

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412496

AZAR NAZARALI	CLAIMANT
DILLARD'S, INC.	RESPONDENT
ST. PAUL TRAVELERS INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 28, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 23, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 21, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On November 20, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on November 20, 2004.

4. The claimant is entitled to a weekly compensation rate of \$278.00 for temporary total disability and \$209.00 for permanent partial disability.

5. On March 15, 2005, the respondents accepted and paid a 5 percent whole body impairment.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.

In regard to the foregoing issues the claimant contends that she was injured on November 20, 2004. Her right hip, right wrist, right ankle, and lower back were injured when she fell off a ladder.

In regard to the foregoing issues the respondents contend that this injury was accepted as compensable and benefits paid accordingly. To respondents' knowledge, claimant last sought medical treatment in July 2005. On June 28, 2006, claimant's attorney wrote respondents' attorney advising that claimant needed to return to Dr. Knox and was making an appointment. Respondents' attorney responded by letter dated June 29, 2006, advising respondents had no objection to her doing so. Nothing occurred since that date and respondents filed a Motion to Dismiss Without Prejudice on June 11, 2007. Additional medical treatment is not reasonable and necessary for this injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical evidence marked Claimant's

Exhibit No. 1. The respondents submitted medical documentation marked Respondents' Exhibit No. 1 and non medical marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty-eight years old and had been working for the respondent for six years in sales. The claimant testified and it has been stipulated that she sustained a compensable injury on November 20, 2004, when she was working on a display and fell off of a ladder. The claimant testified that as a result of this fall she injured her back primarily on the right side as well as her hands and right ankle. The claimant testified that she was initially treated by Dr. Moffitt and was given medications as well as braces for her hand and ankle. The claimant testified that eventually Dr. Moffitt prescribed physical therapy which she attended. The claimant testified that she is still having problems with her wrist and ankle. The claimant testified that she is also having problems with her right hip. The claimant testified that Dr. Moffitt gave her home exercises which she has continued to do.

The claimant testified that after her fall in November 2004 she was involved in a car accident which injured her neck. The claimant testified that she was treated by Dr. Johnson, a chiropractor, for her neck problems and at the same time was seeing Dr. Moffitt for her low back. The claimant testified that approximately one year after her fall on November 20, 2004, she was

seen by Dr. Knox for her low back. The claimant testified that she also was being seen by Dr. Johnson for her neck. The claimant testified that when she was seen by Dr. Knox she told him that she was being seen by a chiropractor. The claimant testified that prior to her fall in November 2004 she had not had problems with her low back or hip nor had she been under the care of any physician for these areas. The claimant testified that she was involved in a second car accident in May 2006 noting that her medical treatment with Dr. Moffitt had ended at that point. The claimant testified that after her two automobile accidents she had pain in her neck and shoulders. This witness was asked if these accidents bothered her low back and the claimant responded, "No, I don't think so." The claimant agreed that at the time of her car accident she was already being bothered by her back. The claimant testified that since her fall in November 2004 she has had problems standing on her feet and has to take ibuprofen for her discomfort.

On cross examination, the claimant agreed that she had been involved in an automobile accident on December 9, 2003. The claimant agreed that as a result of this 2003 motor vehicle accident she was treated for her neck, upper back, and low back by Dr. Johnson for a period of five months. The claimant also agreed that she was involved in a motor vehicle accident in the year 2000 and was treated by a different chiropractor at that time. After some discussion concerning the claimant's medical exhibits it was agreed that the claimant was first seen by Dr. Abernathy after her fall. The claimant was asked if she was aware that Dr. Abernathy's

assessment on December 22, 2004, indicates that she was probably malingering. The claimant indicated that she was not familiar with that term. The claimant agreed that after her motor vehicle accident in January 2005 she was treated by Dr. Johnson for her complaints of neck, mid and low back as well as headaches for a period of five to six months. The claimant agreed that during this period of time she began physical therapy prescribed by Dr. Moffitt. The claimant was questioned about her attendance for her physical therapy appointments. The claimant testified that she does not remember missing physical therapy appointments on the dates she also was treated by Dr. Johnson. The claimant agreed that she last saw Dr. Moffitt on March 15, 2005, at which time he gave her a permanent impairment rating for her back. The claimant testified that she next was seen by Dr. Knox for her November 2004 low back injury. The claimant agreed that she has not seen Dr. Knox since July 2005 nor Dr. Moffitt since March 2005. The claimant agreed that on May 8, 2006, she was involved in a motor vehicle accident which was almost a year after she had had treatment for her compensable injury. The claimant agreed that after she was treated at the emergency room x-rays were taken of her neck, mid and low back she then began treatment with Dr. Johnson. The claimant indicated that she was aware that Dr. Johnson had diagnosed her with having acute cervical, thoracic, and lumbar strain. The claimant agreed that she did not return to see Dr. Johnson after her July 19, 2006, visit. The claimant acknowledged that she was seen at the Northwest Arkansas Free

Health Clinic on September 19, 2002, for complaints with her hands, wrists, knees, shoulder, neck, back, and hips. The claimant indicated that these problems were alleviated with exercise. The claimant testified that at the time of her May 8, 2006, motor vehicle accident she was already having pain in her low back due to her fall. The claimant agreed that she had been authorized to return to see Dr. Knox in June 2006 but that she never saw Dr. Knox. The claimant explained that Dr. Knox is a surgeon and she does not need surgery and he would have just given her pain killers and told her to do exercises. The claimant agreed that since 2005 all she has taken has been over the counter medications.

On redirect examination, the claimant agreed that before her most recent motor vehicle accident she was already experiencing pain in her low back. The claimant indicated that the home exercises she was prescribed do help her. The claimant agreed that following her December 2003 motor vehicle accident Dr. Johnson indicated on February 15 that all of her symptoms in her back were gone. The claimant was asked if she did in fact get better and the claimant responded, "Yes."

On recross examination, the claimant agreed that Dr. Johnson took her off work for one week following her May 2006 motor vehicle accident. The claimant also agreed that when she was seen by Dr. Michael Morse on May 11, 2006, she indicated that she needed to be off work for approximately ten days due to her ongoing headaches.

On redirect examination, the claimant agreed that she was first seen by Dr. Michael Morse on April 26, 2005, for complaints

to her neck and back. The claimant agreed that she was still having low back problems due to her fall. The claimant agreed that she reported to Dr. Johnson her work related injury and he was aware of it as well as the motor vehicle accident.

On recross examination, the claimant agreed that following her January 4, 2005, motor vehicle accident Dr. Johnson referred her to Dr. Morse. The claimant was questioned about what she told Dr. Morse in April 2005 following her motor vehicle accident in January 2005. The claimant testified that she could not remember what she said to him. The claimant agreed that from the December 2003 motor vehicle accident she had treatment for neck pain and severe headaches. On recross examination, the claimant read from her deposition that the parts of her body that were injured as a result of her 2006 motor vehicle accident were her neck and back. The claimant agreed that she was aware that Dr. Johnson's treatment records following this latest motor vehicle accident reflect that she has had acute strain of her neck, thoracic, and low back. The claimant testified that she already had pain that her pain had never gone away. The claimant was then asked if it got worse as a result of her motor vehicle accident and the claimant responded, "Yes, I think."

On redirect examination, the claimant testified that the pain in her low back has gone back to the level it was prior to her latest motor vehicle accident.

The medical records set forth that the claimant was seen by Dr. Bryan Abernathy on November 24, 2004, after her compensable

injury. After examination, Dr. Abernathy gave the claimant a twenty-pound lifting restriction, no overhead work, and no prolonged stationary standing. The claimant was seen by Dr. Abernathy on December 3, 2004, and he continued her restrictions and notes that the claimant is probably malingering. On follow up on December 23, 2004, Dr. Abernathy recommended that the claimant undergo a CT of her lumbar spine. At this same visit he again notes that she is malingering. The claimant underwent a CT scan of her lumbar spine on December 23, 2004, which revealed bilateral spondylolysis at L-5 with no spondylolisthesis and notes that there is no evidence of any foraminal stenosis, channel stenosis, lateral recess stenosis, herniated nucleus pulposus, or other abnormality. Dr. Johnson saw the claimant on January 5, 2005, following her motor vehicle accident the day before. Based on the history given by the claimant as well as the doctor's examination and review of her x-rays, Dr. Johnson diagnosed her with acute Grade II strain of the cervical spine and lower thoracic strain, noting that both of these areas have other complications. Dr. Johnson administered therapy as well as manipulation to reduce the claimant's muscle spasms and estimated that she would require at least three months of treatment. The claimant returned to see Dr. Johnson on January 7, 2005, reporting that she was suffering from dizziness, blurred vision, and severe headaches. A CT of the claimant's brain done on January 11, 2005, was normal. Dr. Johnson continued to treat the claimant for her ongoing complaints of neck and upper back problems as well as severe headaches through January 31, 2005. Dr. Gary

Moffitt writes on January 26, 2005, that he has seen the claimant for her compensable injury. After examination, Dr. Moffitt writes that he is suspicious that the claimant has a piriformis syndrome and may have some other muscles involved. Dr. Moffitt recommended physical therapy, x-rays, and a CT scan but released the claimant to work without restrictions. The claimant began physical therapy on January 31, 2005. The medical records set forth that the claimant continued to be seen and treated by Dr. Johnson for her cervical and thoracic strain as well as undergoing physical therapy at the direction of Dr. Moffitt for her compensable injuries. These alternate treatment programs continued for the claimant up through March 15, 2005, when Dr. Moffitt writes that the claimant is still having some pain in the right SI area and does have some reproduction of symptoms with piriformis testing noting, however, that there is no neurologic abnormality. Dr. Moffitt opines that the claimant has reached maximum medical improvement and assessed her with a 5 percent whole body impairment noting that there was a chance that she may need further physical therapy. The claimant continued with her chiropractic treatment throughout April 2005. Dr. Johnson referred the claimant to Dr. Michael Morse for evaluation of her headache problems following her January 2005 car accident. Dr. Morse did an evaluation of the claimant on April 26, 2005, noting specifically that he was not evaluating the claimant for any injuries she might have sustained in a fall while working for the respondent. The claimant reported to Dr. Morse that her back injury was not exacerbated by her car accident. Dr. Morse did

have the claimant undergo an MRI of her brain which was normal. Dr. Morse had the claimant undergo an MRI of her cervical spine which revealed a disc bulge to the right at C3-4, a disc bulge at C4-5, and a mid line disc bulge at C5-6. Dr. Morse had a follow up visit with the claimant on May 5, 2005, concerning her whiplash/headache problems. The claimant continued to be seen for chiropractic treatment by Dr. Johnson throughout May, June, and July 2005. The claimant was seen by Dr. Luke Knox on June 23, 2005, for her complaints of back and right leg pain. Upon examination, Dr. Knox notes that the claimant has marked positive para spinal muscle spasm and complaints of L5 pain with an S1 myelotomal distribution. Dr. Knox x-rayed the claimant's lumbar spine and notes that there was no evidence of spondylolisthesis although there was marked degenerative changes noted at L2-3. The claimant underwent an MRI on June 27, 2005, which was within normal limits for her age. Dr. Knox writes on July 13, 2005, that he has reviewed her MRI which revealed no evidence of compressive pathology. Dr. Knox opined that the claimant had reached maximum medical improvement and assessed her a 7 percent permanent partial disability rating. The claimant was seen by Dr. Michael Morse on July 18, 2005, for her headaches and neck problems as a result of her motor vehicle accident. The medical records set forth that the claimant continued with her chiropractic treatment by Dr. Johnson throughout July, August, September, and October 2005. On November 28, 2005, Dr. Morse released the claimant from his care noting that she had reached maximum medical improvement as to her headaches and

neck pain due to her motor vehicle accident. Dr. Morse notes that he anticipates that the claimant will continue to have some pain but there is nothing further to be done.

The claimant was taken by ambulance following an automobile accident on May 8, 2006. The claimant was taken to Washington Regional Medical Center for complaints of neck, mid back, mid chest, and abdominal pain. X-rays taken of the claimant's neck and thoracic spine were normal. After examination and review of the claimant's test she was assessed with having cervical strain as well as a mild concussion. Imaging studies done of the claimant's lumbar spine on May 8, 2006, were normal. The claimant continued with her chiropractic treatment by Dr. Johnson throughout May 2006 which now mention treatment for her low back. The claimant was seen by Dr. Michael Morse on May 11, 2006, as a result of her May 2006 motor vehicle accident. Dr. Morse notes that the claimant reports feeling dizzy, nauseated, sleepy, and that her head feels heavy as if there is pressure behind her eyes. Dr. Morse notes that the claimant complains of neck pain that radiates down into her left shoulder noting that there is no numbness, tingling, or weakness and she also reports a mild exacerbation of her low back pain. After examination, Dr. Morse notes that the claimant has a whiplash injury to her neck with left arm pain and he recommended a repeat MRI to compare with her earlier MRI and to continue with treatment by Dr. Johnson. An MRI of the claimant's cervical spine revealed that there are disc bulges at C3-4, C4-5, and C5-6 which have essentially not changed since the prior study dated April 27,

2005. The claimant was seen again by Dr. Morse on May 15, 2006, where he notes that the claimant's MRI of her cervical spine is unchanged from her prior study. Dr. Morse writes that he anticipates this is an exacerbation of a pre-existing condition and that she will do well. Dr. Morse writes on May 22, 2006, that within a reasonable degree of medical certainty it is his opinion that the claimant's disc bulges in her cervical spine are related to the motor vehicle accident of January 4, 2005, but are not related to her fall while working for the respondent in November 2004. Dr. Johnson's chiropractic notes following the claimant's May 8, 2006, motor vehicle accident now mention and specifically treat her reports of lumbar pain. Dr. Johnson's chiropractic report dated July 19, 2006, notes that the claimant has resolving Grade II cervical sprain, acute thoracic and lumbosacral sprain and resolved costosternal sprain. Dr. Kirk Johnson writes on September 26, 2007, that he has treated the claimant on several occasions since her low back injury in 2004 noting that the focus of these follow up visits primarily involved injury of the neck and upper back as reflected in his records. Dr. Johnson writes that during these periods of time the claimant frequently complained of low back pain but due to her previous injury and care being provided through workers' compensation he made no formal effort to provide treatment other than electrical muscle stimulation when necessary to relax her lower back.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence

that she is entitled to additional medical treatment for her compensable low back injury. It is not questioned that the claimant has been receiving medical treatment but it primarily has been for her neck and upper back problems due to motor vehicle accidents. Subsequent to the claimant's last motor vehicle accident on May 8, 2006, Dr. Johnson, a chiropractor, then began to note and address her low back complaints. It is my opinion, based on the medical records, that any low back problems which this claimant may currently be experiencing are as a result of her latest motor vehicle accident and not as a result of her fall in November 2004. Therefore, the claimant's request for additional medical is denied.

FINDINGS & CONCLUSIONS

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

2. On November 20, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on November 20, 2004.

4. The claimant is entitled to a weekly compensation rate of \$278.00 for temporary total disability and \$209.00 for permanent partial disability.

5. On March 15, 2005, the respondents accepted and paid a 5 percent whole body impairment.

6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury. Therefore, this claim for additional benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE