

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F710007

CARMEN SAUCEDO, Employee	CLAIMANT
WORK SOURCE, INC., Employer	RESPONDENT
WAUSAU INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED FEBRUARY 15, 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 JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On January 23, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 28, 2007, and a pre-hearing order was filed on November 29, 2007. 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 stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable injury on July 13, 2007.

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

1. Claimant's entitlement to additional medical treatment and temporary total disability benefits from September 10, 2007 through a date yet to be determined for her compensable injury.
2. Attorney fee.

The claimant contends she is entitled to additional medical and temporary total disability from September 10, 2007 through a date yet to be determined as well as an attorney fee.

The respondents contend the claimant has received all compensation benefits to which she is entitled.

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 stipulations agreed to by the parties at the pre-hearing conference conducted on November 28, 2007, and contained in a pre-hearing order filed November 29, 2007, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment and/or temporary total disability benefits for her compensable injury.

FACTUAL BACKGROUND

The claimant is a 52-year-old woman who has worked for the respondent on several different occasions. Claimant last began working for the respondent on July 3, 2007. Claimant was assigned by the respondent to work on a line that processed green beans, removing trash such as sticks and branches. Claimant testified that she could either sit or stand in order to perform her job.

Claimant suffered a compensable injury to various parts of her body when she slipped on a wet floor in the bathroom and fell backwards on July 13, 2007. Claimant

reported this incident to the respondent and was sent to Dr. Haws for medical treatment. Dr. Haws diagnosed claimant's condition as musculoskeletal pain secondary to a fall. He prescribed medication and released claimant to return to work with restrictions. In addition to Dr. Haws, claimant was also evaluated by Dr. Lewis. Dr. Lewis also treated claimant conservatively with medication. Beginning in August 2007 the claimant underwent a regimen of physical therapy which did not alleviate her condition.

On August 22, 2007, claimant underwent an MRI scan of the cervical spine which was negative with the exception of some mild scoliosis. Claimant was subsequently released by her treating physicians to return to work as of September 6, 2007 with no restrictions.

Subsequent to that release claimant sought medical treatment from Vicky Moore, a nurse practitioner. Moore recommended an MRI scan of the claimant's lumbar spine and prescribed medications. The MRI scan was performed on November 14, 2007 and revealed desiccation and a bulge at the L4-5 level. However, there was no evidence of herniation and no compromise of the canal or foramina. As a result, Moore recommended continued conservative treatment.

Claimant has filed this claim contending that she is entitled to additional medical treatment and temporary total disability benefits for her compensable injury.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 32 (2004). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. *White Consolidated Industries v. Galloway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the

doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment.

As previously noted, claimant's initial medical treatment was provided by Dr. Haws. Dr. Haws diagnosed claimant's condition as musculoskeletal pain secondary to a fall and treated claimant conservatively. Significantly, in a report dated July 27, 2007, Dr. Haws indicated that claimant was magnifying her condition.

She moves in a very slow, deliberate fashion when specifically asked to perform movements, such as standing and forward bending. However, when ambulating in the hallway when leaving or through the lobby when leaving the office, she is much more fluid and seemingly displays a much better ROM than when specifically questioned or commanded to perform movements.

She displays breakaway weakness when testing strength in the upper extremities. When asked to display strength in her lower extremities, such as flexion at the knees against resistance she displays weakness bilaterally along with breakaway weakness. The patient climbs on and off the exam table in a very slow and labored fashion.

Based on her exam today I think her condition is highly magnified, she displays breakaway weakness, displays very restricted, limited movement when asked to perform certain movements but I observed her myself in other places in the clinic displaying much better ROM and less public display of pain at the same time. Though she states through her granddaughter that she wants to return to work, I would have to question her motivation. (Emphasis added.)

Claimant subsequently came under the care of Dr. Lewis. Dr. Lewis likewise noted an exaggeration of complaints. In a report dated August 16, 2007, Dr. Lewis stated:

The patient is ambulatory without any difficulties. Seated on the exam table, gentle palpation of the upper back and neck result in flinching with inconsistent response to the gentle touch.

The patient again flinches on exam of the cervical spine to gentle one-ounce touch pressure.

IMPRESSION: History of remote fall greater than one month ago with inconsistent history and lack of objective findings.

Thus, two of claimant's treating physicians have noted exaggerated responses during their examination of the claimant. A review of the medical records indicates that claimant was provided with conservative medical treatment including medication and physical therapy. None of that treatment has alleviated the claimant's condition. As a result, claimant was released by her treating physicians in September 2007.

Claimant subsequently sought medical treatment from Vicky Moore, a nurse practitioner. Moore ordered an MRI scan of the lumbar spine which revealed desiccation and a bulge at the L4-5 level. However, no herniation was noted and no compromise of the canal or foramina. Moore indicated that surgery would not alleviate the claimant's condition and instead recommended continued conservative treatment. It should be noted that claimant had previously undergone conservative treatment with no improvement in her condition.

I find based upon the evidence presented that claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. While Moore has recommended continued conservative treatment, Moore is a nurse practitioner, not a physician. Two physicians who have evaluated the claimant, Drs. Haws and Lewis, have both noted exaggerated complaints during their examinations of the claimant. I find that the opinions and findings of Dr. Haws and Dr. Lewis are entitled to greater weight than that of Moore. Accordingly, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.

Likewise, I also find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury. Following her compensable injury the claimant received medical treatment from Dr. Haws and Dr. Lewis. Claimant was treated conservatively and was released to return to work with restrictions by those physicians. Claimant was released to return to work without restrictions as of September 6, 2007. When claimant was subsequently evaluated by Moore, Moore indicated in a letter dated December 7, 2007 that she did not believe claimant would be able to work within the next year. However, in addition to claimant's back complaints, Moore also noted that claimant suffered from depression, diabetes, hypertension, tendinitis, and extreme obesity. In fact, claimant relied upon these conditions in part in order to obtain social security disability benefits in August or September of 2007.

In order to be entitled to temporary total disability benefits for her compensable injury, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. Based upon the evidence presented in this case, particularly the medical records of Dr. Haws and Dr. Lewis, I find that claimant has not remained within her healing period for this compensable injury and also find that she has failed to prove that she suffers a total incapacity to earn wages as a result of her compensable injury. Therefore, her claim for temporary total disability benefits is denied.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment and/or temporary total disability benefits for her compensable injury. 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 \$299.75.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE