has been plagued with chronic lower back

pain since a lifting injury sustained while at work in January, 2004. Her pain has been refractory to trials of physical therapy, medication, lumbar epidural steroids, etc. She occasionally notes some pain radiating to her right hip and upper leg in a non-segmental pattern.

Her neurological exam is negative. She specifically has no sign of lumbar radiculopathy, and straight leg raising is negative bilaterally. The patient demonstrates full range of motion of the lumbar spine without paraspinous muscle spasm.

The patient and I reviewed two MRI scans of her lower back, the first obtained in 2004, with a followup study from November, 2005. Both studies reveal multilevel degenerative disc disease, but without any resulting canal stenosis or nerve root entrapment.

Steve, I feel certain Mrs. Harris' chronic lower back pain is secondary to long standing degenerative disc disease and associated osteoarthritis. Unfortunately, this is not a problem that will respond favorably to lumbar disc surgery, spinal fusion, or other neurosurgical intervention. This was apparently the same conclusion reached by Dr. David Arnold at the time of his evaluation a year or so ago. Although I was going to refer her for pain management, the patient really has not noted much benefit from this type of treatment in the past. I have, however, started her on therapeutic trial of Celebrex 200 mg per day. As always, I stand ready to reevaluate Mrs. Harris, particularly should her pain change in character of location.

#### **Adjudication**

The sole issue for determination is whether the claimant is entitled to additional medical treatment for her compensable back injury after March 6, 2006.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g

Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable back injury of January 23, 2004.

The claimant suffered an admittedly compensable injury to her back after lifting a seat, which has resulted in chronic back pain. The respondent accepted the claim as compensable and paid some medical expenses. However, the respondent subsequently suspended the payment of medical benefits, in March of 2006, but has allowed limited treatment for the claimant's compensable injury by way of its company physician, which has included physical therapy treatment.

Specifically, although, the claimant has received extensive conservative treatment for her compensable back injury, which include, but is not limited to physical therapy treatment, a medication regimen, occupational therapy, and steroid injections, she has consistently complained of continued low back pain and related symptoms, with only minimal relief. An MRI taken on March 2, 2004, of her lumbar spine demonstrated degenerative changes, which were worse at L4-L5, with a mild broad-based disk protrusion. Electrodiagnostic testing performed on the claimant's lower

extremities on January of 2006, revealed both acute and chronic changes. Prior to this, on January 3, 2007, Dr. Long, one of the claimant's treating physicians and the respondent's company doctor, opined that the claimant needed to be reevaluated by Dr. Arnold and that she may need pain management. The claimant testified that she had no prior problems with back before the January of 2004 incident, nor has any evidence been presented to the contrary. The claimant also credibly testified that as of the date of the hearing, she continues with low back and related symptoms due to her compensable injury.

Therefore, in light of the persistent nature of the claimant's symptoms since the compensable incident, the objective findings of an acute injury to her back, the fact that the claimant's preexisting degenerative condition was asymptomatic prior to her compensable injury, and based on the expert opinion of Dr. Long, and due to all of the other foregoing reasons, I find that the claimant is entitled to additional medical treatment for her compensable back injury after March of 2006.

While I recognize that Dr. Arnold has opined the claimant is at maximum medical improvement, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark App. 230, 184 S.W. 3d 31 (2004).

In addition to this, Dr. Cathey has opined that the claimant's chronic pain is secondary to long standing degenerative disc

disease and associated osteoarthritis. In workers' compensation law, an employer takes the employee as he finds her, and employment conditions that aggravate preexisting conditions are compensable. Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W. 3d 383 (2004). Considering that the claimant's preexisting condition was asymptomatic prior to the compensable injury and has physically progressed and become symptomatic due to this incident, and because the aforementioned diagnostic testing revealed evidence of an acute injury to the claimant's back, I find that the compensable injury is what resulted in the claimant's current back condition. As a result, minimal weight is attached to Dr. Cathey's opinion.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including January 23, 2004.
3. The claimant sustained a compensable back injury on January 23, 2004.
4. The claimant has been provided some medical care through March of 2006.
5. The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to her compensable injury of January 23, 2004.
6. All other issues are reserved.

**AWARD**

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable back injury of January 23, 2004. Therefore, the

respondent is directed to pay benefits in accordance with the Findings of Fact cited above.

Because the claimant's injury occurred after July 1, 2001, I am without statutory authority under Ark. Code Ann. §11-9-715 to award the claimant's attorney an attorney's fee on the medical benefits awarded herein.

IT IS SO ORDERED.

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CHANDRA HICKS  
Administrative Law Judge