

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512340

JUNE VILCHES, EMPLOYEE	CLAIMANT
PINE BLUFF SCHOOL DISTRICT, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED MAY 17, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 16, 2007 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's right to payment of medical expenses and attorney's fees through the enforcement of an Agreed Order.

At issue is whether or not the respondents' are in contempt of an Agreed Order pursuant to Ark. Code Ann. §11-9-706; and whether or not the respondents are estopped from denying payment of the claimant's medical expenses.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on November 10, 2005 at which time the claimant sustained a compensable injury at a compensation rate of \$466.00/\$350.00 . Medical expenses and temporary total disability benefits (until February 10, 2006) were paid. The parties entered into an Agreed Order filed July 10, 2006, with the Commission regarding the payment of Dr. Greenberg's medical expenses. The claimant has group insurance with the Municipal Benefits Fund through her husband's employer.

The claimant contends that she remained symptomatic and Dr. Martin Greenberg was authorized by the Medical Cost Containment Division of the Commission to treat her. Dr. Greenberg performed surgery on April 20, 2006 which was reasonable and necessary to treat the claimant's condition. The respondents are in contempt of an Agreed Order entered into by the parties on July 10, 2006 regarding payment of the claimant's medical expenses. Furthermore, the respondents paid medical bills after the date of controversion and are now estopped from denying liability. The claimant seeks payment of medical expenses associated with Dr. Greenberg's treatment and attorney's fees.

The respondents contend Dr. Greenberg failed to obtain pre-authorization for the surgery as required by Rule 30 and therefore the carrier is not liable for those expenses. The claimant was released by Dr. Rutherford and Dr. Schlesinger after treatment for an aggravation of a preexisting condition.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant and Adjuster, Corrine Lancaster. The claimant held her neck stiffly and became emotional talking about the stress of collection agencies hounding her for payment of her medical expenses. The claimant is a school teacher and her husband is a police officer. The claimant appeared to be sincere in her testimony.

In June, 2006, this case was set for a hearing on the issues of payment of reasonable and necessary medical expenses, Dr. Greenberg's authorization, estoppel, additional temporary total disability benefits and attorney's fees. On the day of the hearing, the parties reached an amicable resolution of the issues and in lieu of a hearing on the merits, entered into an Agreed Order filed with the Commission on July 10, 2006.

In pertinent part, the parties agreed that Dr. Greenberg failed to comply with the provisions of Rule 30 and did not pre-certify his treatment or surgery. Furthermore, the respondents would not

be liable for medical expenses between April 11, 2006 to June 26, 2006. The respondents also agreed to pay for any out-of-pocket expenses “not covered” by the claimant’s group insurance.

The claimant’s group carrier, the Municipal Health Benefit Fund, declined payment of Dr. Greenberg’s expenses explaining that since the respondents accepted this claim as a compensable injury, Risk Management Resources is solely responsible for any medical expenses.

The Workers’ Compensation carrier, Risk Management Resources then refused to pay the medical expenses based on the Agreed Order and Dr. Greenberg turned the bills over to a collection agency. The claimant’s credit rating has now been ruined and she cannot return to Dr. Greenberg to complete her treatment.

Corrine Lancaster, the Adjuster for Risk Management Resources (RMR) testified the Medical Cost Containment Division originally appointed Dr. Adametz as a change of physician. When he learned the carrier would only pay for one visit before deciding if further treatment was reasonable and necessary, he declined to accept the claimant as a patient.

The claimant advised Ms. Lancaster that she had seen Dr. Greenberg on April 10 and he recommended surgery for herniated discs at C5-6, C6-7. Ms. Lancaster spoke with the doctor’s office on April 18 and gave them contact information with another company, Systematic, which handles RMR’s medical expenses. The doctor’s office informed Ms. Lancaster that they had submitted the bills to the claimant’s group carrier. No one from Systematic or Dr. Greenberg’s office was called to testify. Ms. Lancaster testified Systematic had never been contacted for pre-certification by Dr. Greenberg and he performed surgery on the claimant’s neck on April 20.

DOCUMENTARY EVIDENCE

The claimant provided a print-out of benefits showing the respondents paid some of Dr. Greenberg’s expenses. The claimant relies on this print-out as a basis for estoppel.

Estoppel is an equitable doctrine which is invoked in appropriate circumstances to prevent a party from prevailing on purely technical grounds after having acted in a manner indicating that the opposing party’s strict compliance with the technicality would not be required. Snow v.

ALCOA, 15 Ark. App. 205, 691 S.W.2d 194 (1985). The necessary elements of estoppel are: 1) the latter must be ignorant of the true facts; and 4) he must rely on the former's conduct to his injury. Foote's Dixie Dandy v. McHenry, 270 Ark. 816, 607 S.W.2d 323 (1980). Estoppel is a question of fact. Hoffius v. Maestri, 31 Ark. App. 13, 786 S.W.2d 846 (1990).

As I interpret the evidence, the estoppel argument does not apply in this case. The respondent may controvert a claim at anytime. The claimant also knew that the respondents wanted the opportunity to consider the reasonable necessity of Dr. Greenberg's recommendation before approving treatment as evidenced by Dr. Adametz's objection to assuming care of the claimant.

This issue of estoppel is also one of the issues the parties chose not to litigate at the June, 2006 hearing, entering into the Agreed Order instead of a hearing on the merits of the case.

MEDICAL EVIDENCE

The claimant's health history includes back surgery at L4-S1 in 1993.

With regard to the compensable injury, Dr. Reginald Rutherford released the claimant on February 7, 2006 with no restrictions or an impairment rating. He commented, "Ms. Vilches became very dramatic during the discussion advising that she would go the attorney route."

The claimant first saw Dr. Greenberg on April 10, 2006. An MRI scan of the claimant's cervical spine revealed multilevel degenerative disc disease and stenosis, with a C6-7 herniated nucleus pulposus (HNP). Dr. Greenberg also noted radicular right shoulder pain with biceps and tricep weakness.

An Order was entered April 11, 2006 by the Medical Cost Containment Division changing the claimant's physician from Dr. Reginald Rutherford to Dr. Martin Greenberg.

On April 20, 2006, Dr. Greenberg performed surgery for a "huge" right HNP at C5-6 and C6-7. Based on the medical records, it appears the medical treatment was reasonable and necessary and urgent, although these are issues that the parties chose not to litigate at the June, 2006 hearing, entering into the Agreed Order instead of a hearing on the merits of the case.

FINDINGS AND CONCLUSIONS

The parties entered into an Agreed Order concerning payment of Dr. Greenberg's medical expenses. The respondents now argue that the Agreed Order is void due to a mutual mistake of fact – both parties assumed the group carrier would pay the majority of the claimant's medical expenses. In fact, the claimant's group carrier (through her husband's employer) had recently changed to the Municipal Health Benefit Fund which does not pay any expenses on a compensable workers' compensation.

The Agreed Order became final within thirty days, Ark. Code Ann. §11-9-711. While mistake of fact might void a contract, it has no application under the Workers' Compensation Act.

Under the Act, the ways to change a final order are set out in Ark. Code Ann. §11-9-713 and Ark. Code Ann. §11-9-711. In the case at bar, there is no clerical error, change in physical condition, erroneous wage rate or evidence of fraud to warrant a change in the Agreed Order.

We are then left with the enforcement of the Agreed Order:

Paragraph 5.

The respondent carrier agrees to indemnify the claimant for any out-of-pocket expenses not covered by group insurance pursuant to the treatment of Dr. Martin Greenberg.

Since none of Dr. Greenberg's expenses were covered by the group policy, all of Dr. Greenberg's expenses are out-of-pocket expenses to the claimant.

For Medical Cost Containment to work effectively it is imperative to educate the medical providers' staff about compliance with Rule 30.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on November 10, 2005 at which time the claimant sustained a compensable injury.
2. Pursuant to an Agreed Order filed July 10, 2006, the respondents are liable for Dr. Greenberg's expenses.
3. The respondents are in contempt of the Agreed Order

and are hereby fined \$2,000.00 payable to the fiscal officer of the Commission.

4. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge