

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G600617

SONDRA K. ALLEN, Employee	CLAIMANT
ROGERS SCHOOL DISTRICT, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WCT, Carrier	RESPONDENT

OPINION FILED FEBRUARY 5, 2018

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

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

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

STATEMENT OF THE CASE

On January 17, 2018, the above captioned claim came on for a hearing at Springdale Arkansas. A pre-hearing conference was conducted on October 23, 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 at all relevant times.
3. The claimant sustained a compensable injury to her head on January 20, 2016.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle her to compensation at the rates of \$296.00 for per week for total disability benefits and \$220.00 per week for permanent partial disability benefits.

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

1. Claimant's entitlement to additional medical treatment from Dr. Tremwel in the form of a return visit.

2. Reimbursement for prescriptions from Dr. Tremwel.

The parties agreed at the time of the hearing that the issue of reimbursement for prescriptions had been resolved, leaving as the only issue claimant's entitlement to additional medical treatment from Dr. Tremwel.

The claimant is requesting a return visit to Dr. Tremwel as a result of her compensable injury.

The respondents contend they have paid all benefits to which the claimant is entitled.

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 October 23, 2017 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant was earning sufficient wages to entitle her to compensation at the rates of \$296.00 per week for total disability benefits and \$220.00 per week for permanent partial disability benefits is likewise hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to a return visit with Dr. Tremwel.

FACTUAL BACKGROUND

The claimant is a 52-year-old woman who has worked for the respondent for 22 years. Claimant drove a bus and also worked in the cafeteria two days per week. Claimant suffered an admittedly compensable injury to her head on January 20, 2016. On that date claimant was walking to her bus to start it when she slipped on ice and fell, striking her head. Claimant does not have any recollection of what happened because she lost consciousness and did not wake up until two days later in ICU at Washington Regional. Claimant was diagnosed as suffering from a closed fracture of the left temporal bone; subarachnoid hemorrhage; and a subdural hematoma. Claimant was hospitalized for four to five days before she was released. Following her release claimant treated with her personal physician, Dr. Janelle Potts, and she was also evaluated by Dr. Moon, neurologist.

Claimant's initial evaluation with Dr. Moon occurred on March 21, 2016. Dr. Moon noted that claimant suffered from post-concussional syndrome and he recommended that claimant undergo physical therapy and undergo an evaluation by an ENT.

Dr. Moon's medical report of April 18, 2016 indicates that claimant had made some progress with therapy but noted that she still suffered from headaches and still had not seen an ENT. Dr. Moon recommended that claimant continue with her therapy; increase medications; remain off work; and undergo the evaluation by an ENT.

On May 19, 2016, claimant was discharged from physical therapy. The discharge summary indicates that claimant had progressed significantly, but was no longer making any improvement. Following that discharge claimant returned to Dr. Moon on May 31, 2016. Dr. Moon noted that therapy had been helpful and that claimant's dizziness was better but that she still suffered from some dizziness when she looks down. He stated that claimant's ENT evaluation did not result in any new information and that claimant still complained of headaches and a loss of smell. Dr. Moon increased claimant's medication

and recommended that she continue her therapy at home.

Claimant's last visit with Dr. Moon occurred on August 3, 2016. Dr. Moon noted that claimant's dizziness had resolved and that she was driving a vehicle without difficulty. He also indicated that a return to work was appropriate and that he would not schedule another visit. Dr. Moon indicated that claimant had no permanent neurological impairment and indicated that claimant had reached maximum medical improvement and that she could return to work with no restrictions.

Claimant testified that she continued to have problems with dizziness and headaches following her release by Dr. Moon and she filed for and received a change of physician to Dr. Tremwel, neurologist. Claimant's initial evaluation with Dr. Tremwel occurred on November 21, 2016, at which time she was complaining of dizziness and headaches. Dr. Tremwel prescribed claimant Cymbalta for her headaches and ordered an MRI scan of claimant's brain.

Claimant's next visit with Dr. Tremwel occurred on January 12, 2017. Dr. Tremwel noted that claimant's headaches had subsided, although she still had some occasional headaches. She also noted that claimant had returned to work with no problems but was still suffering from a lack of smell. Dr. Tremwel reviewed claimant's MRI scan and noted that there were vascular changes present which were unrelated to the accident. Dr. Tremwel indicated that no further evaluation or work up for a concussion was needed and that further cognitive testing would probably be unrevealing. She indicated that she would see claimant on an as-needed basis.

Since her visit with Dr. Tremwel on January 12, 2017, claimant has continued to take Cymbalta or its generic equivalent for her headaches. However, she testified that the benefit of the medication has lessened over time. She also testified that she continues to suffer from a loss of smell.

Claimant has filed this claim requesting a return visit to Dr. Tremwel for further

evaluation.

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). 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 was released by Dr. Moon as having reached maximum medical improvement on August 3, 2016. However, claimant continued to suffer from dizziness and headaches and received a change of physician to Dr. Tremwel. Dr. Tremwel gave claimant a prescription for Cymbalta or its generic equivalent which claimant has continued to take for approximately one year. Dr. Tremwel indicated in her last medical report dated January 12, 2017 that no further evaluation or work up for a concussion was needed and that further cognitive testing would be unrevealing. However, she also indicated that she would see claimant on an as-needed basis.

The medical records indicate that Dr. Tremwel in response to questions submitted by claimant's attorney did author a letter regarding her treatment of the claimant. For instance, in her letter of October 30, 2017, Dr. Tremwel indicated that the prescription medication was part of the treatment for claimant's closed head injury and she also noted that claimant's loss of sense of smell was the result of the closed head injury in January 2016. Dr. Tremwel reiterated that opinion in a letter dated December 2, 2017, again stating that claimant's loss of sense of smell was the result of the closed head injury and that the Cymbalta was for treatment of that injury as well. Dr. Tremwel in those reports did not indicate one way or the other whether claimant was in need of additional medical treatment. However, Dr. Tremwel had previously indicated in her report of January 12, 2017 that she would see claimant on an as-needed basis. Given this opinion of Dr. Tremwel, as well as the fact that her medication for headaches which was prescribed by Dr. Tremwel

has expired, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to return to Dr. Tremwel for an evaluation to determine whether any additional medical treatment is needed.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Tremwel in the form of a return visit.

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 \$365.65.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE