

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F612608

ANNA STIELER, Employee	CLAIMANT
ARCHITECTURAL BUILDING PRODUCTS, Employer	RESPONDENT #1
FIRSTCOMP INSURANCE COMPANY, Carrier	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED NOVEMBER 20, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by ADRIENNE KINCAID MURPHY, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

Respondent #2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 10, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 30, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed between the claimant and respondent #1 at all relevant times.
3. The claimant sustained a compensable injury to her cervical spine on August 16, 2006.

At the time of the hearing the parties agreed to stipulate that claimant earned an

average weekly wage of \$750.00 which would entitle her to the maximum compensation rate.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right shoulder.
2. Medical related to right shoulder injury and additional medical for claimant's cervical spine.
3. Temporary total disability benefits from July 12, 2007 through a date yet to be determined.
4. Attorney fee.

The claimant contends she is entitled to additional medical treatment for her compensable cervical spine injury. She also contends that she suffered a compensable injury to her right rotator cuff which has resulted in surgery. She requests medical and temporary total disability beginning July 12, 2007.

Respondent #1 contends the claimant sustained a prior motor vehicle accident in which she underwent a three-level fusion from C4-7. Dr. Sprinkle noted that the claimant developed degenerative disc disease at C3-4 and C7-T1 and went on to state that he thought the bony disc problems at C3-4 were the result of a prior disc surgery and not due to the claimant's medical only claim on August 16, 2006. Dr. Sprinkle treated claimant conservatively and recommended claimant continue to work while undergoing treatment. As of February 15, 2007 claimant was released by Dr. Sprinkle and it was noted claimant did not need any further medical treatment and had no permanent impairment or additional restrictions. Claimant's EMG nerve conduction study was completely normal. Claimant then went to Dr. Raben who treated her for cervical problems and described rotator cuff tendinitis. Respondents have not accepted the rotator cuff injury as a compensable consequence of the injury. Moreover, respondents contend that claimant is not entitled to additional indemnity benefits at this time.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 30, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$750.00 which would entitle her to the maximum compensation rate is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder while employed by the respondent.

4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable right shoulder injury. This includes surgery performed by Dr. Dougherty.

5. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical injury.

6. Claimant is entitled to temporary total disability benefits beginning July 12, 2007 and continuing through a date yet to be determined.

7. Respondent is entitled to a credit for any benefits paid by a group carrier pursuant to A.C.A. §11-9-411.

8. Respondent has controverted claimant's entitlement to all unpaid temporary total disability benefits.

FACTUAL BACKGROUND

The claimant is a 56-year-old woman who moved to the United States from South Africa in 2001. Claimant moved to Northwest Arkansas in August 2005 and began working for the respondent as an office manager in March 2006.

The claimant suffered an injury while working for the respondent on August 16, 2006. On that date, the claimant attended a meeting and as she got up from a table and turned to walk out a door, she tripped over a wire and fell to the floor. Claimant did not seek medical treatment that day, but instead took some medication. Claimant worked on August 17, 2006 and went to the emergency room that night after work.

After the emergency room visit claimant came under the care of Dr. Vandergriff who diagnosed claimant as suffering from a lumbosacral and cervical spine strain and thoracic muscle spasm. Dr. Vandergriff treated claimant conservatively with medication and physical therapy. Dr. Vandergriff eventually ordered an MRI scan of the claimant's cervical spine and referred claimant for a neurosurgical evaluation. Claimant was referred by respondent to Dr. Sprinkle, a D.O. who specializes in non-operative care of the spine. Dr. Sprinkle also treated claimant conservatively with his treatment including medication, cervical epidural injections, physical therapy, and a TENS unit. Dr. Sprinkle eventually released the claimant from his care in early 2007.

Claimant was granted a change of physician by the Commission to Dr. Cyril Raben. In a report dated February 26, 2007, Dr. Raben assessed claimant's condition as a cervical spine degeneration, herniation, and stenosis. He also believed that claimant suffered from rotator cuff syndrome and recommended an injection of claimant's right shoulder. The injection provided temporary relief and Dr. Raben referred claimant to Dr. Dougherty for further shoulder evaluation. Dr. Dougherty assessed claimant's condition as shoulder impingement syndrome and rotator cuff tear. Dr. Dougherty performed surgery on claimant's right shoulder on July 12, 2007.

The respondent accepted an injury to claimant's cervical spine as compensable and paid some compensation benefits through the date of last treatment by Dr. Sprinkle. Respondent has denied compensability of the claimant's right shoulder injury. As a result, claimant has filed this claim contending that she suffered a compensable injury to her right shoulder as a result of the fall on August 16, 2006. She seeks payment of medical benefits as well as temporary total disability benefits. In addition, claimant also contends that she is entitled to additional medical treatment for her compensable cervical spine injury.

ADJUDICATION

The initial issue for consideration involves claimant's contention that she suffered a compensable injury to her right shoulder as a result of the accident on August 16, 2006. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a

preponderance of the evidence that she suffered a compensable injury to her right shoulder.

First, I note that claimant testified that she had no prior problems with her right shoulder before the fall on August 16, 2006. Claimant testified that after this fall she had immediate pain in her head and down her arm. The initial medical report from Dr. Vandergriff dated August 21, 2006 reflects numerous complaints including claimant's thoracic spine, cervical spine, lumbosacral spine, and headaches. In addition, claimant also apparently referred to her shoulders because Dr. Vandergriff's medical report contains the following statement: "She feels like her shoulders are tingling." When claimant returned to Dr. Vandergriff on September 13, 2006 she again had numerous complaints including pain in her shoulders that went down her back. Dr. Vandergriff diagnosed claimant's condition as trapezial muscle spasm and a tension headache. Dr. Vandergriff also referred claimant to physical therapy. Physical therapy notes of October 2 and October 5 both note complaints of pain in the claimant's right arm.

Dr. Vandergriff subsequently ordered an MRI scan of the claimant's cervical spine and referred her for a neurosurgical evaluation. Claimant came under the care of Dr. Sprinkle whose initial evaluation of the claimant occurred on October 19, 2006. Dr. Sprinkle's medical report of that date notes a complaint of numbness in the claimant's shoulders. In addition, the documentary evidence contains a diagram completed by the claimant on that date wherein she marked numerous sensations including burning, stabbing, and pins and needles in her shoulder area extending down her right arm.

Based upon the claimant's complaints Dr. Sprinkle ordered an MRI scan of the claimant's right shoulder. A rotator cuff tear was not identified on that MRI scan, but it was noted that there was an increased density signal "tracking along the myotendinous junction of the infraspinatus muscle." The radiologist went on to note that this was most likely a Grade I strain, but also noted that a delaminating injury could not be excluded. In fact, Dr.

Sprinkle's report of November 1, 2006 indicates that the MRI scan of the claimant's shoulder revealed a small tear. Dr. Sprinkle provided several modalities of treatment before indicating that he had nothing further to offer the claimant with respect to her cervical or right shoulder conditions. Significantly, Dr. Sprinkle did not indicate that the claimant's cervical condition had resolved or that she was asymptomatic; only that the treatment he was providing was not alleviating her condition.

Claimant subsequently sought medical treatment from Dr. Raben and from Dr. Dougherty who performed surgery on claimant's right shoulder. In report dated June 5, 2007, Dr. Raben indicated that in his opinion the claimant's right shoulder injury was related to her on-the-job injury and it had been primarily overlooked by claimant's primary treating physicians. Indeed, it appears that much of Dr. Sprinkle's medical treatment addressed claimant's cervical condition as opposed to her right shoulder complaints. More importantly is the opinion of Dr. Dougherty who completed a form on August 20, 2007. On that form, Dr. Dougherty indicated that in his opinion the claimant's right shoulder condition was causally related to her work-related injury and it was the cause of her need for medical treatment. Dr. Dougherty specifically indicated that claimant's right shoulder condition was not related to any prior pre-existing condition.

Based upon the claimant's testimony which I find to be credible as well as my review of the medical records and the opinions of Drs. Raben and Dougherty, I find that claimant has met her burden of proving by a preponderance of the evidence that her right shoulder injury arose out of and in the course of her employment and that it was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm to her body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury. Here, Dr. Sprinkle indicated in his medical report of November 1,

2006 that the MRI scan of the claimant's right shoulder revealed a small tear. Claimant eventually came under the care of Dr. Dougherty who performed surgery in July 2007 for shoulder impingement syndrome and a rotator cuff tear. This evidence is objective and satisfies the remaining element of compensability.

In summary, I find based upon the evidence presented that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder as a result of the fall on August 16, 2006. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable right shoulder injury. This includes, but is not limited to, surgery performed by Dr. Dougherty.

I also find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical spine injury. As previously noted, claimant was released by Dr. Sprinkle after conservative treatment provided no benefit to claimant. However, as previously noted, Dr. Sprinkle did not indicate that claimant's condition had resolved or that she was asymptomatic. Instead, he simply indicated that the treatment he was providing was providing no relief. In a report dated June 5, 2007, Dr. Raben indicated that claimant's work-related injury exacerbated a pre-existing condition in the claimant's cervical spine. As a result, it was his opinion that claimant was in need of additional medical treatment for her cervical spine injury. Based upon the opinion of Dr. Raben, which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her cervical spine injury.

Finally, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning July 12, 2007, and continuing through a date yet to be determined. In order to be entitled to

temporary total disability benefits claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

Claimant is requesting temporary total disability benefits beginning July 12, 2007, the date of her surgery, and continuing through a date yet to be determined. I find based upon a review of the medical reports from Dr. Dougherty and Dr. Raben that claimant remains within her healing period and that she suffers a total incapacity to earn wages. The medical reports from Dr. Dougherty indicate that claimant continues to have problems with her right shoulder for which she continues to receive medical treatment. In addition, claimant has not been able to return to Dr. Raben for continued medical treatment involving her cervical spine due to her right shoulder injury and the denial of her claim for additional benefits by the respondent. Nevertheless, Dr. Raben has indicated that additional medical treatment is necessary for claimant's cervical spine injury. Dr. Raben also indicated in the report dated June 5, 2007 that the claimant was unemployable because of the injuries to her cervical spine and her right shoulder. Based upon this evidence, I find that claimant has remained within her healing period and that she has suffered a total incapacity to earn wages beginning July 12, 2007 and continuing through a date yet to be determined. In awarding temporary total disability benefits, I note that there was some testimony regarding a cleaning business which was owned by claimant's family. However, it does not appear that claimant has earned any wages from that cleaning business since her surgery on July 12, 2007. While claimant's husband and children may have earned wages, I find insufficient evidence indicating that claimant has earned wages.

To the extent that claimant received any disability benefits or that any medical

benefits were paid for by a group carrier, the respondent is entitled to a credit pursuant to A.C.A. §11-9-411.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable right shoulder injury. This includes, but is not limited to, surgery performed by Dr. Dougherty. Claimant is also entitled to additional medical treatment for her compensable cervical spine injury. Finally, claimant is entitled to temporary total disability benefits beginning July 12, 2007, and continuing through a date yet to be determined. Respondent has controverted claimant's entitlement to all unpaid temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded

on medical benefits.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$568.50.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE