

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G008831

ELIZABETH JOHNSON, Employee	CLAIMANT
BERRYVILLE SCHOOL DISTRICT, Employer	RESPONDENT #1
ARKANSAS SCHOOL BOARDS ASSN. WCT, Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JULY 5, 2012

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

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

Respondent #2 represented by CHRISTY KING, Attorney, Little Rock, Arkansas; excused from hearing.

STATEMENT OF THE CASE

On June 13, 2012, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 11, 2012, and a pre-hearing order was filed on that same date. 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 relationship existed between the claimant and respondent #1 at all relevant times.
3. The claimant sustained a compensable injury to her left shoulder, cervical spine, and head on October 1, 2010.
4. The claimant was earning sufficient wages to entitle her to compensation at the

weekly rates of \$562.00 for total disability benefits and \$422.00 for permanent partial disability benefits.

5. Respondent #1 accepted and paid permanent partial disability benefits based on a 22% rating to the cervical spine and a 1% rating to the left shoulder.

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

1. Additional medical treatment as recommended by Dr. Thomas Knox in the form of a left shoulder MRI arthrogram.

2. Temporary total disability benefits from November 1, 2011 through a date yet to be determined.

3. Attorney fee.

At the time of the hearing the claimant withdrew and reserved the issue of her entitlement to temporary total disability benefits beginning November 1, 2011 and continuing through a date yet to be determined.

The claimant contends she is entitled to additional medical as recommended by Dr. Knox.

Respondent #1 contends it has paid all authorized, reasonable and necessary medical expenses to date.

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 April 11, 2012, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment recommended by Dr. Thomas Knox in the form of a left shoulder MRI arthrogram.

FACTUAL BACKGROUND

_____The claimant is a 52-year-old woman who obtained her bachelor of science degree in education from UCA. Claimant began working for the respondent during the 1998-99 school year as a business teacher. Claimant taught grades 9 through 12 word processing, spreadsheet programming, PowerPoint, and general computer knowledge. Claimant was also the sponsor of the school's FBLA organization.

On October 1, 2010, the claimant was riding on a school bus taking kids to an FBLA conference in Melbourne when the bus was involved in an accident and went off the side of a hill. Claimant testified that her first memory of the accident was waking up in the hospital several days later. Claimant testified that she was hospitalized for approximately 23 days.

The parties have stipulated that as a result of this accident the claimant suffered compensable injuries to her left shoulder, cervical spine, and head. These injuries included a fracture at the C6-7 level, a left scapular fracture, fracture to two ribs, facial fractures, and a closed head injury. While claimant was hospitalized she underwent surgery to repair the fracture at the C6-7 level. Medical reports indicate that as a result of this accident the claimant has also had to undergo more than a year of speech therapy.

Included in claimant's compensable injuries is an injury to her left shoulder. As a result of these complaints claimant was evaluated by Dr. Wilson on February 8, 2011. Dr. Wilson reviewed an MRI scan which according to him revealed mild tendinopathy and mild subacromial bursitis in claimant's shoulder. Dr. Wilson diagnosed claimant's condition as adhesive capsulitis and recommended that she receive an injection and physical therapy.

Dr. Wilson also indicated that if claimant's condition did not improve, intervention in the form of an arthroscopic procedure or manipulation would be necessary.

Claimant underwent the physical therapy and returned to Dr. Wilson on March 8, 2011. In his report of that date Dr. Wilson notes that his examination revealed that claimant had minimal improvement since her last visit and as a result he recommended that claimant undergo a left shoulder manipulation under anesthesia. This procedure was performed by Dr. Wilson on March 23, 2011.

Following this procedure the claimant continued to undergo physical therapy for her left shoulder and she again returned to Dr. Wilson on May 2, 2011. Dr. Wilson's medical report of that date indicates that claimant's condition had improved to the point that he recommended that she complete her physical therapy over the next couple of weeks and that he would release her from his care only to return as needed.

A subsequent physical therapy note dated May 13, 2011 as well as a medical report from Dr. Bell dated June 30, 2011 indicates that claimant was still complaining of pain in her left shoulder area.

Claimant returned to Dr. Wilson on October 27, 2011. In his report of that date he noted that he had not seen the claimant since May 2, 2011 and that claimant had been doing well at that time. However, he notes that within the last couple of months claimant has had increasing pain with no specific injury. Dr. Wilson noted that claimant's pain was so severe that she was taking increased narcotic pain medication. Dr. Wilson indicated that claimant's exam was consistent with a rotator cuff tendinitis with some impingement signs. He gave claimant an injection and indicated he would follow her on an as-needed basis.

