

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512901

BECKIE L. MAYO

CLAIMANT

ROYAL FINANCIAL SERVICES, INC.

RESPONDENT EMPLOYER

AMERICAN HOME ASSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED MARCH 5, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE DONALD C. PULLEN, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on January 19, 2007, in Hot Springs, Arkansas. A prehearing conference was held on November 28, 2006 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable August 1, 2005, injury.
2. The compensation rates are \$207/155.

The claimant contends that she is entitled to additional medical benefits and additional temporary total disability benefits from February 1, 2006, to the present, and attorney's fees.

Respondents contend that all appropriate benefits have been paid.

Respondents rely on Dr. Bruce Smith's opinion that 80% of the claimant's need for treatment is related to degenerative non-work-related problems. Respondents further contend that no physician has taken the claimant off work since Dr. Michael Atta released her in October 2005. Respondents alternatively rely on the Court of Appeals opinion in *Roark v. Pocahontas Nursing Center* for its holding in light of the claimant being a no call and no show after her doctor's release. Medical benefits were controverted on June 14, 2006.

ISSUES TO BE LITIGATED

1. Additional medical.
2. Temporary total disability benefits.
3. Attorney's fees.

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. There was a compensable August 1, 2005, injury.
2. The compensation rates are \$207/155.
3. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to her work

injury.

4. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages.

DISCUSSION

The claimant, 39 years of age, sustained a back injury on August 1, 2005, where she worked as a floater for the respondent employer. The claimant's job activities involved being on her feet, twisting, turning, squatting, and lifting. On August 1, 2005, the claimant was building screen frames and as she turned to put the frame on a sawhorse, her back popped and she felt pain going down her right hip and leg. The claimant had no previous back problems.

The claimant first saw Dr. Atta on August 9, 2005, and she was returned back to work with restrictions. The claimant continued to work but also participated in physical therapy and took pain medications. Dr. Atta referred the claimant to Dr. Bruce Smith and he performed some injections. According to the claimant, the injections did not help but she continued taking medications. The claimant next asked for a change of physician and began seeing Dr. Brent Sprinkle, a pain management physician. She continued to take medications and Dr. Sprinkle's last report of May 23, 2006, indicated he intended to try some facet injections; however, respondents denied further benefits. The claimant went to the emergency room at St. Joseph on September 29, 2006, and followed up one more time with Dr. Atta. According to the claimant, none of her treating physicians have released her back to full duty but she has been released to restricted duty.

According to the claimant, she went to the emergency room twice and was

unable to return to work. She contacted Todd, her floor supervisor, and then she was fired by Robert and that was in November 2005. According to the claimant, now she is unable to do her housework or cook meals for the family.

Under cross examination, the claimant confirmed that a September 22, 2005, CT scan revealed severe arthritic changes and abnormal facets and a September 22, 2005, myelogram provided normal results. Also, a nerve conduction study provided normal results. The claimant confirmed that she drew temporary total disability benefits through January 31, 2006, when Dr. Atta released her to light duty. Counsel noted that the claimant was rocking in her chair at the hearing and she stated this helped her with pain. The claimant testified that she occasionally goes to the grocery store to pick up something, but otherwise did not do many daily activities. According to the claimant, facet injections have been recommended by Dr. Sprinkle but the insurance company has denied further care.

Kirk Erickson, owner of the respondent employer, testified that he and the claimant went to high school together and knew each other before her employment. The claimant's injury was initially accepted and the claimant received treatment and testing and continued to work, missing days sporadically through mid-November 2005. The claimant's last work day was November 14, 2005. According to Mr. Erickson, the claimant did not come in or call for at least three days and it was assumed she had resigned her position. Mr. Erickson testified that he was not contacted by the claimant nor was any of the supervisors contacted or given prior notice. Mr. Erickson testified that the claimant worked in the screening department and would be involved in cutting, assembling or rolling screens in her job which involved lifting up to five pounds. Mr.

Erickson testified that before the claimant's injury she had missed 156 work hours for various reasons. Mr. Erickson confirmed that he had work available within the claimant's limited duty restrictions had she presented herself.

Under cross examination, Mr. Erickson testified that Todd Puckett was the claimant's direct supervisor and she could call in to him, if she was unavailable for work, as well as Judy Lonzack or Monica Murray. Mr. Erickson confirmed the claimant was paid temporary total disability benefits from November 14, 2005 through January 31, 2006.

The claimant contends she is entitled to additional medical benefits. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to the compensable injury. The claimant was initially diagnosed with a lumbar strain and provided medication. An August 23, 2005, MRI revealed some mild degenerative

changes in the lumbar spine at L4-L5, including partial disc desiccation and hypertrophic changes in the posterior facets. The claimant was released to work with limitations and sent to physical therapy. On September 14, 2005, the claimant underwent a lumbar myelogram with a CT Contrast which revealed the following:

IMPRESSION

There is some narrowing of the spinal canal at L4-5 and some spurring with impingement of the left L3-4 nerve root. Rather severe arthritic changes of the apophyseal joints is seen throughout the lumbar spine, but most severely in the lower levels from L3 through S1. Thickening of the lamina in the lower lumbar spine is also seen with sclerosis. This partially contributes to the narrowing of the canal at L5. Asymmetry of the facets is seen involving the L4 superior facet which is larger on the left than on the right with spurring which simulates an additional joint space. (Cl. Exh. No. 1, page 10.)

The claimant next had a lumbar epidural steroid injection with little improvement noted. By January 17, 2006, Dr. Bruce Smith had no new treatment options and recommended the claimant be evaluated by Dr. Ted Saer or his colleague. Dr. Brent Sprinkle evaluated the claimant on May 3, 2006, and ordered an EMG and this presented normal findings. Dr. Sprinkle opined that the diagnostic tests revealed degenerative changes with irritation in some of the facet joints. Dr. Sprinkle recommended facet joint injections and the respondents controverted the claim.

Respondents accepted the claim and paid for some conservative medical treatment and diagnostic testing. The diagnostic tests revealed primarily degenerative changes and the conservative treatment for the lumbar strain was exhausted. The latest medical reports simply recommended trying facet injections and indicate that the condition was pre-existing but *could* have been exacerbated by her work injury. I was not persuaded that the additional medical treatment was reasonable and necessary and

related to her compensable work injury. The claimant's diagnostic tests have not revealed acute conditions but rather have revealed degenerative changes and conditions and mere possibilities. I find that additional treatment is not reasonable and necessary and related to the compensable August 1, 2005, work injury.

The claimant next contends that additional temporary total disability benefits are warranted from February 1, 2006, to the present. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the respondents paid temporary total disability benefits through January 31, 2006. On January 17, 2006, Dr. Bruce Smith opined that the claimant was released to light-duty work if it was available. On May 3, 2006, Dr. Brent Sprinkle opined that the claimant could be released back to work with no lifting over 35 pounds. Finally, on October 1, 2006, the claimant saw Dr. Michael Atta and he opined she could work with the following restrictions:

. . . .If she is able to go back to work she should limit her prolonged walking and standing as well as her sitting. She should do no repetitive bending or stooping. No kneeling or squatting and limit her climbing of stairs and ladders, et cetera. She should limit her pushing and pulling, and don't do an lifting over 8 pounds. At this time, she should not operate any heavy machinery. She should limit her tasks of reaching above her shoulders or head and she should do no twisting of the back or have any awkward or positioning of her back until further clinic visits and studies are obtained. . .
(Cl. Exh. No. 1, p. 43.)

The owner of the business, Kirk Erickson, testified that he was willing to work with the claimant on all restrictions; however, she failed to report to work or call in and

she was terminated. I found Mr. Erickson to be a credible witness and I gave considerable weight to his testimony. After considering the medical evidence and considering all the credible testimony, I find the preponderance of the evidence supports the claimant was not totally unable to earn wages. The treating physician had placed her on restricted duty and work within those restrictions was available at the respondent employer. Therefore, I find the claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages.

ORDER

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to her work injury. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**