

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F513619

KARLA J. GILBERT, EMPLOYEE

CLAIMANT

SONIC DRIVE-IN, EMPLOYER

RESPONDENT

FARMERS INSURANCE EXCHANGE, CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 30, 2008

Hearing before Administrative Law Judge O. Milton Fine II on July 2, 2008, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Jason Lee, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 2, 2008, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on January 28, 2008. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an amendment of the second stipulation and two additional stipulations reached at the hearing, they are the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed on or about March 16, 2005 and at all relevant times.
3. Respondents have controverted all further benefits.
4. Respondents accepted Claimant's March 16, 2005 left upper extremity injury as compensable.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant withdrew the issue concerning the constitutionality of the Arkansas Workers' Compensation Act and reserved issues concerning her entitlement to temporary total and permanent partial disability benefits, along with her entitlement to an impairment rating and vocational rehabilitation. Also, the compensability issue was amended to reflect the date in the stipulation. The following issue was litigated:

1. Whether Claimant is entitled to reasonable and necessary medical care recommended by Dr. Marcia Hixson.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that her current need for treatment is related to her injury of March 2005. Dr. Hixson recommends that the Claimant be sent for pain management. Dr. Hixson in her May 11, 2007 report clearly documents the need for treatment is related to her injury to her left ulnar nerve most likely at the elbow. The Claimant has complained of pain in her left upper extremity since her injury in March of 2005. Dr. Hixson's recommendation

for her to start pain management is clearly related to her injury and should be deemed reasonable and necessary medical care.

2. The Claimant was injured in March of 2005. There are various dates reported for this injury which are in the month of March of 2005. The Claimant sought medical treatment for her injuries by Dr. Todd Oliver on March 29, 2005. His records show that the Claimant gives a history of going through an episode where she started to have pain after lifting heavy ice buckets at work. The respondents have filed a Form 2, advising that they controvert an injury of March 29, 2005. The Claimant's letter reports an injury on or about March 19, 2005. It appears that these dates are all reporting the same injury and that she did sustain a work-related injury in March of 2005.

Respondents:

1. Respondents contend that Claimant's request for treatment to her left elbow is not related to the incident that occurred on March 16, 2005. At this time, Claimant is seeking medical treatment for an injury to her left ulnar nerve at the elbow. As a bit of background, Claimant underwent bilateral carpal tunnel release in October 2004 and December 2004. As a result of those surgeries, Claimant alleges that she was under a lifting restriction of less than 10 pounds on the date of this incident. Claimant alleges that she was dumping buckets of ice into a soft drink dispenser on the date of this incident. After receiving the first report of the Arkansas Form 1 following this incident of March 16, 2005, Jeff Jenson of Respondent Farmers took a

recorded statement of Claimant on May 16, 2005. At that time, Claimant was asked which arm was giving her trouble and she stated that the left one had pretty much healed and that the right arm was giving her more trouble than anything else.

2. Claimant presented to Dr. Todd Oliver of Regional Orthopedic Care in Mountain Home on March 29, 2005 for a follow-up on her bilateral carpal tunnel releases. According to that record, Claimant stated that she had significant left wrist pain after lifting ice buckets at work, but that the pain had since resolved. Dr. Oliver, following his examination, determined that she was coming along fine and advised her to return in six months for a re-check. On August 30, 2005, Claimant again presented to Dr. Oliver for a subsequent follow-up on the bilateral carpal tunnel releases. That report indicates that Claimant continued to have significant problems with the left side and that the right side is doing quite well and she is having no symptoms. According to Dr. Oliver's report, Claimant stated that in July she was involved in an accident and got the left wrist caught between roll bars on a jeep and that her symptoms have worsened since that accident. Ultimately, Claimant underwent a left ulnar nerve neurolysis and submuscular transposition by Dr. Oliver on October 28, 2005.
3. Respondents have paid indemnity benefits, wage loss, and medical benefits as a result of this left wrist injury. However, Respondents now controvert any further treatment as it relates to the Claimant's left wrist and elbow based upon the facts set out above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Because Respondents failed to provide their Proffered Exhibit 2 (a cassette tape purportedly of a statement Claimant made to the adjustor) to Claimant prior to the hearing, in contravention of the prehearing order, Respondents were denied permission to play it in open court.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to the pain management recommended by Dr. Marcia Hixson because she has not proven that it was causally related to her March 16, 2005 work-related injury involving the lifting of buckets of ice. That injury was only a temporary aggravation of a pre-existing condition and had resolved by March 29, 2005.

PRELIMINARY RULINGS**Admission of Respondents' Proffered Exhibit 2**

During the hearing, Respondents sought to play in open court their Proffered Exhibit 2, a cassette tape purportedly containing a May 2005 statement Claimant made to the adjustor. Claimant objected to the admission of the exhibit on the grounds that it was never provided to Claimant's counsel. Respondents' counsel admitted that the tape had not been provided, but stated that the transcript thereof had been provided and that the playing of the tape was being sought to impeach the Claimant on an alleged prior inconsistent statement.

The prehearing order in this case, Commission Exhibit 1, provides in pertinent part:

Exhibits and the identity of witnesses must be exchanged at least seven (7) days prior to the hearing. All depositions must be completed prior to the hearing. Medical reports must be exchanged at least seven (7) days prior to the hearing pursuant to Ark. Code Ann. § 11-9-705(c)(2)(A). Evidence not disclosed in compliance with this order shall not be considered as evidence unless prior permission of the Commission is obtained and for good cause shown.

I refused to allow Respondents to play the tape in open court, finding that (1) such an action was tantamount to offering it into evidence; and (2) they had abridged the prehearing order and did not show good cause to excuse the failure to exchange the tape. However, on more than one occasion I instructed Respondents' counsel that he was free to question Claimant from the transcript of the statement, which had been provided to her counsel in keeping with the prehearing order, and that he could offer the transcript into evidence. Respondents did not do so. I also permitted Respondents' counsel to proffer the tape to insure the record on this matter is preserved for review.

CASE IN CHIEF

Summary of Evidence

_____The witnesses at the hearing were Claimant and Heather Ann Chamberlain, her daughter.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, a compilation of her medical records, consisting of one index page and 5 numbered pages thereafter; Claimant's Exhibit 2, Interrogatories Nos. 10 and 11 and Request for Production No. 3 propounded to Respondents, consisting of one page; Claimant's Exhibit 3, the transcript of the deposition of Claimant taken March 31, 2008, consisting of 77 pages; and Respondents' Exhibit 1, a compilation of Claimant's medical records, consisting of two index pages and 47 separately numbered pages thereafter.

Testimony-Hearing

Karla Gilbert. Claimant testified that she is 44 years old and is five feet four inches tall. She weighed 125 to 130 pounds at the time of the alleged incident. Her testimony was that she has always been in restaurant management, and has worked all her life. Claimant during the period in question worked for Respondent Sonic Drive-In as a crew person. In March 2005 her job was to use the switchboard and to take orders. She had previously undergone bilateral surgery for carpal tunnel syndrome by Dr. Todd Oliver. He had provided a no-lift restriction, which Claimant had given to her boss, Adrian Woodbury. However, Claimant stated that on one occasion in March 2005 the shift leader, Tiffany, instructed her to fill five-gallon buckets with ice. When Claimant informed her of her lifting

restriction, Tammy replied that anyone could have a restriction, and told her that if she did not comply she would be sent home or lose her job.

Claimant stated that she did as she was told. After she filled the bucket, which she estimated weighed 20 pounds, she attempted to lift it using both arms, with the handle on her right arm and her left arm under the bucket. She testified that she felt pain in the left arm, through her wrist and elbow. Claimant rated the pain as 8/10 to 10/10. She stated that she informed Tiffany that she was clocking out, and she went home.

Claimant denied having any trouble in her left arm prior to the incident. She attempted to get treatment from Dr. Oliver, but was informed that he was on vacation. Thus, Claimant used pain medication to treat the condition. Her family doctor at the time was Dr. Hodges. However, she had a conflict with him over the prescribing of pain medication from more than one source.

She went to Dr. Marcia Hixson, and she recommended pain management. However, the Respondent carrier is refusing to cover the treatment. Her testimony was that she needs and desires to have the pain management. She cannot afford it on her own. Claimant stated that she currently is unable to work and draws Social Security disability benefits.

She testified that her left arm, wrist and elbow still bother her. She rated the pain as 5/10 on a typical day, but added that it can be lesser or greater than this level. Because of her condition, she cannot pick up her infant grandchild, and has to hold him "like a football." The pain caused her to have a serious automobile accident that involved the rolling of her vehicle.

Claimant testified that in August 2005, she was riding in the back of a Jeep while her husband, who had been drinking, was driving too fast. She denied that her arm was injured as a result of the incident, but mentioned that it only aggravated it temporarily and left it “sore” for five to seven days. Claimant mentioned the occurrence to her doctor.

She stated that a recorded statement was taken from her in May 2005. Claimant stated that she inadvertently referred to her right arm in the statement when she meant her left. She attributed the mistake to her being under the influence of Darvocet and Neurontin at the time. Claimant explained: “I get confused sometimes.” She insisted, however, that at the time she gave the statement, her left arm was bothering her.

Under questioning from Respondents, Claimant stated that she was also on anti-depressants at the time she gave the statement. She estimated that at the time, she was taking ten different prescription medications, for depression, anxiety, pain, hypertension and cholesterol, as she did at the time of her deposition. The morning of the hearing, she took, *inter alia*, Effexor and Neurontin. Asked why her deposition and hearing testimony would be trustworthy, she stated that “[b]ecause I believe all my statements have been true and honest as, as my abilities.” Asked to explain why her statement to the adjustor is not then trustworthy, Claimant stated that at the time, she was on more medication at that time due to the recent surgery. Her testimony was that she has not had recent problems with confusion.

With respect to her Social Security disability benefits, Claimant stated that her depression and anxiety were part of the basis for the award.

Claimant admitted that in the statement, she told the adjustor that her left hand had “pretty much healed.” But she was confused concerning which hand she was speaking of.

She recalled seeing Dr. Oliver on March 29, 2005, but was not aware that his report reflects that she told him that her left wrist pain had resolved. She had no reason to believe that Oliver would make this statement up. Claimant treated with Dr. Hodges at North Central Arkansas Medical Associates in from March-August 2005, but stated that she only complained about her left wrist during the March 21 visit. But she admitted that she would not be surprised if none of the records of those visits mention her wrist because Hodges was her family doctor and was not treating her wrist. She could not explain why, if she told Dr. Hodges on August 30, 2005 that her wrist pain was due to the ice bucket incident, that he wrote that it was due to the July 4, 2004 Jeep incident. Claimant denied stating on direct examination that her wrist was aggravated for five to seven days after the Jeep incident. She denied that she was having problems associated with the Jeep ride in August 2005, but admitted that she might have mentioned the incident to Hodges at the time.

With respect to the ice bucket incident, Claimant did not recall saying in the statement that Woodbury was actually at the restaurant at the time and that he told Tiffany not to make her fill the buckets because it was against her lifting restriction.

Under further questioning from her counsel, Gilbert stated that as she testified in her deposition, Woodbury at the time of the ice bucket incident was out behind the restaurant and employees were not allowed to bother him when he was out there.

Heather Ann Chamberlain. Called by Claimant, Chamberlain testified that she is Claimant's daughter. In March 2005, she worked at the same Sonic Drive-In restaurant as Claimant. At the time of the ice bucket incident, Tiffany was the shift leader and in charge. Woodbury was the general manager and on the premises, but was out back in his

car having a smoking break and did not like to be bothered while he was on break. At the time, Claimant was wearing wrist braces. Woodbury was told of her lifting restriction and was supposed to inform the shift leaders. On the day of the incident, after Tiffany instructed Claimant to fill the ice bucket, she informed the shift leader of her restriction. Tiffany's response was that she had to perform the task anyway. However, Chamberlain did not recall Tiffany telling Claimant that if she failed to comply that her job was in peril. She witnessed her mother fill the bucket to within two inches of the rim and attempt to pour it into the dispensing machine. Chamberlain stated that she heard Claimant state at that point that it was hurting her and that she needed to go home because she could not do anything. According to Chamberlain, shortly thereafter, at the end of her shift, she drove her mother home. Claimant appeared to be in a lot of pain in her left arm.

With respect to Claimant's pain medications, Chamberlain stated that they sometimes affected her and made her confused. Claimant continues to have problems with her left arm, elbow, wrist and hand since the ice bucket incident. According to Chamberlain, it hurts for Claimant to drive. The pain caused her to have an automobile accident where her vehicle rolled over. She is only able to hold her grandchild like a football, and then only if he is handed to her. Based on Chamberlain's observation, Claimant is not able to do much because of the arm condition. She insisted, however, that Claimant is not lazy, and has a long history of restaurant management.

On cross-examination, Chamberlain stated that Tiffany did not have hiring and firing power. She agreed that Woodbury was the person to go to if an employee was having a problem with lifting restrictions. Chamberlain stated that the fear was that Tiffany would get Woodbury to fire Claimant for failing to follow orders.

Under further questioning from counsel, Chamberlain stated that Woodbury fired “a number of people” for bothering him during his break.

Testimony-Deposition

Karla Gilbert. Claimant was deposed on March 31, 2008, and the transcript thereof was admitted as Claimant’s Exhibit 3. She testified that she had bilateral carpal tunnel releases in 2004. Her symptoms of numbness began about a year before that. She did not attribute the condition to her employment at Respondent Sonic. After the surgery, she was given a lifting restriction (the amount of which she could not recall) and an admonition not to perform any sweeping or mopping.

With respect to the ice bucket incident, Claimant testified that she lifted five buckets that were three to five gallons each. Each bucket had to be raised from the ground to waist level and dumped. She estimated the weight of the buckets at 24 to 25 pounds. Claimant stated that she had not been directed to perform this task since the surgery. After she finished the job, she cried, punched out, and went home. She attempted to contact Dr. Oliver, but he was out of town. So, she went to her family doctor, Dr. Hodges, the next day and went to Oliver the next week.

Claimant stated that she no longer went to work after the ice bucket incident. Her left hand began to bother her after this happened, and continues to do so. Asked about the current condition of her hand, Claimant stated that it is constantly “sore, hurts, cold, numb, tingles, stings, stabs [*sic*].” The pain is in her fingers and goes up her arm. Her use of her hand is limited. While she tries to perform housework, she does not accomplish much.

She takes Nortriptyline and Neurontin for her hand. Dr. Chris Winslow, her psychiatrist, prescribes the medication because, according to Claimant, she no longer has a doctor to go to for her hand. She also takes Darvocet. At present, she is not treating with Dr. Hixson. She last saw Hixson a year ago. The doctor referred her to pain management and retired. However, the reason Claimant gave for no longer seeing Hixson is that the doctor "dismissed" her. She is not seeing any doctor for her wrist.

Claimant testified that in July 2005, her husband became drunk and took her for a rough ride in his Jeep. She sat in the back seat. The next day, both of her wrists hurt. Claimant did not understand why Dr. Oliver noted that she had been in a Jeep accident. She merely told him that they had been "four-wheeling." Claimant had no other incident where she hurt her wrist.

She denied telling someone from Respondent Farmers Insurance that her left wrist had pretty much healed.

Records-Medical

The medical records of Claimant that were introduced at the hearing and are part of Claimant's Exhibit 1 and Respondents' Exhibit 1 reflect the following:

Pre-Incident

Claimant on September 21, 2004 presented to Dr. Todd Oliver with a four-year history of bilateral carpal tunnel syndrome. Recent nerve conduction velocity studies done that month showed bilateral carpal tunnel syndrome and mild bilateral cubital tunnel syndrome. She reported that her wrist splints were providing less and less relief. Dr. Oliver on October 29, 2004 performed left carpal and cubital tunnel releases.

Claimant on November 9, 2004 reported that she was “doing quite well.” On December 8, 2004, Claimant was still doing well when she returned to see Oliver. She reported the loss of cold intolerance in the left hand, which she still possessed in the unreleased right hand.

The right carpal and cubital tunnel release procedures were performed on December 10, 2004. When she again saw Dr. Oliver on December 21, 2004, her left arm was good and her right was also doing well with the exception of sharp bouts of pain in the right elbow. On a return appointment on January 18, 2005, she was doing very well. Claimant stated that she had excellent grip strength and function on the left, and that the right was coming along as well. No numbness, tingling, or pain symptoms were present in either hand. Claimant on February 16, 2005 reported that with respect to her left side, “she is pretty much over her symptoms.” Her grip strength and other functions were back to normal.

Post-Incident

Dr. Oliver on March 29, 2005 saw Claimant again. He reported:

Mrs. Gilbert returns today for a follow-up of her bilateral carpal and cubital tunnel releases. She continues to do well. She states she went through an episode last week where she started getting some significant left wrist pain, dorsally, after lifting heavy ice buckets at work; however, this has since resolved.

On examination, everything looks fine. Her wounds are long since healed. They are soft and supple. Everything is coming along nicely. Where she has the pain over the dorsum of the left wrist, I see nor obvious deformity. There is no swelling. She has good range of motion without discomfort. She states she noted the wrist was actually swollen last week, dorsally.

Five months later, on August 29, 2005, she presented to North Central Arkansas Medical Associates with left wrist pain and numbness. The next day, August 30, 2005, Dr. Oliver again examined Claimant. His notes reflect the following:

The patient returns today for a follow-up of her bilateral carpal and cubital tunnel releases. She unfortunately continues to have significant symptoms with the left side. The right side is actually doing quite well and she is having no symptoms. The left side seems to be bothering her. She states in July, she was actually involved in an accident and got the wrist caught between roll bars on a Jeep. She states her symptoms have worsened even more since then. The pain is quite vague that she is describing. This is associated with some continued numbness and tingling over the ring and small fingers but will occasionally radiate across her palm in an ulnar to radial direction and she points to the thenar eminence region when describing the pain. She states it will shoot all the way up her shoulder and to her neck. She denies any neck pain.

X-rays taken that day showed no obvious pathology and no significant degenerative changes. Oliver's assessment was that she might have just been getting some continued ulnar neuropathy, despite the cubital tunnel release ten months before. He set her up for repeat nerve conduction studies of the left upper extremity, and stated that her condition might require a revision surgery with a submuscular ulnar nerve transposition.

Claimant had worsening symptoms, with nerve studies indicating worsening compression of the ulnar nerve. For that reason, Dr. Oliver performed a left ulnar nerve neurolysis and submuscular transposition on October 28, 2005. When she returned on November 8, 2005, Claimant reported that the numbness and tingling had not resolved. However, Dr. Oliver reported that she looked good upon examination, with almost no swelling. On December 6, 2005, she complained of pain numbness and tingling, and stated that she remains very miserable. However, her examination appeared good, and she had minimal swelling. Oliver opined that she was coming along about as expected.

He referred her for therapy, began her on Neurontin, and specified that she was to work only with her right hand at work. Claimant on January 17, 2006 reported that while she still had pain and numbness, she is getting her function back well because of therapy. He wrote that her arm looked good, but that she needed to quit smoking because it was slowing her recovery.

Claimant went to Dr. Travis Richardson. On March 7, 2006, she presented with pain, primarily numbness and coldness in the ring and small fingers of her left hand. Claimant rated her pain as 10/10 and stated that it is unbearable at times. She was very tearful. Richardson could see changes in her x-rays taken that day compared to ones taken previously. He stated that he was going to ask her to seek pain management because he felt that he could not improve upon her two previous surgeries.

Claimant presented to Dr. Charles Varela on April 19, 2006 with vague ulnar sided hand pain and numbness of the left hand. She stated that the pain prevents her from working. He noted that “[s]he obviously has been using the hands, as there are well-formed calluses over the fingers.” Varela wrote:

ASSESSMENT:

Nonspecific ulnar sided pain and numbness, left hand. Her objective findings are not compatible with the symptomatic complaints. Objectively and functionally, I could not find focal deficits to explain her pain and her numbness. Based on her grip strength evaluation, I believe patient may have maybe some secondary gain issues as well.

PLAN:

Patient was advised that based on my evaluation, I believe she has reached maximal medical improvement, and I feel there is no further surgical intervention that can improve patient’s situation. I believe patient should be able to return to work at this time with activities as tolerated and no specific restrictions.

On October 4, 2006, Dr. Michael Hodges wrote Claimant a letter that reads in pertinent part:

It has come to my attention that you have violated our agreement with long-term use of controlled substances. You have called for early refills, as well as received prescriptions for controlled substances from another physician without notifying the office. This, unfortunately, represents a violation of trust, which I think is vital for the physician/patient relationship. I will no longer be able to be your primary care physician, however, will serve to provide you care over the next 30 days, while allowing you to find a new physician.

On May 11, 2007, Dr. Hixson wrote a letter to Respondent Farmers that reads in pertinent part:

Ms. Gilbert had an MRI of her left elbow performed on 04/20/2007; this was read as normal. There was no obvious sign of ulnar compression.

Ms. Gilbert has a sensory injury to the left ulnar nerve mostly [sic] likely at the elbow. She does not have involvement of the motor portion of the nerve. I don't feel that this is going to be improved with surgery at this point. My recommendation would be that she be referred to a physician for chronic pain management. In that way hopefully, the pain can be reduced to a level where the arm is somewhat useful since that is the main reason that she is not using her left upper extremity for normal activity.

On June 17, 2008, she saw Dr. Bing Behrens at NEA Neurological Associates. She presented with numbness, tingling and pain in the left upper extremity, worse on the last three digits of the left hand. Dr. Behrens noted that the NCV/EMG of the left upper extremity that she underwent that day was consistent with mild carpal tunnel syndrome on the left, as well as mild ulnar neuropathy on the left at the elbow. However, it was conceded that the low amplitude of the ulnar elbow at the elbow might be due to technical difficulty because of the previous ulnar nerve transpositional surgery.

Records-Nonmedical

Claimant's Exhibit 2. This is one page of Claimant's discovery requests to Respondents, and is comprised of Interrogatories Nos. 10 and 11 and Request for Production No. 3.

Claimant's Exhibit 3. This is the transcript of Claimant's deposition discussed above.

ADJUDICATION**A. Additional Medical Treatment**

Claimant contends that she is entitled to the pain management recommended by Dr. Hixson and related to the problem with her left ulnar nerve. Respondents contend that the treatment is not related to her March 16, 2005 incident at work concerning the lifting of the bucket of ice.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2002) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*,

73 Ark. App. 158, 40 S.W.3d 333 (2001). “Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.” *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Respondents accepted Claimant’s March 16, 2005 left upper extremity injury as compensable. While her deposition testimony and statement to Dr. Oliver was that on that date she lifted multiple buckets of ice, her hearing testimony was that only one bucket was involved. Regardless, she stated at the hearing that she was having no trouble with her left arm prior to the incident, but has continued to have problems with it since. Claimant rated the pain as 5/10 on a typical day, and stated that the condition has left her with the inability to easily pick up and hold her grandchild. She testified that she is unable to work because of the condition in her arm.

When asked about a statement Claimant gave to the adjustor in May 2005 (the tape recording of which was the subject of the preliminary ruling *supra*), Claimant admitted that in the statement, she told the adjustor that her left hand had “pretty much healed.” She attempted to explain this by stating that she was mistaking her left arm for her right, and attributed the confusion to being under the influence of Darvocet and Neurontin. Claimant testified that at the time she provided the statement, her left arm was still bothering her. Since neither the recording or the transcript of the statement was admitted into evidence, what she said concerning her “right” arm or hand is unknown in order to make a comparison. But her explanation is questionable in light of the fact that, among other things, the subject of the statement was undoubtedly the arm that was injured in the ice bucket incident.

Interestingly, her medical records comport with her statement. When she went to Dr. Oliver on March 29, 2005, two weeks after the incident, she reported experiencing “significant wrist pain” after lifting ice buckets. However, Oliver’s note states that “this has since resolved.” Claimant testified that she knew of no reason why Oliver would have fabricated this. Also worthy of note is the fact that she did not treat with anyone for her left arm for five months after this visit.

On consecutive days, August 29 and 30, 2005, Claimant presented to North Central Arkansas Medical Associates and Dr. Oliver with left wrist pain and numbness. Her records reflect that she had been to the aforementioned clinic, where Dr. Hodges, her then-primary care physician practiced, multiple times over the preceding months. But no mention was made of problems in her left arm. She explained that this was because she was not treating with him for this condition. When she saw Dr. Oliver on August 30, she related that in July, she was “in an accident and got the wrist caught between roll bars on a Jeep.” She added that “her symptoms have worsened even more since then.” At the hearing, Claimant on direct denied injuring her arm in the incident; but she testified that it only aggravated it temporarily, making it “sore” for five to seven days. Inexplicably, on cross-examination she denied testifying that her wrist was aggravated for five to seven days after the Jeep incident.

In light of the foregoing, I find that the injury to Claimant’s left upper extremity on March 16, 2005, which Respondents accepted, was a temporary aggravation of a pre-existing condition—the aftermath of her carpal tunnel release. *See Wal-Mart Stores, Inc. v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001). It clearly had resolved by the time of her March 29, 2005 visit to Dr. Oliver. The pain management recommended by Dr. Hixson

is thus not causally related to this temporary aggravation. For that reason, Claimant has not proven her entitlement to this additional treatment by a preponderance of the evidence.

CONCLUSION

Claimant has not proven that she is entitled to additional medical treatment. Therefore, her claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge