

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F701984**

**SHIRLEY BAKER**

**CLAIMANT**

**FAMILY MARKETS**

**RESPONDENT EMPLOYER**

**CONTINENTAL WESTERN INSURANCE CO.  
SECOND INJURY FUND**

**RESPONDENT CARRIER NO. 1  
RESPONDENT NO. 2**

**ORDER AND OPINION FILED JULY 24, 2008**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, 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 June 12, 2008. A prehearing conference was held on February 28, 2008 and a prehearing order was filed on 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 a January 1, 2007, compensable injury.
2. The compensation rates are \$173/154.

The claimant contends she is entitled to additional medical benefits and temporary total disability benefits from May 11, 2007, to a date to be determined.

Respondents contend that light-duty work was available to the claimant and she quit her job for unrelated reasons. Respondents further contend that a second opinion has been requested regarding the proposed surgery; however, medical has not been

controverted. The claimant has an appointment scheduled June 13, 2008, with Dr. Wayne Bruffett. Respondents contend all medical to date has been paid; however, respondents would defer to the IME scheduled tomorrow for additional insight into the claimant's medical. Since claimant was without funds to get to the doctor in Little Rock, a medical transport vehicle was arranged by respondents to bring the claimant to her appointment.

### **ISSUES TO BE LITIGATED**

1. Temporary total disability benefits.
2. Additional medical benefits – Mobic and Flexeril.
3. Attorney's fees.

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 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 a January 1, 2007, compensable injury.
2. The compensation rates are \$173/154.
3. The claimant has proven by a preponderance of the evidence that the medications for pain and muscle spasms she has been prescribed are reasonable and necessary and are the responsibility of respondents.

4. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from May 11, 2007, to a date to be determined.

5. No indemnity benefits have been awarded here. An attorney's fee may be awarded only on indemnity benefits owed and controverted.

### **DISCUSSION**

The claimant, 45 years old, began her employment with the respondent employer on August 3, 2003, where she worked as a clerk and dealing with produce. On January 1, 2007, the claimant was unloading produce off a pallet from a truck with boxes weighing from 40 to 60 pounds. The claimant testified to feeling pain where she could not sit down and her legs were hurting. The claimant began seeing Dr. C. W. Koch and he prescribed muscle relaxers and ordered an MRI. The claimant next treated with Dr. Brent Sprinkle, who ordered steroid epidurals and medication.

The claimant subsequently received a change of physician to Dr. Koch and was referred to Dr. Tim Burson, a neurosurgeon, who recommended surgery. Respondents controverted the surgery and requested an independent medical examination.

The claimant returned to light-duty work on April 19, 2007, and she worked some, but according to the claimant, she had to move and she could not work and move so she quit her job. Since May 11, 2007, the claimant testified that she cannot bend over and do anything, cannot do housework and cannot do dishes, and cook. The claimant testified that she has to move from standing to sitting to laying. The claimant testified that she has continuous pain and numbness in her toes and feet with the left leg hurting worse. The claimant last saw Dr. Burson in April 2007. The claimant

has sought emergency room treatment and has received muscle relaxer and pain medication there. The claimant has not worked since leaving the respondent employer.

Under cross examination, the claimant confirmed that she had a previous back strain that resolved. The claimant also confirmed that she had cervical surgery in September 1999 and recovered from that. The claimant confirmed that she has been advised to stop smoking and she has cut down to a few cigarettes per week. She further confirmed that she quit her job with the respondent employer so she could move and she knew the employer needed an employee it could rely on.

### **ADJUDICATION**

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

In the present case, the claimant has a compensable injury and has been treating with various doctors. The claimant changed doctors to her primary care doctor, Dr. C.W. Koch and he referred her to Dr. Burson, a neurosurgeon, who has

recommended back surgery. The claimant has continued to be prescribed medication, to include Mobic and muscle relaxers, to help deal with pain and spasms. It seems the only additional medical at issue at the time of the hearing was some prescription medicine. The medical evidence supports the claimant's contention that the prescription medicine has been prescribed by the authorized treatment physicians and is reasonable and necessary. Respondent remain liable for the prescription medications. The claimant's request for the surgery to be compensable is being addressed by the respondents' request for the claimant to have an IME with Dr. Wayne Bruffett. Those arrangements were made for June 13, 2008.

The claimant next contends that she is entitled to temporary total disability benefits from May 11, 2007, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from May 11, 2007, to a date to be determined. The claimant testified that her employer had accommodated her on her restrictions and had provided the lightest job possible for her and she had been working in that capacity. The claimant also confirmed that she quit her job when she moved and has not worked since. The claimant further testified that her treating doctors, Dr. Sprinkle, Dr. Koch and Dr. Burson, had not taken her off work since May 11, 2007. The medical evidence is consistent with the claimant's testimony regarding her not being taken off work.

## **ORDER**

The claimant has proven by a preponderance of the evidence that the medications she has been prescribed for pain and muscle spasms are reasonable and necessary and are the responsibility of respondents. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from May 11, 2007, to a date to be determined.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**