

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F209697 & F214297

JENNIFER L. CHANSLOR, EMPLOYEE	CLAIMANT
SONIC DRIVE-IN, EMPLOYER	RESPONDENT
HARTFORD UNDERWRITERS INSURANCE/ GALLAGHER BASSETT, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 17, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Mountain Home, Baxter County, Arkansas.

Claimant was represented by THE HONORABLE Frederick "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by THE HONORABLE Cynthia Rogers, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on May 21, 2008, in Mountain Home, Arkansas. A Prehearing Order was entered in this case on February 11, 2008. This Prehearing Order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing, along with the parties' respective contentions.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant

times, including February 1, 2001 and August 29, 2002.

3. The claimant sustained compensable injuries to her neck, back, and tail bone.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Constitutional issues was withdrawn by the claimant at the time of the hearing.

2. The issue of permanency is reserved.

3. Additional treatment to include, but not limited to, an MRI of her head and spine with and without Gadolinium, and nerve conduction study as recommended by Dr. Barrett-Tuck. (At the time of the hearing, the claimant withdrew her request for an MRI of the head).

CONTENTIONS

The claimant contends that she is entitled to the testing recommended by Dr. Barrett-Tuck as it is related to her compensable injury to her back, neck and tail bone. Dr. Tuck recommends in her report of July 18, 2007 that an MRI be completed on the lumbar spine and thoracic spine, MRI of the head with and without Gadolinium and EMG and Nerve conduction studies of the upper and lower extremities. The claimant contends that these tests are reasonable and necessary medical treatment related to her workers' compensation injuries.

The respondents contend that the claimant is asking for additional MRI scans of the lumbar and thoracic areas. The claimant requested a change of physician to Dr. Tuck, which was granted. The claimant is now complaining of thoracic and low back pain as well as numbness in both hands, feet and face. In fact, Dr. Tuck noted that she thought a lot of these problems could be related to multiple sclerosis. Obviously, that would not be a work related problem. The respondents did accept this claim as compensable. The claimant underwent MRI scans in 2003 that showed no disc herniations. These were done almost one year after the injury.

It should be noted that initially in 2002, the claimant was seen by Dr. Lane, who was a chiropractor, and was referred to Dr. Young. The claimant also saw Dr. Bruce Safman. In October 2002, Dr. Safman noted the claimant had no spasms, no neurological deficits, and full range of motion. He released the claimant to full duty.

The claimant was scheduled to return to Dr. Safman on December 13, 2002, but failed to appear for the appointment. Subsequent to this, the claimant requested a change of physician and was granted the change to Dr. Ron Williams. However, the claimant failed to appear for numerous appointments to the point that Dr. Williams refused to see the claimant for an evaluation.

There has now been nearly a four year gap since the last

medical treatment. On June 22, 2006, the claimant went to the emergency room with headache, shoulder pain, and back pain, which were similar complaints to what she has now. Her history was that these had been going on for about two weeks. This occurs four years after the injury.

At this point, the claimant is asking for MRI scans of the brain, nerve conduction study, thoracic studies and lumbar studies. The respondents contend that the nerve conduction studies and brain study are to rule out multiple sclerosis and are clearly not related to the claimant's injury. The claimant has already undergone studies in the other areas of her back and all studies were negative. Repeat studies in those areas would not be considered reasonable and necessary medical.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of February 11, 2008, the claimant's response to the Prehearing Questionnaire, and the respondents' response to the Prehearing Questionnaire, which were all marked as Commission's Exhibit No. 1. The claimant's Medical Packet was marked as Claimant's Exhibit No. 1, and the claimant's Change of Physician Order was marked as Claimant's Exhibit No. 2. The deposition of Dr. Rebecca Barrett-Tuck was marked as Joint Exhibit No. 1

The following witnesses testified at the hearing: Crystal Burkett, Johnnie Burkett, Robert John Chanslor, and the claimant.

DISCUSSION

The claimant, age 29 (9/29/78), sustained admittedly compensable injuries to her neck, back, and tail bone while working for the respondent-employer.

Crystal Burkett, the claimant's sister-in-law, gave testimony during the hearing. She testified she has known the claimant for approximately seven or eight years. According to Ms. Crystal Burkett, the claimant had been really active prior to her falls. She essentially testified that within the last year, she has observed the claimant having really bad headaches, dizziness, and problems with pain and a limp.

Johnnie Burkett, the claimant's mother gave testimony during the hearing. She denied that the claimant had problems prior to her falls at Sonic. According to Ms. Burkett, since the claimant's fall, she has observed a lot of trauma in the claimant, as she has had to take care of her children quite a bit and do her household work or whatever she needed done due to the claimant having really bad headaches. Ms. Burkett testified that she has observed the claimant scrunching her eyes and having to lie down due to headaches.

On cross examination, Ms. Johnnie Burkett admitted that the claimant has had problems with pregnancies and miscarriages. She further testified that the claimant not only had problems with headaches, she also has experienced problems with her back.

The claimant's husband, Robert John Chanslor, gave testimony during the hearing. He admitted that the two are separated, and have been for a little over two years. Mr. Chanslor admitted to

knowing the claimant prior to her falls at Sonic. He admitted to having known the claimant since May of 1996. According to Mr. Chanslor, they met at a restaurant that he owned in Hardy wherein the claimant was an employee. Mr. Chanslor testified that prior to her injury, the claimant was a hard worker, who got plenty of overtime.

The claimant gave testimony during the hearing. The claimant is a high school graduate of Ozark Christian Academy. The claimant admitted to having sustained two falls while working for the respondent-employer, with her first fall occurring in 2001. According to the claimant, the first incident took place late at night while doing some cleaning in preparation of an audit, as she slipped and fell. The claimant further testified that only her tail bone was injured during this incident.

She admitted that she slipped and fell in grease during her second fall. According to the claimant, since this incident, she has had persistent back pain and headaches. The claimant admitted that between 2002 and 2006, she saw doctors using her husband's insurance. She further testified that she would like to continue treating with Dr. Tuck and undergo whatever tests deemed necessary for her spine.

On cross examination, the claimant testified that between the time that Dr. Safman released her in 2002 and the time that she went to see Dr. Tuck, she saw some doctors in Batesville, but could not recall their names. According to the claimant, her pain from her back causes her head to hurt.

The deposition of Dr. Rebecca Barrett-Tuck was taken on May 6, 2008. According to Dr. Barrett-Tuck, the claimant gave the following history as to what had happened to her:

A. Ms. Chanslor is a 28-year-old lady. She related that she was working for Sonic August of 2002, and she took a fall, landing on her buttocks. She told me that she suffered rib fractures, a fractured coccyx, suffered back pain, thoracic pain, headache, and that she's had ongoing problems with that pain ever since the fall. She went on concerning what she had done in the interim with some additional schooling and changing jobs, but indicated that she just continued to have pain, as well as numbness in her hands and in her foot.

Q. Well, let's go through those. She indicated pain in the thoracic area, is that correct?

A. Yes, sir.

Dr. Barrett-Tuck agreed that it is a reasonable assumption that if the claimant was two to three months out and she had no guarding, or spasm in the cervical or thoracic area, that this would indicate that there was not anything acute going on in those areas. She admitted that it is unlikely that a fall onto your buttocks area would cause carpal tunnel.

On August 30, 2002, the claimant sought treatment from White River Health Center due to a fall at work. At that time, the claimant underwent x-rays of the sacrum and coccyx, thoracic spine, lumbosacral spine, and cervical spine, all of which were "normal."

On September 13, 2002, the claimant underwent evaluation with Dr. Bruce Safman for evaluation and treatment of lower lumbar and left hip pain, as well as coccygeal pain. Dr. Safman reported that the claimant had tenderness in the left sacroiliac

region and a trigger point in the left quadratus lumborum. He further reported that there was left trochanteric pain and pain in the left piriformis, and that she was tender over the coccyx on the left side. He also noted that there was no guarding or muscle spasm present and that she had full range of motion of the lumbar spine. According to Dr. Safman, her straight leg raising was negative, and strength, sensation, and reflex examination in the left lower extremity were normal. His impression was, "coccygodynia, lumbosacral and sacroiliac strain, and enthesopathy, left hip (bursitis). Dr. Safman returned the claimant to work with restrictions

An MRI of the lumbar spine was performed on October 2, 2002, with the following impression, "Small left paracentral disc protrusion at the L5-S1 level effacing the epidural fat but producing no definite mass effect upon the thecal sac or nerve roots."

On October 9, 2002, the claimant saw Dr. Safman, and he reported the following:

Ms. Chanslor had a MRI of her lumbar spine: There is a small, left paracentral disc protrusion at L5-S1 which produces no mass effect on the thecal sac or roots. The patient reports that, as long as she takes the Klonopin, her symptoms are under good control. Her review of systems is otherwise unchanged.

On examination, there is no tenderness, guarding, or muscle spasm in the cervical, thoracic, and lumbar spine. There is excellent range of motion of the cervical and lumbar spine. Pulse is 80 and regular.

I will return her to full duty. I gave her a new prescription for the Klonopin and will reassess her in one month. If she is doing well at that time, she will

be at maximum medical improvement.

Dr. Safman reported on December 13, 2002 that the claimant failed to keep her scheduled appointment, and that she also failed to call to cancel it. Dr. Safman declared the claimant to be at maximum medical improvement with a 0% disability rating, and he released her to full duty.

The claimant saw Dr. Michael Hagaman on January 3, 2006, and on March 28, 2006 due to problems unrelated to her work-related injury. However, on January 3, Dr. Hagaman reported, in pertinent part, that a review of systems demonstrated, "M. Skel: NEG arthralgia, arthritis, stiffness, back pain and joints involved." He also reported that the claimant was negative for headaches, vertigo, light headaches, numbness, tingling, forgetfulness and seizures.

On June 22, 2006, the claimant sought emergency treatment from Baxter Regional Medical Center due to a headache, and back and neck pain. The claimant was given medication, directed to rest, and follow up with Dr. Hagaman. However, according to the medical records of evidence, the claimant did not see Dr. Hagaman again until September 25, 2006. It appears that the claimant had complaints of a headaches for three days, sore throat, tiredness, and the fact that she seemed to be bruising more easily. Dr. Hagaman assessed the claimant with viral syndrome, for which he stressed the importance of fluids, and he also directed her to rest, and take ibuprofen or Tylenol for pain or discomfort.

The claimant sought emergency treatment from Baxter Regional

Medical Center again on November 22, 2006, primarily due to chest pain. She also complained of a sore feeling, pain between her shoulder blades and through her back, and of a headache.

From March 7, 2007, through May 22, 2007, the claimant sought treatment from Dr. Michael Hagaman primarily due to complaints of migraine headaches, hormone problems, depression, and weight gain.

On July 18, 2007, the claimant underwent evaluation with Dr. Rebecca Barrett-Tuck. She reported, in pertinent part:

HPI

Jennifer Chanslor is a pleasant 28-year-old lady referred for re-evaluation on a Workmen's Comp injury. Mr. Rick Spencer requested the change of physician. Jennifer apparently was working for a Sonic in August of 2002 when she took a significant fall landing on her bottom. She was told that she had suffered rib fractures and a fractured coccyx. At the time of the fall, she suffered back pain, thoracic pain, and headache. She has had difficulty since that time. In the interim since the fall, she finished her cosmetology school and, in fact, worked in cosmetology for about a year. However, this caused increased pain in the low back as well as the thoracic area. She had her 3-year-old child after that and stayed home with the child for a while and then tried opening a day care; however, she was only able to tolerate that activity for about ten months and had to stop because of the back pain, thoracic pain, numbness in the hands, and continued headache. Currently, she complains of almost constant pain in the thoracic area and the lumbar area. She is also concerned about the numbness that involves both of her hands, occasionally in the left foot, and sometimes in the right foot as well as numbness that has begun to involve her face bilaterally. She did undergo pain management in Batesville. She cannot recall the name of the physician. Apparently, he resided in Little Rock and managed the pain clinic in Batesville. She underwent steroid treatment and injection but did not feel that the treatment was beneficial for her.

Tests

MRI of the lumbar spine was done in 2003. It does show a narrowed disk space at L5-S1 with degenerative changes involving the L5-S1 disk. I do not see any disk ruptures or spinal canal compromise.

Assessment

1. Multiple areas of numbness. Carpal tunnel syndrome is a possibility for explaining the numbness in her hands. S1 root irritation could explain the numbness in her feet. Certainly with her complaints of numbness involving the face as well, we must consider the possibility of multiple sclerosis.

2. She complains of pain in the thoracic area and the lumbar area that occurred after the fall. I would like MRI scans of both of these areas. We did see some abnormalities in 2003. Obviously, that is too long ago to make a current recommendation.

Plan

1. MRI of the thoracic spine.
2. MRI of the lumbar spine
3. MRI of the head with and without Gadolinium.
4. EMGs and nerve conduction studies of the upper and lower extremities.
5. I will see Ms. Chanslor back once these studies have been completed.

Dr. Ronald Burton saw the claimant on October 26, 2007 due to an acute migraine headache.

On January 29, 2008, Dr. Barrett-Tuck reported that she agreed with the following:

Jennifer Chanslor is a patient of mine. It is my belief within a reasonable degree of medical certainty that the MRI of the thoracic spine, and nerve conduction studies of the upper and lower extremities you requested in your report dated July 18, 2007, are reasonable and necessary and related due to the injuries that Ms. Chanslor sustained when she fell two different times on a greasy floor while employed at Sonic.

The Commission entered a Change of Physician Order on May 12, 2003, granting the claimant a one-time change of physician from Dr. Safman to Dr. Ron Williams for evaluation of the claimant's compensable injury sustained to her back, neck and tail bone, on February of 2001, and again on August 29, 2002.

In a letter dated July 3, 2003, the respondent-carrier advised the claimant's attorney that it had scheduled an appointment for the claimant to see Dr. Williams on July 15, 2003.

On September 15, 2006, the claimant's attorney asked the respondents' attorney to advise of the status of the scheduling of an appointment for the claimant to see Dr. John Wilson.

The claimant's attorney wrote to the Commission on October 12, 2005, requesting a change of physician to Dr. John Wilson because Dr. Ronald Williams had refused to see her. On June 27, 2006, the claimant's attorney wrote to the respondents' attorney requesting authorization and an appointment date for the claimant to see Dr. John Wilson.

ADJUDICATION

The sole issue for determination is whether the claimant is entitled to additional medical treatment for her admittedly compensable injuries, in the form of an MRI of the spine with and without Gadolinium, and EMGs and nerve conduction studies of the upper and lower extremities as recommended by Dr. Barrett-Tuck.

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. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to meet her burden of proving by a preponderance of the evidence that the additional medical treatment is reasonable and necessary in relation to her admittedly compensable injuries. Specifically, although an MRI that was done in October 2002 did reveal small left paracentral disc protrusion on the L5-S1 level effacing the epidural fat, it produced no definite mass effect upon the thecal sac or nerve roots. X-rays taken on August 30, 2002, of the sacrum coccyx, thoracic spine and lumbrosacral spine were all negative.

The claimant underwent conservative treatment with Dr. Safman. On September 13, 2002, and on October 9, 2002, Safman essentially reported that the claimant had no guarding or muscle spasm in the cervical, thoracic and lumbar spine. Specifically, on September 13, 2002, Dr. Safman returned the claimant to work with restrictions, and on October 9, 2002, he returned her to full duty work, with a return visit in one month for reassessment. Dr. Safman further reported that if the claimant

was doing well at that time, she would be at maximum medical improvement. Next, on December 13, 2002, Dr. Safman noted the claimant had missed an appointment without calling to cancel. Also, at this time, he pronounced her to be at maximum medical improvement, with a 0% impairment rating and released her to full duty. After this pronouncement, the claimant did not seek treatment for her compensable injuries again until approximately four years later, on June 22, 2006, when she sought emergency room treatment from Baxter Regional Medical Center for lower back pain, pain between the shoulder blades that had a duration of two weeks. She also complained of headaches for one month, which had been worse during the last two weeks. Given the almost four-year-gap in treatment, the results of the aforementioned diagnostic testings, and based on the opinion of Dr. Safman, I find that the claimant failed to establish by a preponderance of the evidence that the additional diagnostic tests as recommended by Dr. Barrett-Tuck are reasonable and necessary in relation to her compensable injuries.

While I realize that Dr. Barrett-Tuck has opined that the recommended tests are causally connected to the claimant's compensable injuries, minimal weight is attached to this opinion since it is based on a material mistake of fact wherein the claimant essentially reported to her of having continuously experienced problems with her spine since her compensable injuries. Hence, the medical evidence of record clearly demonstrates that after Dr. Safman released the claimant from

care on December 13, 2002, there is no medically documented complaints of any spine related symptoms until June 22, 2006, when the claimant sought emergency room treatment from Baxter Regional Medical Center. Hence, this amounts to almost a four-year-gap in time between Dr. Safman's treatment of the claimant's compensable injury, and her subsequent medically documented complaints of any spine-related problems. In addition to this, when the claimant did complain of spine-related problems at Baxter County Regional Medical Center, in June of 2006, she reported that her back and shoulder pain had a duration of only two weeks. In sum, the claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including February 1, 2001 and August 29, 2002.
3. The claimant sustained compensable injuries to her neck, back, and tail bone.
4. The claimant has been provided some medical for the claimant's compensable injuries through her last visit with Dr. Safman in December of 2002, and for the first visit with Dr. Barrett-Tuck.
5. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment as recommended by Dr. Barrett-Tuck is reasonable and necessary in relation to her compensable injuries of February 2001 and August 29, 2002.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an MRI of the spine with and without Gadolinium and EMGs and nerve conduction studies for her compensable injuries.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge