

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204197

RUTH YOUNG

CLAIMANT

WAL MART STORES,
SELF INSURED

RESPONDENT

OPINION FILED MARCH 28, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant not represented by counsel and appearing pro se.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on December 11, 2007, in Fort Smith, Arkansas. By agreement of the parties, the claimant participated by telephone from her home in Bullhead City, Arizona.

A pre-hearing order was entered in this case on August 29, 2007. This pre-hearing order contains no stipulations by the parties but outlined the issues to be litigated and resolved at the present time.

An Opinion has been previously entered in this case by the Full Commission, on August 26, 2004. This Opinion subsequently became final and is res judicata of all issues raised and addressed therein. Judicial recognition will be taken of this prior Opinion. A review of this Opinion reveals that most of the benefits that were requested by the claimant in the most recent ARC were the same benefits that had been previously litigated and resolved by the August 26, 2004 Opinion. At the pre-hearing conference, the current issues were drafted in a manner that would conform with the rule of res judicata, Ark. Code Ann. §11-9-704(b)(3).

The issues to be litigated and resolved at the present time were limited to the following:

1. Temporary total disability from August 27, 2004 through September 18, 2006.
2. The claimant's entitlement to travel expenses for the MRI performed on September 14, 2006.

In regard to these issues, the claimant contends that she is entitled to additional temporary total disability benefits for the period of August 27, 2004 through September 18, 2006. She further contends that she is entitled to reasonable travel expenses necessitated by her return to Arkansas for an MRI, on September 14, 2006.

The respondents deny that the claimant is entitled to any additional temporary total disability benefits or to travel expenses for her return to Arkansas in order to undergo an MRI, on September 14, 2006.

DISCUSSION

I. ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS

The first issue to be addressed concerns the claimant's entitlement to additional temporary total disability benefits for the period of August 27, 2004 through September 18, 2006. The burden rests upon the claimant to prove her entitlement to these benefits. In order to meet this burden, the claimant must show that, during the period of August 27, 2004 through September 18, 2006, she continued within her healing period from the effects of her compensable injuries. Secondly, she must show that during this interval she was also rendered totally disabled from performing regular gainful employment as the result of the effects of these compensable injuries.

The duration of the healing period is a medical question, which must be resolved on the basis of the medical evidence presented. The healing period is defined as that period of time necessary for the healing of the actual physical

damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, at a level where nothing further in the way of time or medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

The prior final Opinion and Order of the Full Commission, entered on August 26, 2004, held that the claimant had failed to prove by the greater weight of the credible evidence that she continued within her healing period from the effects of any of her compensable injuries, after November 16, 2002. Her entitlement to temporary total disability benefits after that date was denied.

The only medical evidence presented, in addition to that presented at the prior hearing and considered in the prior Opinion, are the reports and records of Dr. Claude Martimbeau. Dr. Martimbeau is an orthopaedic surgeon and has been the claimant's primary treating physician for some time.

In his report of May 19, 2004, Dr. Martimbeau indicated that surgery on the claimant's left shoulder was the only remaining treatment, that offered any reasonable expectation of improving the claimant's underlying physical condition. This surgery was in the form of an acromioplasty of the claimant's left shoulder. He further stated that the claimant had refused to undergo this procedure. In this report, he goes on to state:

"At this point, the patient has reached the maximum of medical disability. I gave her some specific restrictions for work to include no lifting or carrying more than 15 lbs. and no overhead type of work."

In this subsequent report of April 15, 2005, Dr. Martimbeau noted that he last saw the claimant on May 19, 2004. He again stated that, in his opinion, the claimant has reached maximum medical "disability". He also noted that the claimant was released from his care and that she had permanent restrictions

of no overhead work and no pushing, pulling, lifting, or carrying in excess of 15 pounds.

The next report of Dr. Martimbeau is dated May 9, 2005. In this report, he diagnosed the claimant's continuing difficulties to be in the form of chronic impingement syndrome of her left shoulder. He declined to give an opinion on a permanent physical impairment rating until the claimant returned for evaluation. Finally, this report states:

"The doctor's final note indicates that she (the claimant) has reached maximum medical improvement and would have permanent restrictions as previously listed in a separate letter."

On October 18, 2005, the claimant was again evaluated by Dr. Martimbeau. In a report bearing that date, he noted that the claimant complained of difficulties in the form of chronic constant left shoulder pain with inability to do any type of physical work. His diagnosis continued to be that of chronic impingement syndrome. He recommended no additional treatment and reiterated that the claimant had permanent restrictions against overhead work and pushing, pulling, lifting, or carrying in excess of 15 pounds.

On September 14, 2006, a repeat MRI study of the claimant's left shoulder was performed, at the request of Dr. Martimbeau. This study was interpreted by Dr. Jeffrey Ferrell, the radiologist, as showing only a small incidental subchondral cyst, a small amount of fluid in the subacromial bursa, and mild degenerative changes. However, he observed no evidence of any significant rotator cuff injury or damage.

On September 18, 2006, the claimant was again seen by Dr. Martimbeau. On his physical examination, Dr. Martimbeau found no deformity of the claimant's shoulder, that the soft tissues of the shoulder were supple, that the shoulder had a "pretty good" range of motion with only minimal soreness in

abduction and rotation, and minimal crepitus. Finally, he found no evidence of contracture or atrophy. His report further indicated that he had reviewed the MRI study of September 14, 2006. Consequently, he again diagnosed the claimant's difficulties as mild impingement syndrome of the left shoulder. He concluded that the claimant had a 0 percent permanent impairment related to her left shoulder and that she could work with no specific restrictions.

The medical evidence shows that the only possible treatment that offered a reasonable expectation of reducing the damage caused by the claimant's compensable injuries was refused by the claimant. There is no evidence that any other medical treatment was provided or even recommended for any of the claimant's other compensable injuries. There is no evidence that any other medical services had any reasonable expectation of alleviating or reducing any of the physical damage caused by the claimant's various compensable injuries.

Therefore, I have no alternative but to find that the claimant has failed to prove that she continued within her healing period from the effects of any of her compensable injuries, during the interval of August 27, 2005 through September 18, 2006. Her failure to prove this fact prevents an award of temporary total disability benefits during this period.

II. TRAVEL EXPENSES

The final issue concerns the claimant's entitlement to travel expenses that resulted from her returning to Arkansas to undergo an MRI. This MRI had been requested by Dr. Martimbeau.

Clearly, this test could have been performed at a facility closer to the place of the claimant's residence. There is no evidence that having this test performed in Arizona would have made any difference in the results or would

have increased the expense of the test. The respondent is a multi-state company. It is self insured for both workers' compensation and group benefits. One would reasonably expect that it would have arrangements with physicians and facilities in Arizona, as well as Arkansas, which would include performance of the requested MRI study. However, for some reason, it was the respondent's wish that this study be performed here.

Obviously, the claimant incurred expenses by traveling to Fort Smith, Arkansas, rather than having the MRI performed in Arizona. As it was the respondent that necessitated this travel, it is my opinion that the respondent should also bear the expense of this travel. It is my further opinion that a reasonable way to calculate the amount of this travel expense is to take the mileage from the claimant's home in Bullhead City, Arizona, to Fort Smith, Arkansas, and multiply this by the mileage rate set by this Commission of 38 cents per mile. In addition, the claimant would be entitled to expenses for meals and lodging for a three day period, which is not to exceed the in state per diem authorized for state employees of \$109.00 per day.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 30, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On March 30, 2002, the claimant sustained compensable injuries to her tail bone, left shoulder, and right thumb.
4. There is no apparent dispute, at the present time, over the claimant's entitlement to medical services for her compensable injuries. The issue of the claimant's entitlement to temporary total

disability benefits, prior to August 27, 2007, has been rendered res judicata by the final Order of the Commission, which was entered on August 26, 2004.

5. The claimant has failed to prove by the greater weight of the credible evidence that she is entitled to additional temporary total disability benefits for the period of August 27, 2005 through September 18, 2006. Specifically, she has failed to prove by the greater weight of the credible evidence that she continued within her healing period from the effects of any of her compensable injuries during this interval.
6. The claimant is entitled to reasonable travel expenses for her required trip to Fort Smith, Arkansas, in order to undergo an MRI test that had been prescribed by her treating physician, Dr. Claude Martimbeau. These reasonable travel expenses would include mileage, at the rate of 38 cents per mile for the round trip highway mileage between Bullhead City, Arizona, and Fort Smith, Arkansas. In addition, the claimant should be allowed per diem expenses for three days at the maximum daily rate of \$109.00.
7. The respondents have controverted the claimant's entitlement to any additional temporary total disability benefits and travel expenses incurred in obtaining the MRI in Fort Smith, Arkansas.

ORDER

The respondents shall pay to the claimant travel expenses in the form of mileage at the rate of 38 cents per mile for the round trip highway mileage between Bullhead City, Arizona, and Fort Smith, Arkansas, together with a per diem for three days, which is not to exceed the daily rate of \$109.00.

For the reasons heretofore set forth in this Opinion, the claimant's request for additional temporary total disability benefits must be and hereby is denied and dismissed.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge