

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613866

REGINA L. WARREN, EMPLOYEE	CLAIMANT
MAVERICK TUBE, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

INTERIM OPINION AND ORDER FILED SEPTEMBER 11 , 2007

Hearing before Chief Administrative Law Judge David Greenbaum on July 20, 2007,
at Luxora, Mississippi County, Arkansas.

Claimant represented by Mr. J. Mark White, Attorney-at-Law, Bryant, Arkansas.

Respondents represented by Mr. Lee J. Muldrow, Attorney-at-Law, Little Rock,
Arkansas.

STATEMENT OF THE CASE

A hearing was conducted July 20, 2007, to determine whether the claimant
was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on June 6, 2007, and
a Prehearing Order was filed on said date. At the hearing, the parties announced
that the stipulations, issues, as well as their respective contentions were properly
set out in the Prehearing Order, subject to further clarification concerning the claim
for medical and related treatment.

It was stipulated that the employment relationship existed between the
parties at all relevant times, including December 16, 2005; that the claimant
sustained a compensable injury to her right upper extremity on said date; that
respondents paid medical and related treatment through on or about October 13,

2006; that the claim was treated as a medical only claim, and that respondents provided appropriate light-duty employment through on or about November 2, 2006; and that respondents had controverted claimant's entitlement to additional benefits. At the hearing, the parties further stipulated that the claimant earned sufficient wages to entitle her to compensation rates of \$319.00 per week for temporary total disability and \$239.00 per week for permanent partial disability.

By agreement of the parties, the following issues were presented for determination:

- 1) Whether the claimant's healing period had ended.
- 2) Claimant's entitlement to additional temporary total disability.
- 3) Claimant's entitlement to additional medical treatment after October 13, 2006.

Claimant contended, in summary, that as a result of her December 16, 2005, admitted injury, she developed RSD/complex regional pain syndrome in her right upper extremity; that respondents provided appropriate light-duty work through November 2, 2006, at which time respondents dismissed the claimant from the work provided and that claimant was, therefore, entitled to temporary total disability benefits after the dismissal. Claimant maintained that she remained within her healing period and was entitled to temporary total disability after November 2, 2006, and continuing through a date yet to be determined; that, in addition, she was entitled to medical treatment provided by, and at the direction of, Dr. Anand Prem, Dr. Joseph Yao, and Dr. Earl McKenzie which was reasonably necessary in

connection with her injury; and, in addition, because she had been referred to the Family Counseling Center of Poplar Bluff, Missouri, respondents should be held responsible for said treatment or, in the alternative, that respondents should be *estopped* from denying liability for said treatment in that the employer directed the claimant to undergo the treatment; and that a controverted attorney's fee should attach to all additional benefits awarded. At the hearing, the claimant withdrew any claim for treatment provided by Dr. Earl McKenzie while acknowledging that Dr. McKenzie was not an authorized physician. The claimant also pointed out that she had been hospitalized for counseling on two (2) separate occasions and that the *estoppel* argument applied only to the first hospitalization.

The respondents contended that the claimant reached the end of her healing period no later than October 6, 2006; that the claimant did not have RSD/complex regional pain syndrome in her right upper extremity; that the claimant was not entitled to further medical treatment; and controverted all additional benefits. Respondents further point out that in the event the claimant was entitled to additional benefits, they were entitled to a credit for any short-term or long-term disability benefits paid to the claimant.

The claimant was the only lay witness to testify. The record is composed solely of the transcript of the July 20, 2007, hearing composed of two volumes, the second containing a joint medical exhibit consisting of two hundred forty-nine (249) pages, together with the evidentiary depositions of Dr. Anand Prem and Dr.

Reginald Rutherford which were introduced as “Joint Exhibit A” and “Joint Exhibit B,” respectively, and retained in the Commission file in bound form.

Following 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 claimant and to observe her demeanor, I find that compelling circumstances exist so as to warrant additional development of the medical evidence pursuant to Ark. Code Ann. §§11-9-704, 11-9-705, and, accordingly, have determined in my sound discretion that an independent medical examination is necessary pursuant to Ark. Code Ann. §11-9-511 (Repl. 2002).

Again, it is undisputed that the claimant sustained an injury to her right hand on December 16, 2005, described as a crush injury when the hand was caught between two (2) large pipes. As reflected by the stipulations, respondents exercised good faith in meeting its obligations under our workers’ compensation laws by providing the claimant with prompt medical treatment, as well as appropriate light-duty employment. The claimant’s primary treating physician has been Dr. Anand Prem an anesthesiologist and pain management specialist at the Great River Medical Center in Blytheville, Arkansas. Dr. Prem diagnosed complex regional pain syndrome. He has been the claimant’s primary treating physician since on or about February 8, 2006. During the course of his treatment, Dr. Prem’s progress notes consistently reflect improvement of the claimant’s physical condition. However, the claimant’s testimony, as well as my personal observation of the right upper

extremity, reflected a different picture between Dr. Prem's assessment and the claimant's admissions. Muscle atrophy of the right hand was obvious. The claimant testified that it had significantly deteriorated during the last six (6) months. In fact, the function of the hand had actually deteriorated since leaving respondents' employment in November, 2006. Clearly, it is apparent that something is wrong with the claimant's hand. This is obvious. The claimant held her hand in an unnatural position and there was noticeable muscle wasting. Respondents sent the claimant to its own physician, Dr. Reginald Rutherford to determine whether the claimant had RSD/CRPS. Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that Dr. Prem continues to opine that the claimant has CRPS. Dr. Rutherford disagreed. He associated the claimant's problems to disuse of the upper extremity which even Dr. Rutherford related to the work injury.

The primary medical issue presented for determination is whether the claimant indeed has developed RSD/CRPS. In view of the conflicting medical evidence, together with my observations, I find that compelling circumstances exist to justify an independent examination and evaluation of the claimant, Regina L. Warren, specifically, to address the medical question concerning whether the claimant has indeed developed this condition.

Accordingly, Dr. Kenneth Rosenzweig, an orthopedic surgeon with Martin, Bowen, and Hefley, 8907 Kanis Road, Little Rock, Arkansas, Suite 310, is hereby selected to perform an independent examination and evaluation of Regina Warren.

The appointment is specifically for the purpose of addressing whether the claimant indeed has developed RSD/CRPS in her right upper extremity. The cost of the examination is to be paid by respondent, Maverick Tube and Crockett Adjustment, TPA.

Dr. Rosenzweig has graciously agreed to perform the independent medical evaluation. The parties are to confer with each other and with Dr. Rosenzweig's office in order to schedule the appointment as soon as Dr. Rosenzweig's office schedule will permit.

Further, the parties should provide Dr. Rosenzweig any relevant medical records, including diagnostic studies previously performed in order to avoid the duplication of same. In the event Dr. Rosenzweig believes additional diagnostic studies are necessary to properly evaluate the within claimant, he should contact respondent for pre-authorization.

By necessity, all issues will be held in abeyance pending receipt of the narrative report from Dr. Rosenzweig. A final decision will be issued based upon the prior record, aforementioned, together with the report from Dr. Rosenzweig.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge