

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F510224**

**PAMELA J. SHIREMAN**

**CLAIMANT**

**AEROSPACE EDUCATION CENTER**

**RESPONDENT EMPLOYER**

**CINCINNATI INDEMNITY CENTER**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED MARCH 8, 2007**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on January 23, 2007. A prehearing conference was held on December 12, 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 an August 28, 2005, compensable injury.
2. The temporary total disability rate is \$256.
3. An Order and Opinion was filed on April 25, 2006, finding a compensable injury and medical to be paid through October 31, 2005.

The claimant contends she is entitled to additional medical benefits and for the continuation of medical treatment with Dr. Kenneth Johnston.

Respondents contend that a hearing was held and an opinion was entered finding the claimant sustained a temporary aggravation to a pre-existing condition and indicated medical would end on October 31, 2005. That opinion was not appealed.

Respondents contend that additional medical treatment is not reasonable and necessary. Respondents contend the April 25, 2006, opinion is *res judicata* for the matter in the instant claim.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, by reference the transcript from the March 22, 2006, hearing and the April 25, 2006, opinion, 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 an August 28, 2005, compensable injury.
2. The temporary total disability rate is \$256.
3. An Order and Opinion was filed on April 25, 2006, finding a compensable injury and medical to be paid through October 31, 2005.
4. The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment she has received since October 31, 2005, was reasonable

and necessary and related to her compensable temporary aggravation of her degenerative disk disease that culminated on August 28, 2005.

## **DISCUSSION**

The claimant sustained a gradual onset temporary aggravation of her degenerative disk condition that culminated about August 28, 2005. A hearing was held on March 22, 2006, and an Order and Opinion was filed on April 25, 2006, finding respondents responsible for reasonable and necessary conservative medical care from September 7, 2005 through October 31, 2005 and finding the claimant was entitled to temporary total disability benefits from September 19, 2005 through October 15, 2005.

According to the claimant, since the March 22, 2006, hearing she has seen her doctor, Dr. Kenneth Johnston, a couple of times with complaints of neck spasms and occipital headaches caused by the spasms. The claimant testified that she has missed from 40 to 45 days in the past six months primarily because of headaches.

Under cross examination, the claimant confirmed that her headaches began about seven months ago or April or May 2006, but after the previous hearing. The claimant testified that she has continued to see Dr. Kenneth Johnston and has had some physical therapy after October 31, 2005, as well as has been prescribed two prescription drugs, Carisoprodol and Cyclobenzapr. The claimant relates her headaches to muscle spasms from her cervical problems and to her long hours at her work. While some prescription drug charges were introduced into evidence, there were no supporting medical reports to provide an explanation for prescribing the medication or to identify symptoms for which the claimant was seeking treatment.

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.

In the present case, the claimant has failed to prove by a preponderance of the evidence that additional medical treatment was reasonable and necessary and related to the compensable temporary aggravation of the claimant's degenerative disk condition. While the claimant testified about problems she is having with headaches, there was no supporting medical records to document her account that the problems are related to her work injury. What constitutes reasonable and necessary treatment is a fact question for the Commission. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

#### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment she has received since October 31, 2005, was reasonable and necessary and related to her compensable temporary aggravation of her

degenerative disk disease that culminated on August 28, 2005. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**