

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612410

KIMBERLY JONES

CLAIMANT

**HEALTHPARK HOSPITAL
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED FEBRUARY 15, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on December 14, 2008. A prehearing conference was held on September 25, 2007 and a prehearing order was filed 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 and before the hearing, the parties agreed to the following stipulations:

1. There was an October 2006, employer-employee relationship.
2. The compensation rate is the maximum for a 2006 injury.

The claimant contends that she had a series of exposures that ultimately terminated in the acquisition of Hepatitis C and that she has sustained a compensable

injury. The claimant received medication treatment and began losing time from work on October 3, 2006 and is requesting temporary total disability benefits from October 3, 2006 through October 22, 2007. This is a combination of temporary total disability and temporary partial disability. The claimant requests medical benefits and maximum attorney's fees.

Respondents contend the claimant did not report having Hepatitis C or report an incident causing Hepatitis C. Respondents contend there was notice of a September 28, 2006, incident of a stick but the results were negative for Hepatitis C of the patient involved in the stick, although the claimant had positive Hepatitis C results. Respondents contend this is an occupational disease standard.

ISSUES TO BE LITIGATED

1. Compensability.
2. Occupational disease.
3. Medical benefits.
4. Temporary total disability and temporary partial disability benefits.
5. 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 an October 2006, employer-employee relationship.
2. The compensation rate is the maximum for a 2006 injury.
3. The claimant has proven by a preponderance of the evidence that she contracted Hepatitis C arising out of and in the course of her employment.
4. The preponderance of the evidence provides the claimant's condition of Hepatitis C is an occupational disease.
5. Respondents are responsible for reasonable and necessary medical treatment the claimant has pursued.
6. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from October 3, 2006 through December 15, 2006, and is entitled to temporary total disability benefits and to temporary partial disability benefits from December 16, 2006 through October 22, 2007, when she was able to work part-time.
7. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 47 years old, has been an R.N. since 1981. The claimant was employed with the respondent employer in October 2002 and was required to take a

pre-employment blood test and the results were negative for Hepatitis C. The claimant did have a positive Hepatitis C test in September 2006 and received the results on October 2, 2006. The claimant contends that sometime between October 2002 and October 2006, she contracted Hepatitis C.

The claimant discussed some instances when she had exposures at the hospital. The claimant spoke of a needle stick through her glove while giving an intramuscular injection in December 2005 and she did not report the incident nor did she have any testing. The first part of 2006, the claimant testified of a blood splash in her eye while emptying a Duval drain. Dorothy West witnessed the claimant washing her eye out with water. Again, the claimant did not seek medical treatment. According to the claimant, another incident was about May 2006, when a patient vomited on her. Another incident was in August or September 2006, when a large amount of blood splashed on her uniform. Another incident was in the emergency room in the summer of 2006, when a known Hepatitis C patient was treated for abscesses and these were drained and there was blood everywhere that the claimant cleaned. On September 28, 2006, the claimant got a needle stick to her middle finger and that stick was reported. When a stick is reported, the patient is tested as well as the person reporting the stick incident. The patient tested negative; however, the claimant tested positive. The claimant learned of her positive results on October 2, 2006.

Another blood exposure the claimant discussed was the ACE wraps have metal clips and these are around the patient's joint replacements following surgery. The ACE wraps can be covered with blood and the metal clips sometimes poke holes in the latex gloves and there is blood exposure. The claimant denied any blood exposures outside

of work during this time period. The claimant testified that all her family had been tested for Hepatitis C and everyone was negative.

The claimant testified that before August 2006, she was in good health and felt fine. Starting in August 2006, she was tired and had nausea and depression. Between October 3, 2006 and October 22, 2007, the claimant had periods of being off work completely and partially. The claimant took a shot of Interferon weekly and that had some debilitating effects for a few days. The last shot was October 22 or 28, 2007. The claimant described her symptoms while taking the Interferon shots as no energy, joint pain, hard rigors, and severe flu symptoms.

Under cross examination, the claimant verified that she had a needle stick injury in 1997 that was reported and proper testing was undertaken. The claimant also had an event in December 2005, where she fell out of a chair and hurt her back and that incident was reported. The claimant also verified that she received an employee handbook upon her employment and the handbook outlined the policy for reporting injuries. The claimant confirmed a needle stick on September 28, 2006, and the required testing revealed the patient was negative; however, the claimant's tests were positive for Hepatitis C. The claimant verified that she had not completed incident reports on any of the exposures except the September 28, 2006, needle stick. The claimant testified that when she was a charge nurse, she was responsible for completing paperwork for those under her supervision who had exposures or needle sticks.

The claimant confirmed that blood exposure is the method of acquiring Hepatitis C and she tested negative in October 2002. The claimant confirmed that she had no

exposures between October 2002 and November 2005 and she contends she had no exposure to Hepatitis C except at work.

ADJUDICATION

Respondents contend the claimant's injury should be considered an occupational disease as opposed to an accidental injury.

An "occupational disease" is any disease resulting in disability or death that arises out of or in the course of an occupation or employment of the employee. Ark. Code Ann. §11-9-601(e)(1)(A) (Repl. 2002). Prior to the enactment of Act 1281 of 2001, the burden of proof was clear and convincing evidence in order for the claimant to prove he/she has a compensable occupational injury. However, Act 1281 changes the burden to a preponderance of the evidence. Ark. Code Ann. §11-9-601(e)(1)(B) (Repl. 2002).

Ordinary diseases of life to which the general public is exposed are not compensable. Ark. Code Ann. §11-9-601(e)(3) (Repl. 2002). The occupational disease must be "due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his employment." Ark. Code Ann. §11-9-601(g)(1)(A) (Repl. 2002). However, a disease may be considered compensable although the general public may contract the disease if the nature of the employment exposes the worker to a greater risk of the disease than the risk experienced by the general public or workers in other employments. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App.

274, 675 S.W.2d 841 (1984). To constitute an occupational disease, there must be a recognizable link between the nature of the job and an increased risk in contracting the disease. *Sanyo Mfg. Corp., supra*. Although the Act does not define the distinction between “accidental injury” and “disease,” one widely accepted and salient distinction is that occupational diseases are generally gradual rather than sudden in onset. *Johnson v. Democrat Printing & Lithograph*, 57 Ark. App. 274, 944 S.W.2d 138 (1997), citing *Hancock v. Modern Indus. Laundry*, 46 Ark. App. 186, 878 S.W.2d 416 (1994). In *Hancock*, the Court of Appeals reversed the Commission’s finding that the claimant had sustained an occupational injury, because the claimant’s injury had resulted from “a single injurious exposure and was sudden in its onset.”

Claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). However, it has long been recognized that a causal relationship may be established between an employment related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is no other reasonable explanation for the injury. *Hall v. Pittman Const. Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962).

In the present case, I find the claimant has proven by a preponderance of the evidence that she contracted Hepatitis C, an occupational disease, arising out of and in the course of her employment. I found the claimant to be a credible witness and employed in an occupation where the hazards and exposures to Hepatitis C are greater

than other work environments. The claimant identified several exposures between November 2005 and September 2006, when she contends she came into contact with blood and fluids from patients with one known to be positive for Hepatitis C. The claimant had gradually experienced increased fatigue and nausea before being tested positive for Hepatitis C in October 2006. The claimant testified that her family has tested negative for Hepatitis C and she has not had exposures outside of work.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

The medical evidence documents the claimant is positive for Hepatitis C. The claimant has also followed the medical treatment regime recommended by her treating physician, Dr. John Baber, an internal medicine specialist. I find the conservative treatment of Interferon injections weekly and other medications the claimant has undergone are reasonable and necessary and are the responsibility of the respondents. After undergoing the reasonable and necessary treatment for her condition, the claimant has now tested negative for her disease.

The claimant also contends she is entitled to both temporary total disability benefits and temporary partial disability benefits. Before the claimant was diagnosed with Hepatitis C, she worked three 12-hour shifts per week. From the first of October 2006 to the middle of December 2006, the claimant was off work completely and from December 2006 through October 2007, the claimant worked two 12-hour shifts. The claimant is now back to 72 hours every two weeks. 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 medical evidence supports the claimant's testimony. Dr. Baber's October 26, 2006, report reveals that the claimant might not be able to work during her treatment because of the side effects. The Family Medical Leave documents completed by Dr. Baber indicated the claimant's leave was to begin October 3, 2006 and would continue depending on effects of medication. Dr. Baber indicated the claimant was unable to perform the essential functions of her job. After considering the credible testimony of the claimant and the medical evidence, I find the claimant has proven by a preponderance of the evidence that she was totally unable to earn wages and in her healing period from October 3, 2006 through December 15, 2006. She has also proven by a preponderance of the evidence that she is entitled to temporary partial disability while she remained in her healing period and was only able to work part time and that was December 16, 2006 through October 22, 2007. See Ark. Code Ann. §11-9-520.

ORDER

The claimant has proven by a preponderance of the evidence that she contracted Hepatitis C arising out of and in the course of her employment. The preponderance of the evidence provides the claimant's condition of Hepatitis C is an occupational disease. Respondents are responsible for reasonable and necessary medical treatment the claimant has pursued. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from October 3, 2006 through December 15, 2006 and to temporary partial disability benefits from December 16, 2006 through October 22, 2007.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE