

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601071

CARLA MCGAUGH, EMPLOYEE	CLAIMANT
BOYCE AND BYNUM PATHOLOGY, LABORATORIES, P.C., EMPLOYER	RESPONDENT
ARGONAUT INSURANCE COMPANY CARRIER	RESPONDENT

OPINION FILED JUNE 20, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by THE HONORABLE Donald Pullen, Attorney at Law, Hot Springs, Arkansas.

Respondents were represented by THE HONORABLE Michael Mayton, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 2, 2008, in Little Rock, Arkansas. A Prehearing Order was entered in this case on May 5, 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-carrier relationship existed at all relevant times, including January 12, 2006.

3. The claimant sustained a compensable injury to her lower extremity and foot on January 12, 2006. The parties further stipulated that the claimant sustained a laceration to her right hand and forehead.

4. The claimant's average weekly wage was \$390.00, which would entitle her to a weekly temporary total disability rate of \$260.00, and a weekly permanent total disability rate of \$195.00.

5. Respondents have paid some medical expenses and are currently paying temporary total disability benefits.

6. At the time of the hearing, the parties withdrew the issue pertaining to unpaid mileage, as respondents agreed to pay these upon receipt of verification of the same.

7. Also at the time of the hearing, the respondents agreed to pay for the claimant's prior and future treatment with Dr. Pineau that is related to her injury, including the orthopedic shoes and the prescriptions for Hydrocodone.

8. With respect to temporary total disability, the parties agreed at the time of the hearing that this matter had been resolved as well.

ISSUE

By agreement of the parties, they agreed to litigate the following issue:

Whether the claimant is entitled to additional medical treatment from Dr. Greg Pineau, and payment for mileage and incidental expenses. (At the time of the hearing, the parties agreed that all these matters had been resolved, except for the prescriptions for Alprazolam, which is a generic drug for Xanax).

CONTENTIONS

The claimant contends that she was working for the respondent when she had a motor vehicle collision on January 12, 2006 and sustained fractures to the right knee, right ankle and above her left (sic) eye. Claimant's treating physician was Dr. J. Gruenwald who referred her to Dr. Greg Pineau in Hot Springs for follow-up with medications. Claimant submitted mileage statements from Dr. Gruenwald and Dr. Pineau as well as prescriptions on September 28, 2007 which remain unpaid. In addition, Dr. Gruenwald ordered physical therapy for the claimant and respondents have not approved the treatment nor are current medications being paid. Claimant contends she is entitled to continuing temporary total disability, additional medical benefits, attorney's fees and all other benefits to which she may be entitled under the Arkansas Workers' Compensation law.

After having resolved majority of the aforementioned issues, at the time of the hearing, the claimant essentially contended that the Xanax (Alprazolam), which was prescribed by Dr. Pineau was in keeping with her follow-up treatment of pain medication by Dr.

Pineau under the direction of Dr. Gruenwald who had referred her for pain management. And as part of the pain management for the anxiety, it was something that she had not taken in the past.

The respondents contend that all benefits to which the claimant is entitled have been paid and have not been controverted. The claimant is not entitled to any benefits other than those that are currently being paid at the present time. The respondents are continuing to pay temporary total disability benefits to the claimant and provide treatment by Dr. Gruenwald. The respondents controvert any medical treatment other than the treatment by Dr. Gruenwald, who is the claimant's treating physician. The respondents controvert payment of any medical treatment by the doctors the claimant is seeing in Hot Springs, including Dr. Pineau. The respondents controvert payment of any medications prescribed by doctors other than Dr. Gruenwald.

At the time of the hearing, the respondents contended that the prescriptions for anxiety and depression are not causally related to the accident and are not reasonable and necessary and they should not be held responsible for those. There is no mention in Dr. Gruenwald's records, who is the main treating doctor for this injury, any type of concern for anxiety or depression related to this accident. And it is their position that really Dr. Pineau is just there to prescribe her pain medication, as there is no script

from Dr. Gruenwald referring to Dr. Pineau for any type of anxiety or depression treatment. There has been no diagnosis by any licensed psychologist or psychoanalyst or anything like that to say she has any kind of a compensable psychological or depression-type issues and it's their position that that's not a reasonable and necessary medical expense.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of May 5, 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. The respondents' Medical Packet was marked as Respondents' Exhibit No. 1. The unapproved Treatment Packet was marked as Joint Exhibit No. 1. Mr. Mayton's e-mail dated June 2, 2008, and his letter dated June 3, 2008 to the Commission (which was received on June 4, 2008), along with the attached CT of the face, have all been blue-backed, and are hereby incorporated herein by reference, as these all have been marked as Commission's Exhibit No. 1.

The following witness testified at the hearing: the claimant.

DISCUSSION

The claimant, age 41 (8/07/66), sustained an admittedly compensable injury to her right lower extremity and foot while working for the respondent-employer. She also sustained a

laceration to her right hand and her forehead during this incident.

At the hearing, the claimant admitted to having sustained injuries as a result of an automobile accident on January 12, 2006, while working for the respondent-employer. The claimant further testified that in addition to her admittedly compensable injury to her foot, she also sustained a fracture over her right eyebrow, a slight skull fracture, and a laceration on her right arm. According to the claimant, she sustained more extensive injuries to her right knee, leg, and ankle.

The claimant testified that she has undergone 13 surgeries to her right ankle. She agreed that she continues under treatment with Dr. Gruenwald. The claimant denied having been on any type of anxiety medication or anything for nerves prior to January 12, 2006. The claimant testified she was first prescribed Xanax shortly after she starting seeing Dr. Pineau. At this point, the claimant essentially testified that she was not in good physical or mental condition. According to the claimant, she was in extreme pain constantly, and she worried because doctors thought that maybe they were going to have to amputate her foot and part of leg. As a result, she was having a really bad time. The claimant further testified that the Xanax was beneficial to her and did help.

As of the date of the hearing, she testified she is no longer taking the Xanax. However, the claimant admitted that during the short period of time that she was taking the Xanax, it helped with her anxiety, and enabled her to cope a little bit better with the circumstances going on at that time. She admitted that her last

prescription was dated March 11th of 2008, and that the first was for November of 2007, as she took about six prescriptions of it.

With respect to her right knee, the claimant testified that she will have to eventually have a total right knee replacement. As of the date of the hearing, the claimant testified she is having difficulty with walking and standing, and is in a lot of pain pretty much 90% of the time. The claimant also admitted that she has a limp. She next admitted that the Xanax helped her through the rocky time after her last surgery.

On cross examination, the claimant admitted that no licensed psychologist or psychiatrist has prescribed any anxiety medication or diagnosed her as having an anxiety disorder or anything of that nature.

In a medical report dated November 9, 2006, Dr. Karen Hand (apparently a cohort of Dr. Gruenwald) referred the claimant for pain management with her primary care physician, in this case, Dr. Greg Pineau. She noted that the claimant had sustained a right ankle fracture in February of 2006 (sic) for which she had undergone open reduction and internal fixation. Dr. Hand also noted that the claimant later had the hardware removed in May of 2006, and that further hardware had been removed on September 11, 2006. After this, she notes that the claimant had antibiotic beads, and will later possibly need tibial calcaneal nail for ankle fusion. According to Dr. Hand's notations, the claimant was scheduled for hardware removal on November 27, 2006, and possibly antibiotic beads removal/exchange and possible ORIF of the right

ankle.

The medical evidence demonstrated that the claimant subsequently started pain management treatment with her primary care physician, Dr. Pineau.

On November 20, 2007, Dr. Pineau's assessment of the claimant included, but was not limited to, "S/P right ankle fusion, chronic pain syndrome and depression," for which he prescribed among other things, Xanax. Dr. Pineau saw the claimant again on December 7, 2007. He again assessed the claimant with right ankle fusion and chronic pain, for which he prescribed among other things, Xanax. Dr. Pineau saw the claimant again on January 11, 2008, and January 30, 2008, as he made similar assessments and continued her prescription for Xanax.

Specifically, further review of the evidence demonstrates that the claimant had prescriptions filled for Alprazolam, as had been prescribed by Dr. Pineau, on the following dates: November 30, 2007; December 7, 2007; January 11, 2008; February 11, 2008; and two prescriptions for Alprazolam on March 11, 2008, for a sum total of six prescriptions.

ADJUDICATION

While the respondents have paid and continue to pay indemnity and medical benefits for the claimant's compensable injury, of January 12, 2006, namely, the injury pertaining to her right lower extremity and foot, they have controverted her entitlement to payment for the prescription drug, Alprazolam, a generic drug for Xanax, as ordered by Dr. Pineau during his care for her, in an

attempt to manage her chronic pain, which resulted from her compensable injury, despite numerous surgeries.

Therefore, the sole issue for determination is whether the claimant is entitled to additional medical treatment in the form of an anti-depressant for her admittedly compensable injury of January 12, 2006. Specifically, the claimant asserts that she is entitled to reimbursement for the six prescriptions of Alprazolam as prescribed by Dr. Pineau from November 30, 2007, through March 11, 2008.

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).

In the present matter, the claimant has established by a preponderance of the evidence that the additional treatment from Dr. Pineau, (in the form of prescriptions for Alprazolam), was reasonable and necessary in relation to her compensable lower right extremity and foot injury of January 12, 2006. However, I find that the claimant is entitled to repayment for only five of the six prescriptions. There were two prescriptions for Alprazolam, on March 11, 2008; however, the claimant has not offered any

explanation as to why she refilled two prescriptions for Alprazolam on this date. Therefore, I find that the respondents shall be liable for only one of these prescriptions, the Alprazolam tab for 1mg.

Specifically, in the present matter, it is undisputed that the claimant sustained a serious compensable injury to her right lower extremity and foot as a result of an automobile accident during and in the course of her employment with respondent-employer on January 12, 2006. Although the claimant sustained other minor injuries, her right lower extremity and foot injury was most serious. The claimant credibly testified that she has undergone 13 surgical procedures to her right ankle. The claimant also testified that prior to her injury, she had not taken any type of anti-depressant. However, the claimant's testimony, and medical records demonstrate that after her injury, she experienced chronic pain syndrome, and extreme worry and fear/anxiety, which resulted from the possibility of her having to undergo amputation of her foot and part of her leg.

According to the claimant, the Xanax helped with her anxiety, and enabled her to cope a little better with her circumstances. As of the date of the hearing, the claimant had discontinued her use of Xanax, as it was used only during the period in which she was told that she may have to undergo amputation of part of her lower extremity.

Therefore, considering the seriousness of the injury to the claimant's right lower extremity and foot, which resulted in

numerous surgeries; the persistent nature of her ongoing chronic pain despite these surgeries; the fact that the claimant had no prior history of use of any type of anti-depressant; and because the Xanax helped in relieving her anxiety which resulted from the possibility of her having to undergo partial amputation of her right lower extremity, I find that the five prescriptions for 1mg of Alprazolam were reasonable and necessary in relation to her compensable injury. As a result, the respondents shall be liable for payment of said prescriptions.

Because the claimant's injury occurred after July 1, 2001, there is no longer any statutory authority under Ark. Code Ann. §11-9-715 to award the claimant's attorney an attorney's fee on the medical benefits awarded herein.

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 January 12, 2006.
3. The claimant sustained a compensable injury to her right lower extremity and foot on January 12, 2006. She also sustained a laceration to her right hand and her forehead.
4. At the time of the hearing, the parties resolved issues pertaining to temporary total disability compensation, additional medical treatment pursuant to the recommendations from Dr. Pineau, except for the prescription medications for Alprazolam, a generic drug for Xanax.
5. The claimant proved by a preponderance of the evidence that the five prescriptions for Alprazolam, a generic drug for Xanax, were reasonable and necessary in relation to her compensable right

lower extremity and foot injury of January 12, 2006.

6. The respondents are liable for payment of the aforementioned additional medical treatment.
7. The respondents have controverted the claimant's entitlement to additional medical treatment in the form of Alprazolam.

AWARD

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of five prescriptions Alprazolam, a generic drug for Xanax. Therefore, the respondents are directed to pay for this additional medical treatment in accordance with the afore cited Findings of Fact and Conclusions of law.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge