

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202082

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| LOIS WASHINGTON, EMPLOYEE | CLAIMANT |
| UNIVERSITY OF ARKANSAS, EMPLOYER | RESPONDENT |
| PUBLIC EMPLOYEE CLAIMS, CARRIER | RESPONDENT |

OPINION FILED AUGUST 1, 2005

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

Claimant represented by HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondent represented by HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed November 24, 2004.

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

1. The Workers' Compensation Commission has jurisdiction of this case in which the relationship of employer-employee-carrier existed among the parties on February 15, 2002 when the claimant sustained compensable injuries in a fall at work, at a compensation rate of \$154.00. Medical expenses and temporary total disability benefits were paid.

2. After conservative treatment and diagnostic testing showing only degenerative changes, the claimant was released to return to work with no impairment. Therefore, I find respondents paid all appropriate benefits.

3. Two days after her release, the claimant was involved in a motor vehicle accident. When she returned to the doctor her symptoms were worse, she was unable to work and repeat diagnostic testing showed a change in her condition. Therefore, I find the motor vehicle accident was an independent intervening cause breaking the chain of liability.

4. Dr. Ward was a valid referral from an authorized physician, Dr. Maxwell.

5. Dr. Ward's treatment was unrelated to the compensable injury and ineffective. Therefore, I find his treatment was unreasonable and unnecessary.

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 of fact

made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____The claimant in the present case sustained an admittedly compensable injury on February 15, 2002. The claimant is now seeking payment for continuing medical treatment with Dr. Ward and for additional temporary total

disability benefits. The Majority now affirms and adopts the decision by the Administrative Law Judge's decision finding that the claimant did not sustain a compensable injury and that she is not entitled to receive treatment from Dr. Ward or to receive additional temporary total disability benefits from July 8, 2002 to August 21, 2002 and from October 21, 2002 to December 12, 2003.

The claimant's symptoms were the same both before and after her motor vehicle accident. As such, I find that the claimant's accident did not change her physical condition in any way and therefore did not amount to an independent intervening cause to prevent the employer from becoming liable. I also find that the claimant remained in her healing period and was unable to work from July 8, 2002 to August 21, 2002 and from October 21, 2002 to a date yet to be determined. Therefore, she should be entitled to receive temporary total disability benefits for that time period. Lastly, I find that the claimant's treatment by Dr. Ward was reasonable and necessary to treat the claimant's ongoing complaints, which were caused by the

compensable injury she sustained while working for the respondent. For these reasons, I respectfully dissent.

On February 15, 2002 the claimant, while performing work for the employer, carried a vacuum cleaner up stairs. The claimant tripped over the vacuum cord and fell down approximately 10 to 12 stairs. The claimant landed on her back.

On the same day the claimant received treatment at Drew Memorial Hospital. A "CT LIMITED STUDY HEAD/NECK" was performed at approximately 10:53. It indicated the claimant likely had a fracture at level T1. X-rays were also performed and indicated the claimant suffered from degenerative disk disease. However, a "Short Term History, Physical, & Discharge Summary," was later written and indicated that the CT scan was performed again. The medical report indicates the area in question did not look like an acute fracture and indicated the claimant's MRI was "negative". The report was silent as to whether the claimant suffered from degenerative disk disease. The report indicates that the claimant was released to return to care of Dr. Maxwell as of February 18, 2002.

On February 19, 2002 the claimant was treated at Family Health Care Center. The doctor noted the claimant had "multiple contusions". The claimant was treated again on March 5, 2002 at the same clinic. The medical report from that day indicates the claimant had paravertebral spasms and that she complained of pain in the shoulders, neck, and back. The report further indicates the claimant was prescribed Flexeril.

The claimant was treated again on April 2, 2002. The medical report from that date indicates that the claimant's hands and arms were, "getting numb off & on". The report further notes the claimant had paravertebral spasms and that she was taking Flexeril. The medical report from May 2, 2002 indicates the claimant was still taking Flexeril and that the claimant complained of pain in the left arm and across her shoulders. She also complained of pain in her back. The claimant was released to return to light duty work.

On May 30, 2002 the claimant was referred to receive treatment at the Little Rock Pain Clinic. On June 26, 2002 the clamant was treated by Dr. Bruce Safman.

