

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E409341

LINDA WILCUT,  
EMPLOYEE

CLAIMANT

BASLER ELECTRIC CO., INS.,  
EMPLOYER

RESPONDENT

TWIN CITY FIRE INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 17, 2004

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

Claimant appeared PRO SE.

Respondents represented by HONORABLE TODD WILLIAMS, Attorney  
at Law, Jonesboro, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent appeals an administrative law judge's  
opinion filed on December 10, 2003. The administrative law  
judge found in relevant part, that the "Medical treatment  
rendered to the claimant subsequent to March 16, 1995,  
relative to her January 15, 1994, compensable injury was  
reasonably necessary medical treatment for which respondents  
are liable pursuant to Ark. Code Ann. §11-9-508(a)."

After reviewing the entire record *de novo*, the Full  
Commission reverses the opinion of the administrative law  
judge.

We find that the claimant failed to prove that the additional medical treatment rendered to the claimant subsequent to March 16, 1995, was reasonably necessary in connection with her compensable injury of January 15, 1994.

#### I. History

The claimant age, 50, began working for the respondent/ employer on November 27, 1972, at their Corning, Arkansas location, performing janitorial-related job duties. The claimant had never experienced any problems with her back or lower extremities. However, on January 15, 1994, the claimant slipped and fell on ice outside the back door at work as she attempted to carry out some trash. According to the claimant, she sustained injuries to her right, but mostly the left hip and knee, and across the lower back and down her "tailbone."

The claimant reported the incident to the appropriate supervisory personnel. Thereafter, the claimant sought medical treatment from the Urgent Care Center in Poplar Bluff, Missouri, where x-rays were taken. X-rays of the right knee showed "no acute bony change, and nor was any acute bony change noted in the bilateral hips or the lumbar spine." However, "mild arthritic changes were revealed in the lumbar spine."

The claimant was next treated by Dr. Dennis Basco, a chiropractor, for approximately six to eight weeks. On February 7, 1994, Dr. Basco diagnosed the claimant as having "subluxation L-5, lumbar strain and involuntary myospasm." Also, on that date, Dr. Basco released the claimant from care due to her having "recovered." However, according to medical notes from Dr. Basco dated March 14, 1994, the claimant returned to him on February 17, 1994, and reported that her pain had returned that morning while working.

Subsequently, Dr. Basco referred the claimant to Dr. Juan B. Cazano, who later referred the claimant to Dr. Peggy Brown, a neurologist.

On April 11, 1994, the claimant underwent initial evaluation with Dr. Brown for complaints of pain in her back, radiating down both lower extremities. Dr. Brown reported that her examination did not reveal any motor or sensory deficits. Although the claimant reported that she was doing very poorly during the day, sleeping very poorly at night, and had radiation of pain down the legs, Dr. Brown found that she did not have any restriction on range of motion testing. Dr. Brown wrote, "She most likely has severe muscle strain but however it has persisted for several months and she is complaining of radicular spread of

the pain." Dr. Brown advised the claimant to continue her regular job if it did not involve heavy lifting. She also recommended the claimant for physical therapy and prescribed medications for pain, muscle spasms, and sleepiness.

Pursuant to orders from Dr. Brown, on April 11, 1994, a nerve conduction study was conducted of the claimant's lower extremities, which was "within normal limits." In addition to this, on that same day, Dr. Brown ordered an MRI of the lumbar spine, which was taken at Arkansas Methodist Hospital in Paragould. This study revealed "no herniation or spinal stenosis, but degenerative changes were noted at various levels."

Dr. Brown reported on May 4, 1994:

Linda returned. She is a 40 year old woman who complained of pain in her legs nad [sic] back. She has been going to physical therapy and overall is not having radiation to her legs anymore. An MRI showed only degenerative changes. No herniated disc or spinal stenosis. She called the office today stating she was in severe pain and went home from work. She started crying on the telephone. She came in the afternoon and didn't appear particularly uncomfortable but stated she was having trouble after she went back to her regular job. Physical therapy seems to help. Medications have helped some.

On May 20, 1994, the claimant was again seen by Dr. Brown for continued complaints of pain in her legs and back. At that time, Dr. Brown reported that the MRI study had

shown only "arthritic changes with no herniated disk." Dr. Brown gave the claimant an injection of Methylprednisolone, recommended a Medrol dosepak and physical therapy.

The claimant was seen by Dr. Reginald J. Rutherford on June 30, 1994, at the Pain Care Center in Doctors Hospital for clinical assessment and possible treatment for complaints of low back pain, with radiation of pain into her legs. Dr. Rutherford concluded that the claimant's "symptom complex appears most in keeping with myofascial pain and dysfunction," for which he recommended a diagnostic trial of myofascial release comprising trigger point injection with stretch and spray physical therapy. The trigger point injections were performed by Dr. William S. Warren at Doctors Hospital and her physical therapy was also performed there.

On October 25, 1994, the claimant underwent initial consultation with Dr. Mark Hackbarth, a pain specialist, for complaints of low back pain with radiation down the posterior aspect of her left buttocks and thigh. His impression was "chronic low back pain with myofascial pain and possibly SI joint pain," for which he recommended epidural steroid injections.

Dr. S. K. Choudhary, a neurologist, examined the claimant on November 14, 1994. Dr. Choudhary wrote, "She has symptoms suggestive of lumbar radiculopathy and on examination she has mildly decreased touch and pinprick suggestive of SI radiculopathy."

On January 20, 1995, the claimant underwent evaluation at Clinical Psychology Associates in Jonesboro. At which time, she was recommended for six visits to implement relaxation training and biofeedback for symptom control and individual counseling for improvement of coping skills.

On February 5, 1995, Dr. Hackbarth referred the claimant to Northeast Arkansas Rehabilitation Hospital, in Jonesboro for physical therapy, which was done. On February 21, 1995, Dr. Hackbarth wrote in part:

At this point in time, I do not feel I have very much to offer this patient and thus, I am discharging her from the center. I feel that she has reached maximum medical improvement. I will be sending her for a disability rating and a functional capacity evaluation.

On March 9, 1995, the claimant underwent a functional capacity assessment at the American Physical Therapy Center. This evaluation showed that the claimant could work at a light physical demand level. However, test results showed that the claimant failed 13 of the 25 validity criteria,

which indicates, "questionable sub-maximal effort during the evaluation." The evaluation also revealed "a marked increase in symptom exaggerations after repetitive bending."

An impairment rating evaluation was performed on March, 16, 1995 by Dr. Terence P. Braden, III. After thoroughly reviewing the claimant's medical records and examining her, Dr. Braden wrote in part, the following:

It appears that although Ms. Wilcut continues to suffer from her reported pain, there is no objective evidence that the injury she sustained at work resulted in any objective findings.

Based on the current law in Workmen's [sic] compensation I would find that her impairment rating would be zero.

The respondent accepted the injury as compensable and paid medical benefits until on or about February 3, 1995. In addition to this, the respondent also paid the cost of the evaluation by Dr. Braden, which was performed on March 16, 1995. However, the respondent thereafter terminated payment for any additional medical benefits, as respondent takes the position that the claimant reached maximum medical improvement as of the date she was released from care by Dr. Hackbarth, which was February 21, 1995.

After the respondent terminated the claimant's medical benefits, she sought medical treatment and services from

various other doctors and medical professionals on her own for complaints of back pain and several other conditions, which include, but not limited to, cholelithiasis, anxiety, hiatal hernia, heel pain, and removal of a cyst from the left breast, a portion of which has been paid by Medicare.

The claimant introduced several of the aforementioned medical documents into evidence during the hearing. A review of this evidence shows that after the claimant's release from care with Dr. Hackbarth in February of 1995 for her compensable injury, she did not receive treatment for her low back pain and related symptoms again until May 1, 1997. At which time, the claimant sought treatment from Corning Area Healthcare for low back pain with radiating pain down both legs. The claimant received extensive treatment from Corning primarily under the direction of Drs. Roland D. Hollis and Cheryl Rich. Dr. Hollis' impression was "chronic low back pain." Other medical notes from Corning indicate that the claimant suffers from severe degenerative disc disease/arthritis.

Dr. Hollis referred the claimant to Dr. Gregory Ricca for evaluation and possible surgical intervention after conservative treatment failed. The claimant underwent initial evaluation with Dr. Ricca on September 4, 1997. His

impression was "low back pain and bilateral lower extremity pain." Dr. Ricca reported on September 4, 1997:

I reviewed the options with Ms. Wilcut and I feel a fresh evaluation is indicated. I plan to obtain L-spine flexion and extension views, bone scan and lumbar myelogram with post-myelogram CT. All of the above was reviewed with her, as well as her various options. All of her questions were answered and she seemed to understand.

Dr. Ricca wrote on September 16, 1997:

The patient had a lumbar myelogram and post myelogram computerized tomography scan through the Outpatient Department at St. Bernards Regional Medical Center for evaluation of her low back pain and bilateral sciatica.

The myelogram and post-myelogram computerized tomography scan were of excellent quality and showed only small central bulging disk at L4-5 and at L5-S1. The disk bulge at L4-5 was larger. There was no significant neural compression however. All the nerve roots filled up normally.

Lumbar spine flexion and extension views done at St. Bernard's Regional Medical Center on 9/5/97, as well as bone scan was done at St. Bernards Regional Medical Center on 9/5/97 were normal.

- IMPRESSION:
1. Chronic low back pain with bilateral lower extremity pain.
  2. Central disk bulge at L4-5 and L5-S1, larger at L4-L5.

I talked at length with the patient and her husband. I believe Ms. Wilcut is an honest, straightforward woman and I believe her history is genuine. I, however, did not find a clear cause of her symptoms. She has failed rather extensive non-surgical measures.

I recommend that her next course of treatment to be weight reduction. I explained that this is not to be critical of her size nor is it for the purpose of looking good. I explained that the less weight her spine has to carry, the better it is for it and this alone may relieve her symptoms.....

An MRI of the lumbar spine was taken on May 10, 1999 with the following conclusions:

There is decreased signal in the L4-5 disc consistent with degenerative disc. No herniated disc. No vertebral body abnormalities.

IMPRESSION: Degenerative disc L4-5. No herniated disc.

The claimant underwent another MRI on February 6, 2001, which showed only mild broad base disc bulging at L4-5, but no nerve root compromise.

The claimant essentially testified that she is seeking additional medical treatment and services in the form of an MRI, epidural shots and/or possibly some kind of surgery. She also maintains that such treatment is related to her compensable injury of January 15, 1994.

Although the claimant admits that she suffers from hypertension and hypothyroidism, she testified that these conditions do not affect her ability to work. A review of the medical evidence shows that since her compensable injury, the claimant has suffered numerous other conditions,

which include, but is not limited to cholelithiasis, anxiety, hiatal hernia, heel pain, and removal of cyst from the left breast.

A Prehearing Order and Hearing Notice was filed on August 12, 2003. In said Order and Notice, the parties agreed that the Arkansas Workers' Compensation Commission has jurisdiction in this claim. The parties also agreed to the existence of the employment relationship on January 15, 1994, at which time, the claimant sustained a compensable injury. In addition to this, the parties agreed that the claimant was paid temporary total benefits through November 8, 1994, and temporary partial disability benefits through February 3, 1995.

Pursuant to the foregoing stipulations, the only issue to be decided at the hearing before the Commission, which was held October 17, 2003, was: Whether the claimant is entitled to additional medical benefits.

As such, the claimant contended that she is entitled to additional medical benefits. However, the respondent contended they have paid all benefits to which the claimant is entitled.

After a hearing before the Commission, the administrative law judge found that "Medical treatment

rendered to the claimant subsequent to March 16, 1995, relative to her January 15, 1994, compensable injury was reasonably necessary medical treatment for which respondents are liable pursuant to Ark. Code Ann. §11-9-508(a)."

The respondent appeals to the Full Commission.

## II. Adjudication

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

The administrative law judge found in the present matter, "Medical treatment rendered to the claimant subsequent to March 16, 1995, relative to her January 15, 1994, compensable injury was reasonably necessary medical treatment for which respondents are liable pursuant to Ark. Code Ann. §11-9-508(a)."

A review of the record indicates that the claimant was essentially diagnosed with what amounted to "likely severe muscle strain," which the respondent accepted as compensable. However, Dr. Hackbarth formally pronounced maximum medical improvement on February 21, 1995. In addition to this, on March 16, 1995, Dr. Braden opined that the claimant's impairment rating was zero. Considering these two expert opinions, the Full Commission finds that it is more probable than not that the claimant's compensable injury had resolved no later than February of 1995. As such, the Full Commission finds that any additional treatment that the claimant sought after this time was not causally related to her compensable injury. Instead, we find that all subsequent diagnostic testing in the form of MRI's, a myelogram, and post-myelogram computerized tomography scan reveal abnormalities and findings consistent with degenerative disc disease and/or arthritic changes, which are unrelated to her compensable injury.

The Full Commission also notes that although the claimant has received extensive treatment from various medical professionals since March 16, 1995, none has stated that her continued back pain is causally related to her compensable injury. In fact, that claimant's own physician,

Dr. Ricca, opined that "he could not find a clear cause of her symptoms," and recommended that her next course of treatment be weight reduction.

Given the expert opinions of Dr. Hackbarth, Dr. Braden, and Dr. Ricca, the Full Commission finds that the preponderance of the evidence shows that the claimant's back pain and related symptoms occurring after March 16, 1995 are causally related to her degenerative disc disease and/or her being overweight rather than her compensable injury. As a result, we find that the claimant has failed to establish an entitlement to additional medical benefits subsequent to March 16, 1995, relative to the claimant's January 15, 1994, compensable injury.

Therefore, the claimant failed to prove that additional medical treatment after March 16, 1995 was reasonably necessary in connection with her compensable injury. Accordingly, the Full Commission reverses the decision of the administrative law judge awarding payment for additional medical treatment rendered subsequent to March 16, 1995.

Based on our *de novo* review of the entire record, the Full Commission reverses the opinion of the administrative law judge. We find that the claimant failed to prove that the additional medical treatment rendered to the claimant

Wilcut - E409341

15

subsequent to March 16, 1995 was reasonably necessary in connection with her compensable injury of January 15, 1994. As such, this claim is denied and dismissed.

IT IS SO ORDERED.

\_\_\_\_\_  
OLAN W. REEVES, Chairman

\_\_\_\_\_  
KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.