

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411073

CHRISTINA SHOCKEY

CLAIMANT

VACATION RENTALS, INC.

RESPONDENT EMPLOYER

CINCINNATI INDEMNITY CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED MAY 12, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

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

STATEMENT OF THE CASE

The above claim came on for a hearing on April 4, 2008, in Hot Springs, Arkansas. A prehearing conference was held and a prehearing order was filed on January 14, 2008. 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 that the claimant sustained a compensable right hand injury on November 10, 2003.

The claimant contends she is entitled to some additional medical benefits and a change of physician from Dr. Randy Bindra to a hand specialist or an orthopedic physician.

Respondents contend that the claimant has already been provided with her one-time change of physician and that she has received all the reasonable and necessary medical that she is entitled to. Respondents contend a change of physician was

granted on November 21, 2005, from Dr. Michael Moore to Dr. Randy Bindra.

Respondents controverted medical on October 30, 2007.

ISSUES TO BE LITIGATED

1. Change of physician.
2. Additional medical benefits.

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. Claimant sustained a compensable right hand injury on November 10, 2003.
2. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary for treatment of her compensable injury.
3. The claimant has failed to establish a compelling reason or circumstance justifying a second change of physician.

DISCUSSION

The claimant, 48 years old, was working for the respondent employer and was doing laundry as part of her job on November 10, 2003. As the claimant was loading the washer, she hit her right hand on the side of the washer. She immediately felt pain

and a large knot and bruising appeared. The claimant reported the incident to her supervisor and went to the emergency room and had x-rays and got a brace. The claimant saw Dr. Dodd a couple of times and had a nerve conduction test and the insurance case manager referred the claimant to Dr. Michael Moore, a hand specialist. Dr. Moore ordered x-rays and he performed surgery on her hand in December 2004. The claimant returned to work but her right hand was tingling and she had a second surgery, a carpal tunnel release, performed by Dr. Michael Moore on June 29, 2005. According to the claimant, her first and second fingers and her thumb are numb following the second surgery.

According to the claimant, she has hand pain now, bone sensitivity, weakness and some tingle and numbness in three fingers. She changed doctors from Dr. Michael Moore to Dr. Bindra. She saw Dr. Bindra one time and no further surgery was recommended. Dr. Bindra left Arkansas and the claimant wanted to see a different doctor; however, the insurance company allowed her to return to Dr. Moore and he ordered another nerve conduction study and another functional capacity evaluation and a sensitivity study. The claimant returned to work for the respondent following her second surgery, but ultimately quit in early 2007, when her hours were cut to three hours per day, two days per week. The claimant began a new job at a day care three weeks ago.

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 has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary for her compensable right hand injury. The claimant was treated at the emergency room immediately following her hand injury. She was then referred to Dr. Dodd, an orthopedic specialist, and treated with him. She was next referred to Dr. Michael Moore, a hand specialist, and she underwent two separate surgical procedures. The first was in December 2004, where Dr. Moore performed a de Quervain's release and a right ganglion excision. She was subsequently diagnosed with carpal tunnel syndrome and a carpal tunnel release was performed on June 29, 2005. While the claimant's hand tingling was relieved following the second surgery, she had three fingers that were numb following the second surgery. The claimant received a change of physician to Dr. Randy Bindra where she was evaluated by him for her condition and no further surgery was recommended. Dr. Bindra, in his December 19, 2005 report, indicated the claimant's loss of sensation in her fingers had a good chance of resolving, but could be permanent. Dr. Bindra left the state and the claimant was no longer able to see him; therefore, she agreed to see Dr. Moore again in October 2007. The claimant

underwent a bone scan on October 12, 2007, another Functional Capacity Evaluation on October 24, 2007 and another EMG study on October 30, 2007. Dr. Moore's October 30, 2007, report reveals that the bone scan provided normal results, the Functional Capacity Evaluation was invalid because of unreliable effort with 32 of 53 consistency measures and Dr. Rutherford's October 30, 2007, report reveals the EMG studies produced normal results. Dr. Moore has opined that no further surgery is recommended, as well as Dr. Randy Bindra recommended no further surgery. The claimant has undergone physical therapy and has been prescribed medication and further treatment has simply not been suggested by the various specialists she has seen. After considering the various diagnostic tests and medical evidence, I find the claimant has failed to prove that additional medical treatment is reasonable and necessary for her compensable injury.

Since the claimant has utilized her change of physician request and because she has been seen by three different orthopedic specialists, I find that another change of physician is not reasonable and necessary. I further find the claimant has not established a compelling reason or circumstance justifying a second change of physician. Ark. Code Ann. §11-9-514. The claimant has stated she does not want more surgery and has already undergone physical therapy.

ORDER

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary for treatment of her compensable injury. The claimant has failed to establish a compelling reason or

circumstance justifying a second change of physician. The claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**