He noted that the claimant, "is still having paresthesias in her left hand." He also noted that the claimant had, "increased tone and tenderness in the upper trapezius muscles." Dr. Safman prescribed Bextra and Skelaxin. She was also given samples of Effexor. On July 3, 2002 the claimant was again seen at Family Health Care Center. The medical report from that date indicates the claimant was taking a muscle relaxer.

On July 10, 2002 Dr. Safman treated the claimant and noted the lack of muscle spasms. He noted that the claimant was still seeing Dr. Maxwell, was taking Neurontin, and that she was still taking Skelaxin. The claimant was treated again by Dr. Safman on July 24, 2002. Dr. Safman again noted the lack of muscle spasms.

On July 26, 2002, the claimant was treated at Family Health Care Center. The doctor's report indicates the claimant was involved in a motor vehicle accident and that she complained of "HA, neck pain". The claimant continued taking Flexeril and continued to complain of neck pain. On August 12, 2002, Dr. Safman indicated that there was no objective pathology and that he believed the claimant had

reached maximum medical improvement. The claimant remained on Flexeril and continued to receive medical treatment. On October 21, 2002 the claimant was treated by Dr. Maxwell. She continued to complain of pain in her neck and shoulders and of numbness in her extremities and loss of feeling when leaning or tilting her head or neck. She also complained of tremors in her hands and of having involuntary contractures of muscles in her hands, neck, arms, and legs. Dr. Ward noted that the claimant had, "significant spasms of contracted muscle".

The claimant received additional treatment on December 18, 2002. The doctor's note indicated that the claimant would receive injections and that she would be subjected to outpatient physical therapy and other treatment in order to, "result in the return of the normal anterior axial skeletal posture and elimination of the mechanical dysfunction that has yet to be corrected."

On January 29, 2003 the claimant was treated by Dr. Ward. Dr. Ward noted that the claimant had impairments of, "segmental hypermobility, muscle spasm activity, compromised mobility, and muscular weakness. Dr. Ward went

on to indicate that the claimant had previously participated in physical therapy, but that it, "did not include an active regimen consisting of exercises aimed at restoring mobility strength, and function." The claimant continued to receive treatment by Ward. Until April 14, 2003 the doctor's notes indicate her pain was diminishing due to the treatment.

On December 21, 2003, Dr. Ward assigned the claimant an impairment rating. He noted that while the claimant did have pre-existing degenerative arthritis, it was exacerbated by her injury in February 2002. Dr. Ward also indicated the claimant had reached maximum medical improvement.

The Majority, by adopting the Administrative Law Judge's decision, denied the claimant benefits based on the finding that her motor vehicle accident constituted an independent intervening cause. In supporting this finding they cite, Ark. Code Ann. §11-9-102(4)(F)(iii), which provides in part,

benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related

independent intervening cause does not require negligence or recklessness on the part of the claimant.

The Majority by relying on the Administrative Law Judge's decision, goes on to conclude that after the claimant's accident, her symptoms, "worsened to include tremors, leg pain, involuntary muscle contractures, postural changes, and an inability to work." Ultimately, the Administrative Law Judge relied on this alleged change in symptoms in concluding that an independent intervening cause existed and therefore ended the employer's liability. I find that the claimant's symptoms remained virtually the same after her car accident, and that as such, no independent intervening cause existed.

If there is a causal connection between the primary compensable injury and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of claimant which is unreasonable under the circumstances. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998); Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984). The claimant's knowledge of

her condition must be considered when determining whether her conduct was unreasonable under the circumstances.

Lunsford v. Rich Mountain Electric Corp., 33 Ark. App. 66, 800 S.W.2d 732 (1990); Lunsford v. Rich Mountain Electric Corp., 38 Ark. App. 188, 832 S.W.2d 291 (1992). See also Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998) (finding that Act 796 of 1993 did not nullify pre-existing law regarding independent intervening cause). See also Davis v. Old Dominion Freight Line, Inc., 20 S.W.3d 326, 341 Ark. 751 (2000) (finding that law existing prior to Act 796 of 1993 was codified and that the standard of Guidry would still apply in cases involving questions of whether an independent intervening cause exists after a non-work related injury that occurred subsequent to a compensable injury).

In this instance it is clear that the claimant's condition did not change due to the car accident. Prior to the accident the claimant had been complaining of neck pain, back pain, pain in her shoulders, and of numbness in her hands and arms. In fact, the doctor's note from June 26, 2002 indicates the claimant was complaining of "paresthesias

in her left hand," and noted increased tone and tenderness in the upper trapezius muscles. As of July 10, 2002 the claimant was still taking Skelaxin, a medicine she had previously been using as a muscle relaxant. The claimant's accident occurred on July 26, 2002 and involved the claimant hitting a car that was attempting to turn into the claimant's lane. The same day the claimant was treated at Family Health Care Center. The doctor's note indicates that the claimant reported being in a motor vehicle accident and that she complained of having a headache and of neck pain. The claimant was diagnosed with a cervical and thoracic strain. The claimant continued to complain of neck and back pain after the accident and eventually presented with numbness in her extremities. While in October 2002 she also began complaining of having tremors in her hands and of having involuntary muscle contractures, her symptoms largely revolved around back and neck pain and from muscle spasms, which she suffered from immediately preceding the accident. Furthermore, I find that any new symptoms that did occur were the natural, probable, consequence of the claimant's compensable injury and therefore did not establish an

independent intervening cause. As such, I find that the motor vehicle accident did not cause any change in the claimant's condition and therefore did not constitute an independent intervening cause as determined by the Majority.

As there was no independent intervening cause or change in the claimant's condition subsequent to her work-related accident, and since the medical treatment she is seeking payment for is related to a work-related injury, I find that the claimant should receive medical benefits. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Supp. 2003). However, injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it seeks to remedy. Deborah Jones v. Seba,

Inc., Full Commission Opinion filed December 13, 1989 (D513553).

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. § 11-9-508. Billy Chronister v. Lavaca Vault, Full Commission Opinion filed June 20, 1991 (D704562). While the results obtained may be a consideration in some cases, the primary considerations are the nature of the service in relation to the compensable injury. Tonnie Crisp v. Weyerhaeuser Corporation, Full Commission Opinion filed July 27, 1993 (D812922). Moreover, the compensability or non-compensability of medical services is not dependent on a retrospective evaluation of the results obtained from the service. Joyce Hager v. St. Edward Mercy Medical Center, Full Commission Opinion filed July 25, 1990 (D408662).

In the present case the Administrative Law Judge's only rationale for finding that Dr. Ward's treatment is unreasonable or unnecessary is due to it allegedly being unrelated to a compensable injury. The treatment and injury

are in fact related to one another, as evidenced by the fact that the claimant had ongoing muscle spasms and suffered from ongoing pain and numbness in her extremities both before and after the accident.

As to the claimant's entitlement to temporary total disability benefits, I find that the claimant remained in her healing period and was unable to work, therefore, she should be entitled to receive benefits from July 8, 2002 to August 21, 2002 and from October 21, 2002 to December 12, 2003.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

A claimant who has been released to light duty work but has not returned to work may be entitled to

temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to earn the same or any part of the wages that he was receiving at the time of the injury. Breshears, supra; Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274, 281-82 (1984).

The claimant was placed on light duty work and the employer paid temporary total disability benefits from February 16 to May 5, 2002. At that time the employer stopped paying temporary total disability benefits as they had no more light duty work available, which supports a finding that the claimant lacked the ability or capacity to earn wages similar to that she was receiving at the time of the injury. Additionally, the claimant continued to have muscle spasms indicating that she had not exited her healing period. Furthermore, the claimant's symptoms in October 2002 were largely the same as they were prior to the accident and as in October 2002 Dr. Ward recommended the claimant have injections in order to stabilize and improve her muscles, indicating that her condition had not stabilized and that she had not exited her healing period.

I further find that the claimant's treatment by Dr. Ward shows that the claimant was receiving ongoing treatment for her condition and that it was not limited to treatment for pain. The claimant returned to work on August 19, 2002 but as of October 21, 2002 Dr. Ward indicated that the claimant was no longer able to work. Dr. Ward's treatment for the claimant included physical therapy and the medical reports indicate that the claimant's treatment consisted of exercise designed to increase her mobility, strength, and function, indicating that the treatment was likely designed to reduce the claimant's muscle weakness and associated muscle spasms in addition to reducing her pain level. As such, I find that the claimant should be entitled to receive temporary total disability benefits for the entire time period in question.

For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner