

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606090

JULIE BARNES	CLAIMANT
SPRINGDALE SCHOOL DISTRICT	RESPONDENT
RISK MANAGEMENT RESOURCES/TPA CARRIER	RESPONDENT

OPINION FILED JULY 29, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 6, 2008, the above captioned claim came on for a hearing on respondents' Motion to Dismiss at Springdale, Arkansas. A pre-hearing conference was conducted on July 18, 2008, and a pre-hearing order was filed on July 20, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 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 this claim.

2. On December 15, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 2005.

By agreement of the parties the issues to litigate are limited to the following:

1. 1. Compensability of the claimant's left shoulder, upper extremity and right knee injuries.
2. Related medical.

Claimant's contentions are:

"The claimant contends that she fell on December 15, 2005, which arose out of and in the course of her employment. The claim was initially accepted as compensable but all additional benefits have been denied. The claimant's attorney is entitled to a full controverted attorney fee on any benefits found due."

Respondents' contentions are:

"The respondents contend that the claimant did not sustain a compensable injury as defined by the Arkansas Workers' Compensation Act. The respondents state that among other issues, they contend that the claimant was not performing employment services at the time of the alleged incident. In addition, the respondents contend that the claimant has no measurable and objective findings for the alleged right knee injury."

DISCUSSION

The respondents' attorney, Curtis Nebben, stated at the hearing that the claimant filed an AR-C on June 6, 2006. A pre-hearing conference was conducted on July 18, 2006, and a hearing was scheduled on August 22, 2006. Mr. Nebben stated that the parties resolved the issues prior to the hearing indicating that the respondents agreed to accept the claim as compensable and pay all reasonable and necessary medical expenses. Mr. Nebben stated that more than six months have passed since that time and there has

been no further request for hearing in this case; therefore, the respondents request a dismissal pursuant to Ark. Code Ann. §11-9-702 without prejudice.

Claimant's attorney, Jason Watson, stated at the hearing that he would agree with everything Mr. Nebben referred to including the AR-C. Mr. Watson stated that the initial AR-C filing referenced by Mr. Nebben included the request for permanent partial disability benefits. Mr. Watson further stated that those were not ripe at the time the agreed order was entered into, and the claimant is requesting this matter be set for a hearing on the merits of the permanent partial impairment. Therefore, this matter is scheduled for a hearing on August 19, 2008, at 10:30 a.m. in the Springdale office.

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, 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 18, 2008, and contained in a pre-hearing order filed July 20, 2008, are hereby accepted as fact.

2. The claimant filed a Form AR-C on or about June 6, 2006, requesting permanent partial disability benefits, additional medical expenses, and a controverted attorney fee.

3. A pre-hearing was conducted on July 18, 2006, at which time the case was scheduled for a hearing on the compensability of the claimant's alleged left shoulder, upper extremity, and right knee injuries and related medical expenses.

4. An agreed order was entered in this matter on September 5, 2006, wherein the respondents agreed to accept the claim as compensable and pay all reasonable and necessary medical expenses.

5. More than six months have passed since the entry of the agreed order and the claimant has failed to request a hearing on the issues set out in the Form AR-C.

6. The claimant has made a bona fide request for hearing; therefore, this matter has been scheduled for hearing on August 19, 2008, at 10:30 a.m. in the Springdale office.

ORDER

I find that the claimant has made a bona fide request for hearing; therefore, the motion to dismiss is hereby denied.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE