

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F112085

CHRISTINA J. JONES, EMPLOYEE	CLAIMANT
ARKANSAS DEPT. OF HUMAN SERVICES, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 15, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on January 16, 2008, in Mountain Home, Baxter County, Arkansas.

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

Respondents represented by THE HONORABLE Richard Smith, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 16, 2008, in Mountain Home, Arkansas. A Prehearing Order was previously entered in this case on November 26, 2007.

The following stipulations were submitted by the parties, either in the Prehearing Order or at the start of the hearing, and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including August 8, 2000.

3. The claimant sustained a compensable injury to her neck, right arm and shoulder.

4. Some temporary total disability compensation has been paid.

5. Some medical benefits have been paid.

6. Any additional benefits have been controverted.

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

1. Constitutional issues. (Withdrawn by the claimant at the time of the hearing).

2. Whether the claimant is entitled to additional medical treatment.

3. The issue of permanency and all other issues are reserved.

The claimant contends that she continues to have ongoing medical problems due to her compensable injuries and is entitled to reasonable and necessary medical treatment from her treating physician, Dr. Lori Cheney.

The respondents contend that claimant is not entitled to any additional benefits at this time. Her physician has placed her at MMI and has not given her an impairment rating. Furthermore, medical evidence indicates that some of her problems pre-existed the compensable injury.

The documentary evidence in this case consists of the Commission's Prehearing Order, 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. The respondents' medical packet was marked as Respondents' Exhibit No. 1

The following witnesses testified at the hearing: the claimant, Clayton Allen, and Connie Phillips.

DISCUSSION

The claimant, age 51 (5/27/56), sustained admittedly compensable injuries to her neck, right arm and shoulder on August 8, 2000, while working for the respondent employer.

At the hearing, the claimant's former supervisor, Clayton Allen, gave testimony during the hearing. He testified he worked for DCFS for 11 or 12 years. According to Mr. Allen, during this period of time, he was both the claimant's co-worker and for approximately six years, he worked as the claimant's supervisor doing investigations and case work in child abuse and neglect cases. He denied having observed the claimant experiencing any kind of problems with neck, back or shoulders before the horse slammed into her on August 8, 2000. However, he admitted that prior to the incident, the claimant had ongoing problems with migraines and stomach aches, but denied that she missed work because of these problems.

According to Mr. Allen, after the August 8, 2000, incident,

the claimant had times she would miss work. He testified that he became the claimant's supervisor around August of 2000. Mr. Allen further testified that there were times he had to send the claimant home because he felt she was impaired due to the pain. He denied her being that sick and impaired before the horse slammed into her, nor was he worried about her health prior to this.

Mr. Allen testified that the frequency and the duration and intensity of the claimant's headaches increased after the horse slammed into her. He also essentially admitted to having to order a special desk for the claimant in order to accommodate her neck problems. According to Mr. Allen, even after this, the claimant continued to have problems.

With respect to the claimant's work performance, he testified that the claimant took her job seriously. He also admitted to observing the claimant take pain medication after the August 2000 incident, but felt she did not take it often enough. According to Mr. Allen, he sent the claimant home for two or three days because he felt she was unable to do her job due to a lack of sleep. He also testified that there were times the claimant would come to work late due having had a bad night. Mr. Allen agreed that based on his observations, the claimant's neck pain and problems had been consistent.

On cross examination, Mr. Allen testified that he is a mental health therapist and to an educational background of a Master's

Degree in Social Work, and a Bachelor's Degree in Human Services. He denied any medical training. He admitted that both no longer work at DHS. According to Mr. Allen, he left DHS in June of 2006 and the claimant left after him. He testified that the last time they shared the same office building and saw each other on a regular basis was in June of 2006. He admitted that he and the claimant were social friends.

Connie Phillips, a fellow counselor with the claimant for the Department of Community Correction, also gave testimony during the hearing. According to Ms. Phillips, they are substance abuse counselors for probation and parole, as they have work together since May of 2007. She testified that they see each other the entire day usually. According to Ms. Phillips, the claimant is "a real tough cookie," but she has seen her expressing great suffering with her neck, as she had to ask for a special desk. She testified she has observed the claimant massaging her neck.

On cross examination, Ms. Phillips denied seeing much of the claimant outside the office. According to her, the claimant's caseload is very mild, as she probably has around 16 to 18 people.

The claimant gave testimony during the hearing. The claimant testified she previously work for the Department of Human Services as a child abuse investigator for approximately eight years. According to the claimant, since May of 2007, she has worked for the Department of Community Correction as a drug court counselor.

