

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109331

BECKY STALNAKER,
EMPLOYEE

CLAIMANT

PULASKI COUNTY SPECIAL
SCHOOL DISTRICT, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED DECEMBER 8, 2004

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

Claimant represented by the HONORABLE EMILY PAUL,
Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J.
DEMORY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed June 15, 2004. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. In February 2001, the relationship of employee-employer-carrier existed between the parties.
3. In February 2001, the claimant earned wages sufficient to entitle

her to weekly compensation benefits of \$253.00/\$190.00 for temporary total/permanent partial disability benefits.

4. In February 2001, the claimant sustained an injury in the form of bi-lateral carpal tunnel syndrome arising out of and in the course of her employment.

5. The claimant was temporarily partially disabled for the period beginning April 2, 2003, and continuing through the end of her healing period, a date yet to be determined.

6. As of April 2, 2003, respondents denied claimant access of medical treatment relative to her compensable injury, and controverted medical benefits therefrom, as well as claimant's entitlement to any indemnity benefits, to include temporary partial, temporary total or permanent partial disability.

7. Medical treatment rendered to the claimant under the care of Dr. Charles Schultz after April 2, 2003, as well as referrals therefrom was reasonably necessary and related to claimant's compensable injury.

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 2001.

9. The respondent has controverted this claim in its entirety subsequent to April 2, 2003.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically,

we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the June 15, 2004 decision 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 on appeal.

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 that claimant has proven by a preponderance of the evidence that she was temporarily partially disabled due to bilateral carpal tunnel syndrome for the period beginning April 12, 2003, and continuing through the end of her healing period which is a date yet to be determined. I would also dissent from the majority opinion that the claimant has proven by a preponderance of the evidence that the medical treatment rendered to her under the care of Dr. Charles Shultz after April 2, 2003, as well as referrals from Dr. Shultz, was reasonably necessary in relation to the claimant's compensable injury.

A carefully conducted de novo review of the record reveals that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary partial disability benefits and/or

to additional medical benefits. Therefore, I find that the decision of the Administrative Law Judge should be reversed.

The respondents agreed that the claimant sustained bilateral carpal tunnel syndrome on February 2, 2001. Thereafter, the claimant received comprehensive medical treatment from several authorized physicians, including carpal tunnel release surgeries performed by Dr. Earl Peeples. In addition, the claimant received temporary total disability benefits and permanent partial disability benefits based upon an accepted 10% impairment rating as assigned to the claimant's left wrist by Dr. Reginald Rutherford on October 22, 2003.

The record reveals that the claimant experienced good results from her right carpal tunnel release surgery which was performed by Dr. Peeples in August of 2001. The claimant continued, however, to experience problems with her left wrist after a release was performed in September of 2001. When the results of a subsequent MRI, bone scan, and an MMPI were normal, Dr. Peeples released the claimant to light duty effective April 18, 2002.

In May of 2002, the claimant was granted a change of physician from Dr. Peeples to a hand

specialist, namely Dr. Michael Moore. Subsequently, Dr. Moore referred the claimant for a neurological evaluation to Dr. Reginald Rutherford. Dr. Rutherford performed EMG/NCV tests and sent the claimant for another MRI. In his report of the claimant's visit dated May 21, 2002, Dr. Rutherford stated that the claimant had a normal clinical examination and nonspecific change in sensory examination that was "not significant." A triphasic bone scan conducted on August 30, 2002, showed mild arthritis in both of the claimant's hands with no RSD. Furthermore, from his examination of the claimant on May 31, 2002, Dr. Rutherford found the claimant's clinical examination to be within "normal limits," but added that the claimant's electrodiagnostic testing demonstrated signs of mild left wrist median neuropathy. Believing this mild degree of neuropathy to be an "improbable explanation" for the claimant's numerous complaints, Dr. Rutherford ordered another MRI and deferred treatment options. An MRI taken on June 12, 2002, confirmed an abnormality of the claimant's left median nerve at the carpal tunnel bones. Dr. Rutherford prescribed the claimant medications and a carpal tunnel splint to be used on an as needed basis. From his examination of the claimant on November 14, 2002, Dr.

Rutherford reported normal strength and reflexes in both upper extremities. Additional diagnostic studies conducted by Dr. Rutherford throughout the claimant's treatment with him continued to show normal results. On March 13, 2003, Dr. Rutherford wrote:

From a pragmatic standpoint, MMI is probably present at this juncture. Current triphasic bone scan and EMG/NCV studies are required to ascertain whether or not present complaints represent progression in prior objective abnormalities. If nothing further is disclosed, claimant will be declared at MMI.

The claimant's NCV study was normal, and on April 2, 2003, Dr. Rutherford reported that the claimant had reached full recovery from her carpal tunnel surgeries. Accordingly, Dr. Rutherford released the claimant from active treatment with no impairment, and the respondents discontinued payment of temporary partial disability benefits.

In spite of the fact that Dr. Rutherford could find no "objective explanation" for the claimant's persisting complaints of arm pain and sensory disturbance, the claimant continued to insist that she was experiencing these symptoms in her left wrist. On April 19, 2003, the claimant was seen by Dr. Schultz

upon referral by from her family physician. On May 19, 2003, Dr. Schultz performed a nerve conduction study which showed an abnormality in the claimant's upper left extremity. Dr. Shultz referred the claimant to Dr. Ethan Schock, who stated that revision surgery may be necessary on the claimant's left wrist. In response to Dr. Schock's recommendation and at the claimant's behest, the claimant was evaluated by Dr. Rhodes on July 31, 2003. Based upon his evaluation of the claimant's condition, Dr. Rhodes released the claimant to unrestricted secretarial duty. In addition to Dr. Rhode's evaluation, the respondent sent the claimant to be reevaluated by Dr. Moore and by Dr. Rutherford. When repeat EMG/NCV tests showed normal results in the right wrist and borderline abnormalities in the left, Dr. Rutherford assessed the claimant with a 10% permanent impairment on the left and zero impairment on the right. In addition, Dr. Rutherford stated that revision surgery was not recommended for the claimant's left wrist. In his reports of December 4, 2003, and January 6, 2004, Dr. Moore stated that no further treatment was recommended for the claimant's left wrist. On January 22, 2004, Dr. Moore reported that the claimant could resume all regular activities.

Arkansas Code Annotated § 11-9-508(a) (Repl. 1996) states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonably necessary treatment under this statute is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 857 (1984). The claimant bears the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

The evidence in this claim does not support a finding that the claimant was denied reasonable and necessary medical treatment for her carpal tunnel syndrome. In fact, the evidence reveals that upon being diagnosed with carpal tunnel syndrome, the respondents provided the claimant with extensive medical treatment for her condition, including numerous diagnostic studies and surgery. After the claimant's surgery, the respondents continued to provide her with all appropriate and necessary follow-up care, including a change of physician to Dr. Michael Moore. Dr. Moore ultimately referred the claimant to Dr. Reginald Rutherford for further neurological evaluation.

Subsequently, Dr. Rutherford's thorough examinations and treatment of the claimant's condition, which included numerous diagnostic studies, prompted him to opine that, as of April 2, 2002, the claimant had reached full recovery from her surgeries. Based upon statements contained in Dr. Rutherford's clinic note dated April 2, 2003, the claimant was apparently not satisfied with Dr. Rutherford's opinion, and she intended to seek another opinion.

Thereafter, the claimant sought unauthorized treatment through her personal physician, who then referred her to Dr. Schultz for further evaluation. In turn, Dr. Schultz referred the claimant to Dr. Schock. The claimant was next examined by Dr. Rhodes, and she was ultimately reevaluated by Dr. Moore and Dr. Rutherford, the latter two doctors being authorized by the respondents. Based both upon cumulative medical reports and additional diagnostic studies, the majority of the physicians involved in the claimant's care have stated that they do not recommend revision surgery for the claimant at this time.

The facts of this case support a conclusion that the respondents have provided reasonably necessary medical treatment for the claimant's compensable injury.

It is evident that, in spite of being fully aware of the rules pertaining to change of physicians, the claimant became "dissatisfied" with the opinions of her authorized treating physicians, and she sought unauthorized treatment elsewhere. (The record contains a Worker's Compensation Commission Form N signed by the claimant) The Arkansas Court of Appeals has established that an injured employee has an absolute right to a one-time change of physician. Collins v. Lennox Industries, Inc., 77 Ark. App. 30 (May , 2002). Moreover, Arkansas Code Annotated §11-9-514 establishes the procedures which must be followed if the injured employee desires a change of physician. In order to invoke the provisions of Ark. Code Ann. §11-9-514, the respondent must prove that the claimant received the appropriate Commission forms which advise her of her rights and duties relating to a change of physician. Stephenson, supra; see also, Homes v. Superior Industries, Full Commission opinion filed June 1, 1998 (File No. E115559). As noted above, the claimant signed a form acknowledging that she understood her rights and duties concerning authorized changes of medical providers. Furthermore, the respondents were amicable in allowing the claimant a change of physician to Dr. Moore, thus demonstrating a

willingness to provide the claimant with all "reasonable and necessary" medical care in association with her injury. Therefore, although the claimant is free and entitled to seek whatever medical treatment she chooses for her condition, she cannot expect, nor does Arkansas law require the respondents to be liable for unauthorized medical treatment. In other words, a claimant seeks unauthorized medical treatment at their own expense § 11-9-514(b) and (c) (3).

Concerning the issue of additional temporary partial disability benefits, temporary partial disability is that period within the healing period in which the employee suffers only a decrease in her capacity to earn the wages she was receiving at the time of her injury. Ark. State Hwy & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant's authorized treating physician, Dr. Rutherford, pronounced the claimant to be at MMI and the end of her healing period as of April 2, 2003. At that time, the respondents discontinued paying TPD benefits because the claimant was, in Dr. Rutherford's opinion, able to return to her full employment duties at that time. The claimant had been working as a part-time bus driver and part-time secretary at the time of her

injury. After her injury, the claimant began working as a full-time secretary for the respondent employer. The claimant testified that she made the switch to full-time secretary in August of 2002, and that it cost her approximately \$7000 in salary to do so. It was at that time that the respondent commenced paying the claimant TPD benefits. However, at the beginning of April 2003, the claimant was released to full time employment without an impairment. Accordingly, the respondent discontinued paying TPD benefits at that time.

Thereafter, the claimant continued in her secretarial position until the end of the school year, after which time she received a prorated salary and she did not work. The claimant applied to have her temporary full-time secretarial position made permanent, and in August of 2003, the claimant was in fact promoted into a full-time secretarial position. Her current salary is commensurate with her pre-injury salary. After her release by Dr. Rutherford, the claimant chose to continue in her capacity as a secretary for the respondent employer. Clearly, the claimant suffered a decrease in her salary from April 2003 through August of 2003, by her own choice. The claimant did not, however, suffer a decrease in her capacity to earn wages during

that time. Therefore, additional TPD benefits should be denied in this claim.

Based upon the above and foregoing, I would respectfully dissent from the majority opinion that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical and TPD benefits.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner