

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G500316

LINDA J. MILLER, Employee	CLAIMANT
SPRINGDALE SCHOOL DISTRICT, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOC. WCT, Carrier	RESPONDENT

OPINION FILED OCTOBER 4, 2017

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

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

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

STATEMENT OF THE CASE

On September 13, 2017, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 26, 2017, 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/carrier relationship existed among the parties on December 17, 2014.
3. The claimant sustained a compensable injury to her left hand on December 17, 2014.
4. The claimant was earning sufficient wages to entitle her to compensation at the rate of \$144.00 per week.

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

1. Claimant's entitlement to additional medical treatment from Dr. Kelly for her compensable injury.

The claimant contends that due to continuing pain in her left hand as a result of her compensable injury she is entitled to additional medical treatment with Dr. James Kelly.

The respondents contend that any additional treatment is unreasonable, unnecessary, and does not arise out of the compensable injury.

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 a pre-hearing conference conducted on July 26, 2017 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 from Dr. Kelly for her compensable left hand injury.

FACTUAL BACKGROUND

The claimant is a 67-year-old woman who began working for respondent in 2011 as a substitute teacher. Claimant substitutes at grades varying from kindergarten to junior high school, but primarily works at J.B. Hunt Elementary.

On December 17, 2014, the claimant had been assigned to work in the special education classroom. Claimant was at a work station with an autistic child when he

suddenly grabbed her left hand, put it in his mouth, and bit it. Claimant testified that this bite pulled the skin back and blood was pouring down her hand. (Submitted into evidence as Claimant's Exhibit B is a photo of claimant's hand taken approximately 30 minutes after the injury.)

Following this incident claimant initially received treatment from Dr. Berestnev who assessed claimant's condition as a left hand human bite with superficial skin flap laceration and exposure to bodily fluids. Dr. Berestnev cleaned the affected area and dressed it with an antibiotic ointment. Thereafter, at claimant's request, Dr. Berestnev referred claimant to Dr. Henley at Ozark Orthopaedics.

Claimant's initial evaluation with Dr. Henley occurred on January 9, 2015. Dr. Henley diagnosed claimant's condition as a left hand human bite and recommended that she undergo hand therapy three times a week for two weeks. Claimant returned to Dr. Henley on January 29, 2015, at which time he noted that claimant's condition had improved and he continued her physical therapy for two times a week for six weeks.

Claimant's final visit with Dr. Henley occurred on March 26, 2015, at which time he noted that claimant was reporting burning and pain. Dr. Henley indicated that he was not sure what other treatment he could offer and he did not think surgery or exploration would be beneficial. Instead, Dr. Henley ordered a custom, compounded nerve-modulating steroid creme. Thereafter, claimant filed for and received a change of physician to Dr. Kelly. In a letter dated July 20, 2015, Dr. Kelly indicated that he felt that claimant had actually suffered a fracture that was undisplaced but had now healed. It was Dr. Kelly's belief that claimant's discomfort was due to contusions likely to the cutaneous nerves of the dorsum of the hand which he believed would resolve in time.

In a report dated September 16, 2015, Dr. Kelly indicated that claimant was still complaining of pain which felt like bees stinging in her hand. Dr. Kelly believed that the

claimant might have a cutaneous nerve in the scar from the crush injury where she had been bitten. Because of those complaints and the amount of time that had passed, Dr. Kelly recommended surgery to neurolyse the sensory nerve in her hand.

This procedure was performed by Dr. Kelly on October 2, 2015 and claimant returned to Dr. Kelly on November 9, 2015, at which time he noted that the surgical repair had been successful. He also noted that claimant's motion had improved and that she was no longer having bee stinging in her hand. Thereafter, in a report dated December 21, 2015, Dr. Kelly indicated that both he and claimant felt that she was getting better and he indicated that he would obtain a permanent impairment rating. In a report dated January 27, 2016, Dr. Kelly assigned claimant a 5% impairment rating to the hand. He further noted that claimant did not have normal sensation in the hand and that would continue on a permanent basis. Dr. Kelly indicated that he would see claimant back on a "p.r.n. basis."

Claimant returned to Dr. Kelly on June 8, 2016, with complaints in her left hand along with swelling. Dr. Kelly indicated that most of the swelling was from the surgical area and he did not believe that condition would ever change. Dr. Kelly went on to prescribe Voltaren gel to see if it would help claimant's condition. He again indicated that he would see claimant back on a p.r.n. basis.

Claimant's final visit with Dr. Kelly occurred on November 16, 2016. At that time claimant had complaints of pain in the hand which were based around the 2nd and 3rd MCPs and the base of the thumb. Dr. Kelly performed x-rays and noted that claimant was getting a slow progression of osteoarthritic changes. He noted that this would slowly progress and eventually get to the point where claimant would want to have something done. Again, Dr. Kelly indicated that he would see claimant back on a p.r.n. basis.

Claimant has filed this claim contending that she is entitled to additional medical treatment from Dr. Kelly.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment from Dr. Kelly for her compensable injury. Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable left hand 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 proof. Claimant testified at the hearing that she still had a feeling in her hand that felt like bees stinging between the first and second fingers. Claimant indicated that she could not completely stretch out her left hand and cannot make a tight fist with her left hand as she can with her right. She also indicated that she continues to have constant pain in her left hand.

Claimant testified that she had not returned to Dr. Kelly since November 2016 based upon his recommendation that she give her hand some time to heal.

Based upon the claimant's testimony, which I find to be credible, as well as Dr. Kelly's medical records indicating that claimant would continue to suffer from some complaints and his willingness to see claimant back on a p.r.n. basis, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to an additional evaluation from Dr. Kelly. Accordingly, claimant is authorized to return to Dr. Kelly for an evaluation for treatment relating to her compensable left hand injury.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Kelly for her compensable left hand injury.

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 \$291.80.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE