

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F510224**

**PAMELA J. SHIREMAN**

**CLAIMANT**

**AEROSPACE EDUCATION CENTER**

**RESPONDENT EMPLOYER**

**CINCINNATI INDEMNITY COMPANY**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED APRIL 1, 2008**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE J. MARK WHITE, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE CYNTHIA E. ROGERS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on February 21, 2008. A prehearing conference was held on January 8, 2008 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, the parties agreed to the following stipulations:

1. There was an August 25, 2005, compensable injury.
2. The temporary total disability rate is \$256.

The claimant contends that she is entitled to an MRI as ordered by Dr. Kenneth Rosenzweig after the claimant saw him on a change of physician.

Respondents contend any additional medical is not reasonable and necessary, and related to the compensable injury.

## **ISSUES TO BE LITIGATED**

1. Entitlement to an MRI.

From a review of the record as a whole, to include medical reports, documents, and the records and opinions from the previous hearings, 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 August 25, 2005, compensable injury.
2. The temporary total disability rate is \$256.
3. The claimant has failed to prove by a preponderance of the evidence that additional medical benefits, specifically an MRI, is reasonable and necessary and related to the temporary aggravation of the neck in August 2005.

### **DISCUSSION**

The hearing in this matter on the issue of additional medical benefits, specifically, an MRI, represents the third hearing the claimant has been involved relating to her injury on August 25, 2005. The March 22, 2006, hearing resulted in an opinion on April 25, 2006, finding the claimant sustained a temporary aggravation of a pre-existing degenerative disk condition and some medical benefits were awarded from September 7, 2005 through October 31, 2005. A second hearing was held on January 23, 2007, where the claimant was requesting additional medical benefits. An opinion

was filed on March 8, 2007 and additional medical benefits after October 31, 2005, were denied. Appeals were not taken on these opinions. The claimant has now received a change of physician to Dr. Ken Rosenzweig and is requesting payment of an MRI.

The claimant, 52 years old, testified that today she continues to suffer from muscle spasms in her neck caused from the ergonomic design of her work space and the muscle spasms cause headaches. The claimant testified that a headache she had last year was so severe that it imitated the symptoms of a stroke. According to the claimant, her problems started the end of August 2005, when she was working on programming. The claimant was looking at her monitor, up and to the left, and when she checked the dome and looked back down, her neck snapped. She began experiencing tingling and numbness in her fingers and began having spasms in her neck. According to the claimant, her symptoms have never gone away and the symptoms fluctuate, depending on the amount of work she does.

The claimant had a change of physician to Dr. Ken Rosenzweig on October 2, 2007. She had an x-ray and an evaluation. Dr. Rosenzweig recommended an MRI and respondents have controverted additional medical. According to the claimant, she has never had any diagnostic tests other than an x-ray. The claimant contends there has been no significant change in her working conditions since her initial injury.

The claimant testified that she continues to have headaches and she further elaborated:

I have neck pain, shoulder pain, and numbness in my left hand. I'll have off-the-wall tremendous spasms. Like I'll be sitting facing forward, and suddenly my neck will snap 90

degrees. You know, my hands will contract or extend. I have very little strength in my left hand; I have a hard time gripping things. (T., p. 35, lines 4-9.)

The claimant testified that her headaches sometimes begin at work and sometimes begin at home, but are because of muscle spasms that increase to the point of a headache. The claimant testified that she is now working 35 to 50 hours a week but a more comfortable time frame would be 40 hours per week. The claimant also testified that her continuing restrictions are that she would not work more than five days in a row and would not sit or stand for more than two hours at a time and would not lift more than ten pounds with no repetitive bending or stooping.

### **ADJUDICATION**

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that 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. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

The claimant saw Dr. Ken Rosenzweig on October 2, 2007, for an evaluation from a change of physician. Dr. Rosenzweig's physical examination revealed:

On exam, she is a pleasant, 52-year-old, at 5'4" and 230 pounds. Her biceps, triceps, and brachioradialis reflexes are symmetric bilateral. She has a positive Roos exam but a negative Addison maneuver. She has full functional motion of the cervical spine on flexion, extension, and rotation. Negative Lhermitte's and negative Spurling. She has negative Tinel's, negative Phalen's. Shoulder range of motion is intact with negative impingement and negative drop arm. No weakness on rotation strength. (Cl., Exh. No. 1, p. 24.)

Dr. Rosenzweig's review of the x-ray revealed:

X-ray of the cervical spine on the lateral view reveals kyphotic deformity at the apex of the C4-5 level with significant degenerative disease at 5-6 and 6-7 with calcification and probable ankylosis. (Cl., Exh. No. 1, p. 24.)

While Dr. Rosenzweig did recommend an MRI of the cervical spine, his impression of the claimant was (1) neck pain due to spondylosis, (2) degenerative disc disease, (3) no findings of radiculitis and (4) concern for thoracic outlet syndrome. Dr. Rosenzweig did also suggest a program for core strengthening and spinal stabilization.

After a review of the medical evidence, I find the claimant has failed to prove by a preponderance of the evidence that an MRI is reasonable and necessary and related to her compensable temporary aggravation of her degenerative disc condition. The claimant testified that if she worked within the restrictions of her treating physician and a 40-hour week, this would be workable. The medical evidence suggests the claimant has degenerative disc disease and her past medical history reveals headaches in the occipital area as noted in the medical in 2000. The claimant also had symptoms of cervical muscle spasms dating back to 2000. While the claimant may continue to experience some muscle spasms and headaches, these are similar symptoms that she experienced before her compensable temporary aggravation in August 2005. Dr.

Rosenzweig's October 2, 2007, report notes the claimant's significant degenerative problems and her migraine headaches.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that additional medical benefits, specifically an MRI, is reasonable and necessary and related to the temporary aggravation of the neck in August 2005. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**