The claimant testified that her injury of August 8, 2000, occurred while making a home investigation visit. According to the claimant, as she was stepping off the porch of the home to leave, she startled one of the horses and he slammed into her with his head and upper body and knocked her into the trailer. The claimant admitted to prior problems with chronic neck pain. She admitted to using a special desk due to problems with her neck.

She admitted to preexisting problems with her lower back that occurred back in '80 or '82, while working for a nursing home. The claimant admitted to having been on Social Security Disability previously.

The claimant denied having any problems with her neck before August of 2000. She also denied any prior treatment for any type of neck pain, arm or shoulder pain. The claimant admitted that her authorized treating physician is Dr. Lori Cheney. She admitted that Dr. Cheney has referred her to a neurosurgeon, Dr. Tuck, who is located in Jonesboro. The claimant admits that she is requesting to see Dr. Tuck, so that she can evaluate and treat her neck. The claimant admitted the last MRI performed on her neck was done back in 2004 (2006). According to the claimant, she is requesting an MRI of the neck and any reasonable and necessary treatment for her injury.

She admitted to being off work for six weeks last year due to her neck and shoulder. According to the claimant, she went to

physical therapy for six weeks. Although the claimant denied being discharged from DHS, she admitted she was "getting called on the carpet" for missing too much work, which was due to neck and arm pain.

On cross-examination, the claimant admitted to working 40 hours a week since May of 2007. The claimant also admitted that if surgery is indicated, she will have to stop smoking. The claimant admitted to a lot of evaluations by different doctors for her injury. Upon being shown an exhibit (on page 125), the claimant admitted that she probably did undergo an MRI of the spine as recently as July 19, 2006. She admitted to undergoing physical sessions on a number of occasions. The claimant testified that missed sessions of therapy occurred either due to the weather or being called to court, which was a requirement.

The claimant was seen at North Central Arkansas Medical Associates on June 23, 1999 due to complaints relating to her back.

The claimant underwent evaluation at Baxter Regional Medical Center on December 19, 2000, for physical therapy due to right shoulder pain after a work-incident wherein she was hit by a horse which caused her to fall into the side of a home. In January 8, 2001, the claimant reported tingling of the right hand and forearm since January 2, 2001.

Dr. Thomas Knox evaluated the claimant on February 19, 2001 due to multiple complaints, which included right shoulder pain

and arm pain. She also complained of pain throughout her neck, shoulder, and arm with paresthesias. His impression was probable cervical problem, for which he recommended an MRI of the cervical spine.

On March 30, 2001, the claimant underwent an MRI of the cervical spine, with the following impression, "C3-C4 and C5-6 central disc protrusions. At C5-C6, there actually may be some degree of herniation as well."

It appears that Dr. Knox assessed the claimant with degenerative changes of the cervical spine and a cervical disk rupture at C5-6, on April 2, 2001. As a result, he recommended that the claimant see a neurosurgeon.

The claimant underwent evaluation with Dr. Edward Saer III, on April 26, 2001. His impression was cervical strain/sprain, for which he recommended Celebrex and physical therapy of the neck. He also recommended EMG/NCV studies of the right arm to rule out ulnar neuropathy.

An MRI of the right shoulder was performed on July 26, 2001, with an impression of "right acromioclavicular joint arthritis, otherwise normal right shoulder MRI examination."

On September 20, 2001, the claimant saw Dr. Doug Foster due to pain of her neck and arms, as well as headaches with particularly neck parascapular and pericervical pain. She also reported occasional forearm pain and rare occasions of numbness and tingling

in both arms. His impression was, "At this time is that I think her arm and neck pain is related to her cervical disease at C5/6," for which he recommended home traction, a C-spine McKenzie protocol and observation.

The claimant underwent physical therapy evaluation on September 25, 2001 with physical therapist Bruce Wolf due to cervical spine herniated nucleus pulposus/degenerative disc disease at C5-C6 level.

She continued to treat with Dr. Foster due to complaints of pain in her neck, shoulders and arms until December 17, 2001. At which point, he released her to full duty.

The claimant underwent evaluation with Dr. Carl Kendrick pursuant to referral from Dr. Foster on December 18, 2001. He reported:

I see no surgical solution to this lady's problem. As a matter of fact, I cannot find good organic findings to support her complaints and I do not feel as though complaints can be substantiated by physical findings. This lady is complaining of a lot of headaches and a lot of other problems, and I am not sure that the best solution for her would be psychiatric examination.

The claimant continued to seek treatment and diagnostic testings from various physicians for her symptoms.

On February 14, 2003, the claimant was granted a change of physician from Dr. Bruce DeYoung to treat with Dr. Lori Cheney.

The claimant underwent an MRI of the cervical spine on August 12, 2004, with the following impression:

Degenerative changes most pronounced at the C5-C6 level with bony spurring and disc disease, causing central canal and bilateral neural foraminal narrowing. It does not markedly deform the cord, but does displace the cerebrospinal fluid anterior to the cord and slightly flattened the anterior aspect of the cord. This has worsened since the previous study done in 2001.

Dr. Cheney referred the claimant back to Dr. Foster on August 18, 2004 for evaluation and possible treatment of neck surgery.

The claimant was seen by Dr. Foster on September 29, 2004. He reported that the cervical MRI's from 2001 when compared showed slight worsening but otherwise there were no abnormalities. He advised the claimant that his present advice was still the same; i.e., that he was not sure that a cervical fusion would improve her headaches. Therefore, Dr. Foster referred the claimant for a second opinion by a board certified neurologist for a second opinion. He referred the claimant to Dr. Robbins for that purpose.

On October 20, 2004, the claimant saw Dr. Bruce Robbins due to complaints of a lot of head and neck pain, and some shoulder pain. The claimant's primary problem was head and neck pain. His impression was:

Neck pain with degenerative disease, particularly at C5-6. The patient has a congenitally narrowed canal with disk herniation, which is broad based, causing central canal neuroforaminal stenosis. Atypical headaches. The headaches are probably, in part, related to the neck problems but other pathology needs to be ruled out.

Also, in a letter to Dr. Foster dated October 20, 2004, Dr. Robbins advised that the claimant would probably need surgery at some point due to a congenitally narrowed canal with a broad

based disc herniation at C5-6 because this was causing central stenosis and neuroforaminal stenosis.

On November 18, 2004, the claimant underwent an MRI scan of the head, with and without contrast, "showing no specific abnormalities."

The claimant was referred by Dr. Jason Paxton for physical therapy treatment due to a diagnosis of neck and myofasciitis, which was done with little improvement.

The claimant continued to treat with Dr. Cheney. On July 19, 2006, she underwent an MRI of the cervical spine, with an impression of "diffuse degenerative change in the cervical spine, especially at C5-C6, and soft tissue disk herniation was not seen."

An MRI of the right shoulder was performed on that same date, with an impression of, "small tear of the rotator cuff, but retraction was not seen, and degenerative osteophyte at the tip of the acromion, together with some fluid in the subacromial bursa."

The claimant saw Dr. Charles Varela on July 31, 2006 due to complaints of right shoulder pain. His impression was "Subacromial bursitis versus rotator cuff tear, right shoulder," for which he performed Cortisone injection.

On August 21, 2006, the claimant was seen by Dr. Robbins for a follow-up visit due to neck pain going down the right arm. His impression included, but was not limited to, "neck pain, headaches, and right arm pain." He also noted that the claimant may have

symptoms consistent with C5-C6 radiculopathy.

Further review of the medical evidence of record demonstrates that the claimant was seen by a nurse practitioner on September 26, 2007 due to complaints of a headache for one week. The claimant was noted to have some nausea as well along with a history of cervical problems and tension type headaches. The claimant was assessed with a tension type headache, for which medication was prescribed.

Dr. Lori Cheney reported the following on December 3, 2007:

TO WHOM IT MAY CONCERN:

IT IS MY OPINION BASED UPON A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT IT IS CERTAINLY REASONABLE AND NECESSARY THAT CHRISTINA J. JONES BE PERMITTED TO SEE DR. REBECCA TUCK, A NEUROSURGEON, IN JONESBORO, ARKANSAS FOR PURPOSES OF EVALUATION AND TREATMENT WITH REGARD TO CHRISTINA'S CHRONIC NECK AND SHOULDER PAIN AS WELL AS CHRISTINA'S CHRONIC TENSION HEADACHES WHICH IN MY OPINION ARE CAUSALLY RELATED TO HER INJURY WHILE WORKING AT THE DEPARTMENT OF HUMAN SERVICES ON OR ABOUT AUGUST 8, 2000. FURTHER, EVEN IF SHE DID HAVE ANY PREEXISTING DEGENERATIVE DISC DISEASE AND/OR DEGENERATIVE JOINT DISEASE, THE WORK-RELATED INJURY THAT CHRISTINA SUSTAINED WHEN SHE WAS EXITING THE HOMEPLACE OF A CLIENT AND THE CLIENT'S HORSE WAS STARTLED, RARED UP AND THE HORSE'S UPPER BODY SLAMMED INTO CHRISTINA KNOCKING HER AGAINST THE CLIENT'S MOBILE HOME AND THE CLIENT'S PORCH IS THE MAJOR CAUSE [I.E. MORE THAN 50%] OF THE AGGRAVATION OF ANY PREEXISTING DEGENERATIVE JOINT DISEASE CAUSING HER PAIN AND HER PRESENT NEED TO SEE DR. TUCK AND/OR THE MAJOR CAUSE OF HER PRESENT DISABILITY AND SYMPTOMS WHICH IN MY OPINION ARISES OUT OF SAID INJURY.

ADJUDICATION

The crucial issue for determination is whether the claimant is entitled to additional medical treatment for her compensable injury of August 8, 2000, as recommended by Dr. Cheney, (See above

letter). The respondents have paid for extensive conservative medical treatment and various diagnostic testings for the claimant's compensable injury, and some indemnity benefits. However, it appears that they have controverted the most recent treatment sought by the claimant per Dr. Cheney's recommendation.

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 he 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 consideration of all of the evidence, I find that the claimant proved by a preponderance of the evidence her entitlement to additional medical treatment for her compensable injury of August 8, 2000. Specifically, I find Dr. Cheney's (claimant's treating physician) December 3, 2007 recommendation for the claimant to be evaluated by Dr. Tuck, a neurosurgeon, to be appropriate since the claimant has persistently continued with ongoing debilitating pain and related symptoms to her neck, shoulder and arm, with no improvement after extensive conservative treatment. Further, Dr. Cheney opined within a reasonable degree of medical certainty that the claimant's need for additional treatment was causally related to her work incident. I am also

persuaded that this referral is appropriate considering the abnormalities identified in the 2001 and 2004 MRI's of the neck, and those identified in the 2006 MRI of the shoulder. While the 2004 MRI of the claimant's neck demonstrates a worsening of damage since the claimant's initial MRI of 2001, there is absolutely no evidence that this progression or increase of damage to the C5-C6 area is the result of any subsequent trauma or new injury. Instead, the evidence demonstrates that this progression or increase in the physical change to the C5-C6 area of the claimant's cervical spine is merely a natural progressive change that was set in motion by the initial trauma sustained as a result of the compensable injury of being struck by a startled horse while doing a home-visit. In addition to this, in a report dated October 20, 2004, Dr. Robbins opined that the claimant would probably need surgery due to a congenitally narrowed canal with a broad based disc herniation at C5-6, which was causing central canal and neuroforaminal stenosis. He also opined that the claimant's atypical headaches were probably, in part, due to her neck problems. In August 2006, Dr. Robbins opined that the claimant may have symptoms consistent with C5-C6 radiculopathy.

While I recognize that Dr. Foster released the claimant to full duty, on December 17, 2001, this occurred approximately some six years ago, and since this time, the claimant has persistently complained of ongoing problems relating to her compensable injury, for which she received continued medical treatment at the expense of the respondents. In addition to this, Dr. Foster noted that the

claimant's going back to work was part of her recovery and rehabilitation. Also, at the time that he released the claimant back to work, Dr. Foster referred the claimant for evaluation by Dr. Kendrick. As such, I find that there is insufficient evidence to support a finding that the claimant ever reached maximum medical improvement for her compensable injury. Moreover, although Dr. Kendrick opined in December 2001 that there were no physical findings to substantiate the claimant's complaints, given the initial objective findings in the March 2001 MRI, of C3-C4 and C5-6 central disc protrusions, I attach minimal weight to this opinion.

While I realize that the claimant suffered from preexisting degenerative disc disease, it is well settled that an employer takes the claimant as he finds her. Dr. Cheney essentially opined in December of 2007, that the claimant's preexisting condition was aggravated by her work incident. In addition to this, although the claimant previously suffered from headaches, it appears that the frequency and intensity of her headaches have progressed since her compensable injury and resulted in rather debilitating symptoms as is evidenced by the testimony elicited from her former supervisor, Mr. Allen and the medical evidence of record.

Therefore, based on the expert opinions of Drs. Cheney and Robbins, there being no subsequent medical opinions to the contrary, and due to all of the foregoing reasons, I find that the treatment recommended by Dr. Cheney to be reasonably necessary in connection with the claimant's compensable injury of August 8,

2000. As a result, the respondents are liable for the expense of the neurosurgical evaluation by Dr. Rebecca Tuck.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including August 8, 2000.
3. The claimant sustained a compensable injury to her neck, right arm and shoulder.
4. Some temporary total disability benefits have been paid.
5. Some medical benefits have been paid.
6. Any additional benefits have been controverted.
7. The issue of permanency and all other issues are reserved.
8. The claimant has established by a preponderance of the evidence that the neurosurgical referral by Dr. Cheney is reasonably necessary medical treatment for her compensable injury.

AWARD

The respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml