

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109956

KRISTA JARVIS,
EMPLOYEE

CLAIMANT

ST. EDWARD MERCY MEDICAL CENTER,
EMPLOYER

RESPONDENT

SISTERS OF MERCY HEALTH SYSTEM,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 10, 2004

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by HONORABLE RANDY MURPHY, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

This case comes on for review by the Full
Commission on appeal by respondents from an opinion filed
herein by an Administrative Law Judge on November 21, 2003.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction of this
claim.
2. The claimant sustained a
compensable injury to her low back
on April 15, 2000.

3. Medical expenses have been paid until the claimant moved out of the state.
4. The claimant has proven by a preponderance of the evidence that she is entitled to her one time change of physician to a spine clinic in Oklahoma City which is associated with the respondent. See Ark. Code Ann. § 11-9-514 as well as Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W.3d 204 (2002).
5. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to the filing of her claim for additional benefits in September 2001.
6. The respondents have controverted this claimant's request for a change of physician as well as additional medical treatment.
7. The claimant's attorney is entitled to the maximum statutory attorney's fee as set forth for a change of physician as well as on the benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

We therefore affirm the November 21, 2003 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding the claimant is entitled to a one-time change of physician and additional medical benefits.

First, it is without question that a claimant is entitled to a one-time change of physician during the administration of her claim both under Ark. Code Ann. §11-9-514 (a) (3) (A) (Repl. 2002) and interpreting court cases. In interpreting the statute, the Arkansas Court of Appeals has stated that the change-of-physician statute is mandatory, not discretionary, upon the Commission. *Collins v. Lennox Indus.*, 77 Ark. App. 303, 75 S.W.3d 204 (2002). However, Rule 30 (R) of the Arkansas Worker's Compensation Commission still requires, among other things, that out of state providers be willing to abide by the AWCC Medical Fee Schedule, and they must be willing to sign an agreement stating they shall comply with AWCC Rule 30.

So long as the claimant's choice of out of state physician agrees to abide by the Commission's fee schedule, and is willing to agree in writing to abide with AWCC Rule 30, there would be no reason to deny the claimant a change of physician. However, if the claimant's chosen out of state provider is not willing to abide by the fee schedule and willing to abide by Rule 30, then the claimant should either

choose an out of state provider who will so comply with the Rule.

Second, the medical evidence in this claim does not support a finding that the claimant's continuing back pain is associated with her compensable injury of April, 2000. The claimant's past medical history is significant for similar work-related back injuries and problems. Specifically, over the decade prior to her compensable injury in 2000, the claimant sustained three separate lumbar strains from lifting and moving patients. Moreover, the claimant had seen a chiropractor for spinal adjustments prior to her first reported injury in 1994. In addition, the claimant became pregnant in 2002, and she admitted that her pregnancy severely worsened her condition. Furthermore, the claimant testified that she has been in "constant" pain since the time of compensable injury of 2000. However, the evidence reveals that the claimant was not treated for any back related problems from May 10, 2000, until February 13, 2001. Finally, the claimant admitted that she continues to engage in the same type work activities that have caused her previous back injuries.

The evidence in this claim does not preponderate in favor of a causal connection between the claimant's April 2000 back injury and her current symptoms. As were her prior

injuries, the claimant's present complaints are more likely than not resulted resultant from additional aggravations of her back due to her continued exposure to the physical demands of her profession. It is also highly probable that the claimant's pregnancy in 2002 caused her to sustain a new back injury, unrelated to her injury some two years earlier.

Accordingly, after analyzing the facts of this claim, I cannot find that the claimant sustained a recurrence of her compensable back injury of 2000. Rather, I am compelled to conclude that the claimant suffered an aggravation of her preexisting back condition, for which additional medical benefits should not be awarded.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

KAREN McKINNEY, Commissioner