Subsequent to the October 27, 2011 evaluation by Dr. Wilson, a report was authored by Dr. Corsolini summarizing claimant's medical care and stating that claimant was at maximum medical improvement for the injuries of October 1, 2010. Dr. Corsolini

went on to assign claimant impairment ratings based upon the injuries to her cervical spine and left shoulder.

Following this report by Dr. Corsolini claimant sought medical treatment from Dr. Thomas Knox, an orthopaedic surgeon in Harrison. Dr. Knox has diagnosed claimant as suffering from left shoulder pain and has recommended an MRI arthrogram to assess her shoulder.

Claimant has filed this claim contending that she is entitled to the additional medical treatment recommended by Dr. Thomas Knox.

ADJUDICATION

_____ Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). 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 met her burden of proof.

As previously noted, claimant suffered multiple injuries as a result of the accident on October 1, 2010. One of these compensable injuries was to her left shoulder. As a result of that compensable injury, the claimant came under the care of Dr. Wilson who initially treated claimant conservatively with physical therapy. When the physical therapy was ineffective Dr. Wilson recommended and performed a left shoulder manipulation under anesthesia. Claimant subsequently underwent further physical therapy and in a report dated May 2, 2011 Dr. Wilson indicated that claimant's condition had improved to the point that he released her from his care and indicated that he would see claimant on an as-needed basis.

Significantly, at the time she was released by Dr. Wilson he did recommend that claimant continue to finish her physical therapy as previously prescribed. The physical therapist note of May 13, 2011 indicates that claimant was continuing to complain of left shoulder pain. These complaints of continuing left shoulder pain are also reflected in the report of Dr. Bell dated June 30, 2011.

Claimant returned to Dr. Wilson for follow-up treatment on October 27, 2011. Dr. Wilson in his report of that date noted that while claimant had continued to do well for a period of time after the last visit on May 2, 2011, she had had some increasing pain over the last couple of months to the point that she was having to take increased narcotic pain medication. Dr. Wilson indicated that claimant's examination was consistent with a rotator cuff tendinitis with some signs of impingement. He provided claimant an injection and indicated he would follow claimant on an as-needed basis.

Following this evaluation by Dr. Wilson, Dr. Corsolini authored his report indicating that claimant had reached maximum medical improvement for her injuries of October 1, 2010. In that report, Dr. Corsolini cited various medical reports involving claimant's medical treatment since the time of her accident. With respect to claimant's left shoulder, Dr. Corsolini cited Dr. Wilson's May 2, 2011 report indicating that claimant's condition had improved and that she had been released from his care. However, it does not appear from a review of Dr. Corsolini's report that he was aware that claimant had again returned to Dr. Wilson two weeks earlier with complaints of additional left shoulder pain for which she received an injection and was instructed to return on an as-needed basis. Based upon the report of Dr. Corsolini, respondent paid claimant permanent partial disability benefits. It was after this report that claimant sought medical treatment from Dr. Knox and the MRI arthrogram was recommended.

I find based upon the evidence presented that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical

treatment as recommended by Dr. Thomas Knox in the form of an MRI arthrogram. At the time claimant was released at maximum medical improvement by Dr. Corsolini he was not aware that claimant had undergone an additional evaluation and injection by Dr. Wilson some two weeks earlier on October 27, 2011. Therefore, I find that his opinion is entitled to little weight with regard to whether claimant had reached maximum medical improvement with respect to her compensable left shoulder injury. Here, the evidence indicates that after her release by Dr. Wilson on May 2, 2011 she continued to have complaints of left shoulder pain which led to her receiving follow-up treatment from Dr. Wilson on October 27, 2011. In addition, Dr. Thomas Knox has now recommended an MRI arthrogram. Based upon this evidence as well as claimant's testimony regarding her complaints which I find to be credible and entitled to great weight after my observations of her as a witness at the hearing, I find that claimant has met her burden of proof.

In reaching this decision I have not found persuasive the fact that respondent obtained some video evidence of the claimant watering plants at her home with her left hand, using her left hand to walk her dog, or eating with her left hand. The evidence indicates that claimant is left handed and she has made an effort to train her right hand to perform some of these activities; however, according to her testimony which I find to be credible she has made an effort to continue to use her left hand in order to retain its mobility as recommended by her treating physicians. In fact, the medical reports contain several notations of the claimant informing her medical providers that she was engaged in the activity of walking her dog. Furthermore, I do not find the fact that claimant was able to use her left hand to eat as significant evidence that she is no longer in need of any additional medical treatment for her left shoulder.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that

she is entitled to additional medical treatment as recommended by Dr. Thomas Knox in the form of a left shoulder MRI arthrogram.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter’s charges for preparing the hearing transcript in the amount of \$589.65.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE