

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G301896

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| JAMMIE ZAVALA, Employee | CLAIMANT |
| GATES RUBBER COMPANY, Employer | RESPONDENT |
| GALLAGHER BASSETT SERVICES, Carrier | RESPONDENT |

OPINION FILED NOVEMBER 25, 2013

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

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

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 6, 2013, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 9, 2013, 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 parties at all relevant times.
3. The claimant sustained a compensable injury to her right wrist on May 22, 2011.

Subsequent to the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$737.26 which would result in compensation rates of \$491.00 for total disability benefits and \$368.00 per week for permanent partial disability benefits. The parties' stipulation and wage records with regard to this issue have been blue-backed and admitted as Commission Exhibit #2.

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

1. Payment of outstanding medical bills, including MRI of February 23, 2013; all subsequent treatment with Dr. Noel Henley; surgery on March 26, 2013 at Physicians' Specialty Hospital; and therapeutic services treatment of April 22, 2013.
2. Additional medical treatment for claimant's right wrist, including evaluation for permanent impairment.
3. Temporary total disability benefits from February 11, 2012 through May 11, 2012 and from March 26, 2013 through June 6, 2013.
4. Attorney fee.

The claimant contends she sustained a compensable injury while working for respondent on or about May 22, 2011 when she fell and injured her right wrist during the course and scope of her employment. Claimant underwent right wrist surgery on March 26, 2013 as recommended by Dr. Henley. Additionally, respondents have failed to pay related medical bills and follow-up medical treatment. Claimant contends she is entitled to payment of temporary total disability benefits from February 11, 2012 through May 11, 2012, and from March 26, 2013 through June 6, 2013. She further requests a controverted attorney's fee.

The respondents contend they have accepted claimant's right wrist injury as compensable and have paid all authorized, reasonable and necessary medical expenses. Respondents contend they have paid all benefits to which claimant is presently due.

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 September 9, 2013, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$737.26 which would entitle her to compensation at the rates of \$491.00 for total disability benefits and \$368.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. This includes all medical treatment provided subsequent to August 26, 2011, and specifically includes, but is not limited to, treatment from Dr. Henley, an MRI scan performed on February 23, 2012, surgery on March 26, 2013, and therapeutic services provided on April 22, 2013.

4. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning February 17, 2012 and continuing through May 11, 2012, and again from March 25, 2013 through June 3, 2013.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

_____The claimant began working for the respondent through a temporary service in January 2007. The claimant initially performed work as a machine operator/packer. At the time of her injury the claimant was performing work as a jacket builder and was responsible for sewing and cutting fabric to certain sizes for timing belts which were manufactured by the respondent for the automotive industry. Claimant testified that she was required to produce 150 to 200 jackets in a given shift.

Claimant suffered an admittedly compensable injury to her right wrist on May 22, 2011. On that date the claimant tripped over a roll of cardboard that was in the floor and fell, landing on her right wrist. Claimant testified that the fall was witnessed by her supervisors, Shawn Swift and Bud Bohall. Claimant testified that she completed an incident report that day but did not seek medical treatment because she believed she had sprained her wrist and it would get better.

When claimant's condition did not improve but instead worsened, she requested medical treatment and was referred by respondent to Dr. Henley for treatment. Dr. Henley is a wrist specialist. Claimant's initial evaluation with Dr. Henley occurred on July 14, 2011 at which time he ordered an MRI scan of the claimant's right wrist and also recommended that claimant use a thumb splint. Dr. Henley also restricted claimant from lifting and repetitive use of her right upper extremity. Claimant returned to work for respondent and was provided work inspecting belts for defects, a job which she performed with her left hand.

The MRI scan of claimant's right wrist was performed on July 20, 2011 and claimant returned to Dr. Henley on July 28, 2011. Dr. Henley indicated that the MRI scan was normal and recommended that claimant continue using the splint for an additional four weeks and that she continue therapy. He also continued claimant's work restrictions.

In a report dated August 26, 2011, Dr. Henley noted that claimant still had occasional pain but that her condition had improved. He indicated that claimant had reached maximum medical improvement and released claimant from his care. He recommended that claimant continue her home therapy and use her splint as needed. He also indicated that he would see claimant on an as needed basis and he returned her to work without restrictions.

Claimant testified that following her release by Dr. Henley on August 26, 2011 she returned to work for respondent at full duty and after she began performing her regular job

as a jacket builder her right wrist pain returned. As a result, claimant returned to Dr. Henley for additional treatment on December 6, 2011. Dr. Henley's report of that date notes that claimant's wrist pain has returned and is basically the same as before. He diagnosed claimant's condition at that time as tendinitis of the right wrist. He also gave claimant work restrictions and indicated that she should wear a wrist brace at work. Dr. Henley also indicated that he suspected that claimant might have some sort of ganglion cyst. Finally, Dr. Henley indicated that an MRI scan might be necessary if claimant's condition did not improve.

Claimant returned to Dr. Henley on January 30, 2012. Dr. Henley in his report of that date notes that a period of rest did not improve claimant's condition. He again indicated that he suspected a ganglion cyst in the claimant's right wrist and recommended an MRI scan. Dr. Henley also at that time indicated that claimant should no longer use her right hand.

Because respondent no longer considered claimant's right wrist complaints to be a continuation of her workers' compensation injury, respondent did not provide claimant any work within her restrictions. As a result, claimant filed for FMLA leave which she took from February 17, 2012 through May 11, 2012.

Claimant did undergo the second MRI scan as recommended by Dr. Henley which revealed a carpal ganglion cyst in the right wrist according to Dr. Henley's report of March 6, 2012. Dr. Henley's recommended treatment for the cyst was an injection. Dr. Henley provided a second injection in claimant's right wrist on April 16, 2012. In a report dated April 30, 2012 Dr. Henley noted that claimant's wrist hurt more after the second injection than after the first.

In a report dated May 11, 2012, Dr. Henley noted that claimant's pain was not much better and that claimant was concerned that she would need the surgery that they had previously discussed. However, claimant was willing to go back to work and as a result Dr.

Henley released her to return to work with no restrictions and instructions to wear her splint as needed. He also noted that he would see claimant on an as needed basis and that if symptoms warranted in the future they would consider a wrist exploration with excision of the ganglion cyst.

Claimant testified that following this release by Dr. Henley she again returned to work for respondent performing her regular job duties and that her wrist condition again worsened. As a result, claimant returned to Dr. Henley on March 1, 2013. Dr. Henley in his report of that date noted that he had treated claimant conservatively for an occult dorsal ganglion cyst for several months and that the treatment had included injections and splinting. He also noted that claimant's pain was worsening and as a result it was reasonable to proceed with excision of the ganglion mass. Dr. Henley performed surgery to remove the ganglion mass on March 26, 2013. As a result of her surgery, claimant again took FMLA leave from March 25, 2013 through June 3, 2013, when she returned to work for the respondent.

The respondent accepted claimant's initial right wrist injury as compensable and paid medical benefits through August 26, 2011, the date she was released by Dr. Henley to return to work without restrictions. Claimant has filed this claim contending that she is entitled to additional medical treatment for her compensable injury including payment of all medical treatment received since August 26, 2011. In addition, she also seeks payment of temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

_____ Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right wrist injury. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). 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 proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to August 26, 2011.

First, I believe it is important to note that each time claimant was released by Dr. Henley there was at least some indication that future problems with claimant's right wrist might arise. Even though Dr. Henley released claimant from his care on August 26, 2011 and opined that claimant was at maximum medical improvement, he also indicated that claimant should continue her home therapy and use her splint as needed. In addition, he also indicated that he would see claimant back in his office as needed. At that point in time the claimant returned to work for respondent at her regular duties and developed additional problems with her right wrist. As a result, claimant subsequently returned to Dr. Henley on December 6, 2011, and he noted that claimant's right wrist pain had returned and was basically the same as before. Dr. Henley ordered a second MRI scan which revealed a carpal ganglion cyst. In lieu of surgery, Dr. Henley chose to treat claimant conservatively with two injections. Even though those injections did not significantly improve claimant's condition, claimant was nevertheless willing to go back to work and as a result Dr. Henley again released claimant on May 11, 2012. However, he again indicated that he would see claimant as needed and indicated that if symptoms warranted in the future he would consider a wrist exploration with excision of the ganglion cyst. Again, claimant returned to work for respondent at her regular duties and again her right wrist pain returned. At that point claimant returned to Dr. Henley for additional treatment and he performed surgery on the claimant's right wrist.

It appears from a review of the medical records that claimant's right wrist pain never totally resolved and that each time she returned to work for respondent at her regular duties her right wrist pain returned and resulted in the need for additional medical treatment.

Most significantly with respect to this issue is the opinion of Dr. Henley. Dr. Henley expressed his opinion with respect to causation and the differences in the two MRI scans in a letter dated April 30, 2012. In that letter, Dr. Henley stated:

To the best of my knowledge and the findings and history that go along with her case, it is my firm opinion that her right wrist problems are a direct result of her fall on her outstretched right hand that she sustained originally when she came to see me. The most likely etiology of this was a dorsal wrist capsule tear which started out as a simple tear and probably irritation of the posterior interosseous nerve and has progressed to the point where she has a small dorsal carpal ganglion which is pushing on the nerve and causing her pain.

Thus, it was the opinion of Dr. Henley that claimant's subsequent problems were a direct result of the original work-related injury and that those problems had progressed from a tear to the development of a small carpal ganglion cyst. I find that the opinion of Dr. Henley is credible and entitled to great weight.

Accordingly, based upon the foregoing evidence, particularly the opinion of Dr. Henley which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right wrist injury. This includes all treatment provided by and at the direction of Dr. Henley subsequent to August 26, 2011. It includes, but is not limited to, Dr. Henley's medical treatment, the MRI scan of February 23, 2012, surgery performed by Dr. Henley, and services provided in the form of therapy on April 22, 2013.

I also find that claimant is entitled to temporary total disability benefits for her compensable injury. The injury to claimant's right wrist is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability or temporary partial disability benefits during their healing period or until they return to work, whichever

occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Here, I find that claimant remained within her healing period when she returned to Dr. Henley for medical treatment on December 6, 2011 and again on March 1, 2013. On both of those occasions Dr. Henley recommended medical treatment initially in the form of injections and on the second occasion in the form of surgery. While it appears that claimant initially continued to work for the respondent for a period of time, Dr. Henley did place restrictions on claimant's ability to work during both of these time periods. Because respondent did not accept claimant's continued problems as a work related injury, claimant was not provided work within her restrictions as she was provided prior to August 26, 2011. As a result, claimant filed for FMLA leave during both of these time periods, with the second time period coinciding with her surgery. According to claimant's testimony on cross-examination, the dates she was off work on FMLA leave were February 17, 2012 through May 11, 2012, and from March 25, 2013 through June 3, 2013, when she returned to work for the respondent.

I find that for both of these periods of time the claimant was within her healing period and had not returned to work for the respondent. Therefore, she is entitled to temporary total disability benefits for these respective periods of time.

Finally, I note that claimant testified that during these periods of time she drew short-term disability benefits. Pursuant to the provisions of A.C.A. §11-9-411, respondent is entitled to a credit for short-term disability benefits received by the claimant. However, respondents have controverted claimant's entitlement to all temporary total disability benefits and as a result claimant's attorney is entitled to a fee on the total benefits, irregardless of respondent's entitlement to a credit.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right wrist injury. This includes all medical treatment provided by and at the request of Dr. Henley subsequent to August 26, 2011. Claimant is also entitled to temporary total disability benefits from February 17, 2012 through May 11, 2012, and again from March 25, 2013 through June 3, 2013. Respondent is entitled to a credit for short-term disability benefits received by claimant. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$262.75.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE