

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408476

SANDRA ERWIN,
EMPLOYEE

CLAIMANT

RIVERSIDE FURNITURE CORP.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 23, 2005

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

Claimant represented by the HONORABLE STEPHEN M. SHARUM,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM,
Attorney at Law, Fort Smith, Arkansas.

ORDER

The above-styled case is before the Commission on the claimant's motion to submit additional evidence, motion to remand to the administrative law judge for an additional hearing, and motion to stay briefing schedule pending remand. After reviewing the pleadings and evidence before us, the Full Commission denies the claimant's motion for remand, and we deny the claimant's motion to stay briefing schedule pending remand. The Full Commission grants in part the claimant's motion to submit additional evidence. The Full Commission grants the claimant's motion to submit into

evidence Exhibit C and Exhibit D, which exhibits are the reports from Dr. Ruth Thomas at UAMS Medical Center. The Full Commission grants the claimant's motion to submit into evidence Exhibit E, the May 23, 2005 letter terminating the claimant's employment.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury on September 10, 2003. A pre-hearing order was filed on November 3, 2004. The issues that the parties agreed to litigate included reasonably necessary medical treatment, temporary total disability compensation, and "Whether the claimant has experienced reflex sympathetic dystrophy (RSD) as a compensable consequence of the compensable injury to her left ankle."

A hearing was held on January 4, 2005. Along with the other issues for adjudication, the administrative law judge announced that the parties would litigate the claimant's entitlement to several dates of temporary total disability compensation, including September 20, 2004 through a date yet to be determined.

The administrative law judge filed an opinion on March 31, 2005. The administrative law judge found, in part:

6. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury or compensable consequence in the form of reflex sympathetic dystrophy (RSD). Specifically, the claimant has failed to prove the actual existence of such a condition by the greater weight of the credible medical evidence and which is supported by "objective findings", as required by Ark. Code Ann. §11-9-102(4)(D).

9. An evaluation and testing by the physician heading the hand and foot section of the orthopaedic department of the University of Arkansas School for Medical Sciences constitutes reasonably necessary medical services for the claimant's admittedly compensable injury to her left ankle/foot. The greater weight of the evidence presented establishes that such an evaluation is necessary to insure an accurate diagnosis of the nature and extent of the claimant's compensable injury and to determine whether or not further medical treatment would be appropriate. This evaluation is required in order to adequately protect the rights and interests of all parties concerned.

10. Any decision on the claimant's entitlement to additional medical services or temporary total disability benefits should be reserved pending the outcome of this evaluation.

Following the administrative law judge's decision, the respondents informed the claimant's attorney that they had scheduled an appointment for the claimant with Dr. Ruth Thomas at UAMS.

Meanwhile, the claimant appealed the administrative law judge's decision to the Full Commission.

On June 7, 2005, the claimant filed a Motion to Submit Additional Evidence, Motion to Remand to ALJ for Additional Hearing, and Motion to Stay Briefing Schedule Pending Remand. The claimant moves to submit the following additional evidence: (1) a medical report of Dr. John Swicegood dated April 25, 2005; (2) medical records of Dr. Swicegood dated February 25, 2005 through March 10, 2005; (3) a medical record from Dr. Ruth Thomas of UAMS dated May 17, 2005; (4) a medical report of Dr. Thomas dated May 17, 2005; and (5) a letter from Evan Breedlove, Director of Human Resources, Riverside Furniture, to the claimant, dated May 23, 2005. The claimant generally states that the evidence was not available prior to hearing, that it is relevant, and that admission of the evidence will "further substantial justice to the parties and allow the Commission to determine the appropriate disposition of the claim pending."

The claimant also moves the Full Commission to remand the case to the administrative law judge for reconsideration of the administrative law judge's opinion pursuant to this evidence. II. ADJUDICATION

Ark. Code Ann. §11-9-705(c)(1) provides that all evidence must be submitted at the initial hearing on the claim. In order to submit new evidence, the moving party must show that the new evidence is relevant; that it is not cumulative; that it would change the result of the case; and that the moving party was diligent in presenting the evidence to the Commission. Mason v. Lauck, 232 Ark. 891, 340 S.W.2d 575 (1960); Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982).

In the present matter, the Full Commission finds that the claimant was not diligent in submitting the reports of Dr. Swicegood. Dr. Swicegood's findings were authored on February 25, 2005 and March 1, 2005. We find that the claimant had ample time to obtain and submit Dr. Swicegood's findings before or at the hearing by the administrative law judge. Nor can we determine that the post-hearing findings by Dr. Swicegood, a pain clinician, would in any way change the result of the case. As for the reports of Dr. Thomas, these certainly should be admitted into evidence. The administrative law judge determined that the claimant should be evaluated at UAMS. The evaluation by Dr. Thomas at UAMS Medical Center, when compared to the record as a whole,

could change the result of the case. The Full Commission also determined that it would be fundamentally unfair to the parties to exclude these reports from evidence, especially when Dr. Thomas' findings were rendered pursuant to the direction of the administrative law judge.

Finally, the claimant seeks to introduce her May 23, 2005 employment-termination letter from Evan Breedlove. We note that this letter was written after the January 2005 hearing before the administrative law judge. This letter, attached as Exhibit E by the claimant, will definitely change the result of the case, if the Full Commission otherwise determines that the claimant proved she was entitled to temporary total disability compensation. We are aware that the administrative law judge on his own motion "reserved" the temporary total disability issue post-hearing. Nevertheless, the Full Commission is authorized to adjudicate this issue pursuant to our *de novo* review on appeal. See, Ark. Code Ann. §11-9-207(a)(5); Wilson v. Cargill, Inc., 45 Ark. App. 174, 873 S.W.2d 171 (1994).

Based on the pleadings and evidence before us, the Full Commission denies the claimant's motion to remand to the administrative law judge, and we deny the claimant's motion

to stay briefing schedule pending remand. The Full Commission grants in part the claimant's motion to submit additional evidence. We grant the claimant's motion to submit into evidence Exhibit C, Exhibit D, and Exhibit E, which exhibits are attached to the claimant's motion. We direct the Clerk of the Commission to establish a new briefing schedule.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the finding of the majority to admit into evidence Exhibit C and D, the reports from Dr. Ruth Thomas of UAMS Medical Center. I, also, concur with the finding of the majority to submit into evidence Exhibit E, the May 23, 2005 letter of termination.

However, I respectfully dissent without opinion as to the majority's denial of the claimant's Motion for Remand, Motion to Stay the Briefing Schedule, and Motion to Enter into Evidence Exhibit A and B.

SHELBY W. TURNER, Commissioner