

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211692

MARIETHA McGARITY,
EMPLOYEE

CLAIMANT

HEALTHSOUTH REHABILITATION HOSPITAL,
EMPLOYER

RESPONDENT

PACIFIC EMPLOYERS INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 3, 2005

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

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

Respondents represented by HONORABLE BETTY DEMORY, 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 June 16, 2004.

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. On August 8, 2001, and at all times
pertinent thereafter, the

relationship of employee-employer-carrier existed among the parties.

3. On August 8, 2001, the claimant earned significant (sic) wages to entitle her to weekly compensation benefits of \$410.00/308.00 for temporary total/permanent partial disability benefits.
4. On August 8, 2001, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period beginning December 15, 2003 and continuing through February 16, 2004.
6. Medical treatment rendered to the claimant under the care of Dr. Randall Carlton, as well as referrals therefore (sic), was reasonably necessary and related to her compensable injury of August 8, 2001.
7. The respondent shall pay all reasonable hospital and medical expense (sic) arising out of the injury of August 8, 2001.
8. The respondents have controverted the payment of medical benefits subsequent to April 12, 2003 and the payment of temporary total disability benefits for the period of December 15, 2003 through February 16, 2004.

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 June 16, 2004 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 after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commission McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant has proven entitlement to additional medical treatment from and as directed by Dr. Randall Carlton, as well as all reasonable hospital and medical expenses associated with the claimant's compensable injury. In addition, I respectfully dissent from the majority opinion affirming the Administrative Law Judge award of temporary total disability benefits from December 15, 2003, through February 16, 2004.

My carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or to temporary total disability benefits as described above.

It is undisputed that the claimant sustained a compensable back injury on April 8, 2001. Treatment of the claimant's compensable injury eventually culminated in surgery performed by Dr. Kellett on October 15, 2002. Subsequently, Dr. Kellett released the claimant to return to restricted work duty on December 9, 2002, and to full, unrestricted duty on January 9, 2003, which was also her date of maximum medical improvement. In addition, Dr. Kellett advised the claimant that no further neurosurgical treatment was necessary, and that she should return to him on an as needed basis. Finally, Dr. Kellett assessed the claimant with a permanent impairment rating of eight percent (8%) for the body as a whole according to AMA guidelines. However, in January of 2003, the claimant admittedly fell at work. The claimant did not miss time from work as a result of the January 2003 fall and she claimed that no injury resulted. Moreover, the claimant testified that she reported this fall to Dr. Kellett during her March visit, and that he advised her to be more careful. Although the claimant testified that her level of pain did not change as a result of her fall, she reported to Dr. Kellett in March of 2003 that her low back pain and left leg pain had increased since her fall. In addition, the claimant's

subjective complaints of pain continued to increase so significantly after her fall that she was ultimately unable to return to her job with the respondent employer.

Unfortunately, Dr. Kellett was killed in a tragic accident on April 12, 2003. The respondent denied the claimant authorization to access the services of another physician after Dr. Kellett's death. The record reveals, however, that the respondent's refusal was completely justified for the following reasons. First, the record reflects that as of her December 5, 2002, post-operative examination, the claimant was doing quite well. In a report of that visit Dr. Kellett stated, "She [claimant] is doing very well and the pain is completely gone." Dr. Kellett further stated that no further neurosurgical treatment was necessary, that the claimant could return to work, and that she would reach maximum medical improvement by January 9, 2003. Furthermore, additional diagnostic studies did not support an objective basis for the claimant's worsening pain. In July of 2003, Dr. Carlton examined the claimant and he found that the claimant's neurological exam was "essentially negative in the lower extremities." Dr. Carlton suspected that the claimant's left hip pain could be related to SI joint dysfunction or perhaps to her "previous problems

with back pain and scar tissue formation." The record reflects that the claimant had sustained a prior back injury in 1997, at which time she was diagnosed with a herniated disc at L5-S1. In response to the claimant's continuing complaints of worsening pain over her SI joint, in December of 2003 Dr. Carlton ordered more tests. In his report of December 22, 2003, which took the results of the additional tests into consideration, Dr. Abraham summarized the claimant's overall condition as follows:

[The claimant] is a 42-year-old female who has had difficulties with her lumbar spine for several years now. ... The patient in the past has had treatment in Memphis and had operative therapy by Dr. Kelley (sic) in Memphis. The patient states that after surgery she continued to have some difficulties however she was able to be up and around and do her job. Over the past three weeks she has had difficulties that were extreme in her back and left leg and over the past several days she has had pain so bad that she has essentially had to work from a wheelchair.

Dr. Abraham further stated that the claimant had to use narcotics to manage her pain. Her neurological examination, however, was negative and a review of her MRI's showed only post-operative scarring. Dr. Abraham assessed the claimant with lumbar radiculopathy and continued her on

her present pain medications. Likewise, Dr. Cathey stated that the claimant's neurological examination of February 3, 2004, was typical of an SI radiculopathy on the left, and that although her recent diagnostic studies reflected post-operative changes on the left, there was no sign of recurrent herniation, spinal stenosis, nerve root impingement, etc. He noted, incidentally, the presence of congenital spinal bifida occulta, and he added that further surgical or other neurological intervention was not recommended.

In summary, the respondents provided all necessary and appropriate medical treatment for the claimant's back injury of August 8, 2001, including surgery. From the time of her injury and until Dr. Kellett released her to return to work and assigned her a permanent impairment rating, the claimant was denied nothing by the respondent employer in terms of medical treatment. Even afterwards, the claimant continued to receive authorized treatment from Dr. Kellett. It was not until the claimant requested that her medical benefits be continued under the care of Dr. Carlton that the respondent reviewed the claimant's claim and correctly denied additional medical benefits. By that time the claimant had made a complete recovery, she had reached MMI,

and no further medical treatment was deemed necessary. Even so, the claimant continued to be treated for symptoms of worsening pain. However, as the respondent now contends, to relate the claimant's additional medical treatment sought after March of 2003 to her compensable injury of August 2001, amounts to speculation. Furthermore, the preponderance of the evidence does not support a causal connection between the claimant's symptoms of debilitating pain which occurred and her compensable back injury. It is plausible that the claimant sustained a separate injury when she fell in January of 2003. Unfortunately, the claimant has made no claim for benefits as a result of that incident. Moreover, objective medical tests and numerous physical examinations conducted since the claimant's surgery show no new physiological basis for the claimant's worsening condition in relation to her compensable back injury. Finally, none of the claimant's treating physicians have stated conclusively that the claimant's current symptoms are related to her compensable back injury. Based upon the evidence presented in this claim, it is more likely than not that the claimant's fall in January of 2003 constituted an independent intervening cause which has neither been claimed nor found to be compensable.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner