

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F601214

NORMA PARHAM, Employee	CLAIMANT
FAYETTEVILLE PUBLIC SCHOOLS, Employer	RESPONDENT
RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 23, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On September 3, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 23, 2008, and a pre-hearing order was filed on June 11, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulation:

1. The prior opinion of November 16, 2006 is final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.

The claimant contends that she is entitled to additional medical treatment for her vision problems arising out of her compensable injury of February 10, 2005.

The respondents deny liability for medical treatment of claimant's vision problems based upon the deposition testimony of Dr. Daut.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The prior opinion of November 16, 2006 is final.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for vision problems as a result of her compensable injury of February 10, 2005. Specifically, claimant has failed to prove by a preponderance of the evidence that her vision problems are causally related to the compensable injury.

#### FACTUAL BACKGROUND

\_\_\_\_\_The claimant is a very nice 75-year-old woman who has worked in food service for respondent fourteen years. The claimant suffered an admittedly compensable injury on February 10, 2005 when she fell to the floor after tripping while coming out of a walk-in freezer. Claimant landed on her right side and struck the right side of her face on a concrete floor. Claimant was initially evaluated by Dr. Berestnev who diagnosed claimant as suffering from right orbital trauma. Dr. Berestnev eventually referred claimant to Dr. Michael Morse for a neurological examination and he was of the opinion that claimant had bruised her right infraorbital nerve where it exited claimant's face. Dr. Morse treated claimant with medication and a Botox injection, neither of which were beneficial. Dr. Morse referred claimant to Dr. Danks for a neurosurgical evaluation and he evaluated the claimant on January 24, 2006 and assessed her condition as "Probable damage to the infraorbital nerve." Dr. Danks went on to indicate that he did not believe there was anything that could be done for claimant's condition.

On March 11, 2008, the claimant sought medical treatment from Dr. Daut, an ophthalmologist. Claimant had complaints of pain around the eye, numbness on her

cheek, and some floaters in her right eye which she indicated had increased in the last week. Dr. Daut testified by deposition that his examination revealed that claimant had advancing cataracts in both eyes, healthy optic nerves, and several floaters in the right eye. He also testified that his examination revealed no evidence of holes or tears in the claimant's retinas. Dr. Daut diagnosed claimant's condition as blurred vision secondary to cataracts. He also noted that the claimant did suffer from floaters in her right eye. Dr. Daut subsequently performed cataract surgery on both of her eyes.

Claimant has filed this claim contending that she is entitled to additional medical treatment for her compensable injury. Specifically, claimant attributes her vision problems to the fall which occurred on February 10, 2005.

---

#### ADJUDICATION

\_\_\_\_\_ In order to be entitled to compensation benefits attributable to her vision problems, claimant has the burden of proving by a preponderance of the evidence that those vision problems are causally related to the injury which occurred on February 10, 2005. After my review of the evidence in this case, I find that claimant has failed to meet her burden of proof.

Initially, it should be noted that claimant did not seek any medical treatment for any vision problems until March 11, 2008, more than three years after her compensable injury. At that time she was diagnosed as suffering from blurred vision secondary to cataracts and floaters in her right eye. Claimant subsequently underwent surgery to remove the cataract from Dr. Daut.

Dr. Daut testified by deposition and indicated that in his opinion neither the claimant's cataracts nor the floaters in her right eye could be causally linked to the fall on February 10, 2005.

Q. The medical records I have and the previous histories

I have is that Ms. Parham had a fall, I think, at McNair Middle School on or about February 10, 2005, and may have fallen and injured the orbital area of her right eye. As far as the cataract surgery is concerned, with a reasonable degree of medical certainty, was there any causation between that fall and the cataract surgery?

A. No, I wouldn't think so.

Q. Within a reasonable degree of medical certainty, is there any causation between her floaters in the right eye and the fall?

A. It would be really hard to say. The floaters that I saw were - - were just that where they opacities within the vitreous, the jelly of the eye. I don't have any note that she actually had what we call a PVD or posterior vitreous detachment. It's a very common cause for floaters, and what that is, is that's where a membrane that surrounds the vitreous splits off from the retina and then floats in front of it. It's very common. It happens in everybody sooner or later. PVDs sometimes will happen after trauma, but in her I didn't note a PVD before or after surgery. What I saw in there were just opacities and those could be just, you know, collagen and fibrils that have just balled up. I really couldn't say a trauma would cause that.

\*\*\*

Q. The description that I have of her injury is that not only did she fall and perhaps injure the orbital in her eye, but she fell onto concrete ...

A. Uh-huh.

Q. ... flat down on the right side of her eye. If she had not had problems with floaters prior to this injury and then had began developing them afterwards, would that make it more likely that these were caused by this direct blow to the right eye?

A. Possibly, I mean, I - - you know, from my standpoint, I'm coming in, I guess, three years after the fact, so I can't say, you know, from - - I guess from, you know, a cause and effect standpoint there is that possibility. Yes.

Q. Well, so do you think that if her past records, her eye records did not show any evidence of floaters and there was no complaint of that ...

A. Uh-huh.

Q. ... and now there is a complaint and, of course, as you said, it's much more on the right eye than in the left...

A. Uh-huh.

Q. ... and that's the side she hit, would you think that that made it more likely than not that those floaters were caused by the impact on the concrete?

A. Looking at her, probably not. If a - - if a PVD, a posterior vitreous detachment, if I saw that and, you know, that was something that she noticed right after the incident, then I would more likely to say yeah, you know, that could be a cause and effect. But these - - what I have noted is that these are just opacities and, you know, they could have been there. They could have come - - you know, you just - - you can't say for sure. It would be one of those things if someone saw her, you know, at a time after, you know, within, you know, a month or two or something afterwards, you would be able to tell better, but from coming in as late as I came in, I can't say with certainty either way really.

Thus, Dr. Daut was of the opinion that there was no causal relationship between the claimant's fall and her cataract surgery. With respect to the floaters, Dr. Daut did testify that it was possible that a causal connection existed; however, he testified that it was probably not more likely that a causal connection existed. Experts' opinions based upon "could", "may", or "possibly" lack the definitiveness required to prove a causal connection. *Frances v. Gaylord Container Corporation*, 341 Ark. 527, 20 S.W. 3d 280 (2000). In my opinion, it cannot be said from a reading of Dr. Daut's testimony that he was of the opinion that a causal connection existed between the claimant's fall and the floaters in her right eye. To the contrary, a reading of Dr. Daut's testimony indicates that he does not think it likely that such a causal connection exists.

Based upon the testimony of Dr. Daut which I find to be credible and entitled to great weight, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that a causal connection exists between her vision problems and her compensable fall of February 10, 2005. Therefore, claimant is not

entitled to medical treatment for her vision problems.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for visual problems as a result of her compensable injury of February 10, 2005. Therefore, her claim for compensation benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$148.10.

IT IS SO ORDERED.

---

GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE