

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305637

SANDRA F. WOOTEN  
EMPLOYEE

CLAIMANT

CENTRAL MOLONEY, INC.,  
EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 7, 2005

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

Claimant appears pro se.

Respondents represented by the HONORABLE MICHAEL J. DENNIS,  
Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed January 27, 2005. The administrative law  
judge found that the claimant proved she was entitled to  
"additional medical benefits at respondents' expense."  
After reviewing the entire record *de novo*, the Full  
Commission reverses the opinion of the administrative law  
judge. We find that the claimant was granted her one-time

change of physician, and that the claimant did not prove that additional medical treatment after her change of physician was reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties stipulated that there was a "compensable injury of May 6, 2002, while claimant was in the employment of respondent." Dr. Michael M. Moore reported on June 5, 2002:

Sandra Wooten was seen at the Arkansas Hand Center on 06/05/02 for follow-up evaluation of her right and left hands. She was evaluated by Dr. Reginald Rutherford. A nerve conduction and EMG study was consistent with a moderate to severe bilateral carpal tunnel syndrome. In addition, her clinical history and physical examination are consistent with stenosing tenosynovitis of the left thumb. A review of systems regarding the musculoskeletal system was otherwise unremarkable.

I discussed treatment options at length with Ms. Wooten. It was my opinion she would benefit from carpal tunnel surgery and a left thumb A1 pulley release....

Dr. Moore performed a "left thumb A1 pulley release" and "left carpal tunnel release" on July 11, 2002. Dr. Moore noted on July 23, 2002, "She has regained excellent motion in the left thumb. She reports the pain and numbness in her left hand have significantly improved." Dr. Moore

noted on September 9, 2002, "She reports the pain and numbness in her left hand have resolved. She has regained excellent motion in the thumb....Ms. Wooten will be scheduled to undergo a right carpal tunnel release....In regards to the left hand, she has reached her maximum medical improvement. Her physical examination and objective studies do not suggest an impairment of the left hand or arm."

Dr. Moore performed a "right carpal tunnel release" on October 24, 2002. Dr. Moore noted on November 4, 2002, "She reports the pain and numbness in her right hand have significantly improved." Dr. Moore noted on December 12, 2002, "She reports the pain and numbness in her right hand have significantly improved....I anticipate she will reach her maximum medical improvement in 6 weeks."

Dr. Moore performed a "right thumb A1 pulley release" on April 30, 2003. Dr. Moore noted on July 24, 2003, "She has regained full motion in the right thumb. She does not report any pain in the right thumb or hand....Ms. Wooten has reached her maximum medical improvement. She can resume regular activities....Ms. Wooten does not have an impairment

of her right thumb following the surgery that was performed on 04/30/03."

Dr. Moore wrote to the respondent-carrier on October 7, 2003:

Sandra Wooten was seen at the Arkansas Hand Center on 10/07/03 for follow-up evaluation of her hands. She has worked at Central Maloney for approximately 20 years. She has been previously treated for bilateral carpal tunnel syndrome and stenosing tenosynovitis of the thumbs. On 07/11/02, she underwent a left carpal tunnel release and left thumb A1 pulley release. On 10/24/02, she underwent a right carpal tunnel release and on 04/30/03 a right thumb A1 pulley release. Following the surgeries, Ms. Wooten reports the pain in her hands significantly improved. She has resumed her regular work activities. She reports that she works in the hookup department, which apparently requires her to scrape wires. She describes using her hands and thumbs to grip and pull. Ms. Wooten has developed pain over the volar aspect of both thumbs. The symptoms in the left thumb are more severe than the right and are aggravated with work activities. Her thumb symptoms are relieved with rest. She does not experience locking in the thumbs or numbness in the fingers of either hand. The review of systems regarding the musculoskeletal system was otherwise unremarkable.

Ms. Wooten's physical examination reveals tenderness over the volar aspects of both thumbs. There is no evidence of significantly swelling, inflammation, erythema, or edema.

X-rays, including AP and lateral of the thumbs, were ordered and did not reveal any evidence of degenerative changes.

It is my opinion the majority of Ms. Wooten's symptoms are related to overuse syndrome and/or mild inflammation in the thumbs. The type of work activities as described by Ms. Wooten could aggravate or precipitate her bilateral thumb symptoms.

I had a long discussion with Ms. Wooten regarding treatment options. It is my opinion the most appropriate treatment option would be a job transfer. If possible, I would recommend that she be transferred to the decal or finishing department. She reported that these work areas require less pinching and use of the thumbs. If Ms. Wooten could transfer to a job that required less pinching and gripping using her thumbs, I suspect her symptoms would eventually resolve. In addition, Ms. Wooten will continue to take anti-inflammatory medication as needed. Any consideration she could be given regarding a job transfer would be appreciated. She was advised to return to the office if she has any problems in the future. She understands and agrees with the treatment plan as outlined and all questions were answered.

The parties stipulated that "medical and indemnity benefits have been paid." The claimant testified that the respondent-carrier paid for all of Dr. Moore's charges.

A Change of Physician Order was entered on December 19, 2003, stating, "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Sandra Wooten to change from Dr. Michael Moore to Dr. David Rhodes".

Dr. David M. Rhodes wrote on January 29, 2004:

Ms. Wooten was referred to us as a consult from Dr. Nancy Williams....

The patient is a 55 year old right hand dominant female, who states that on 5/6/02 she underwent bilateral carpal tunnel release and subsequently trigger thumb release. She states that this improved her numbness but she has had pain in this area since. She states the pain is a dull pain that is exacerbated with range of motion. She denies any specific traumatic event....

RIGHT UPPER EXTREMITY: There is a well-healed incision on the volar aspect of the right wrist and in the volar right thumb. Non-tender over the A1 pulley of the thumb. No triggering present. Sensation intact in radial, ulnar and median nerve distribution. Thumb opposition and extension intact. Digit abduction/adduction intact....

LEFT UPPER EXTREMITY: There is a well-healed scar over the volar wrist and volar left thumb. Sensation intact in radial, ulnar and median nerve distribution. No triggering present in the thumb. Digit abduction/adduction intact. Full range of motion of the shoulder, elbow and wrist.

X-RAYS: 2 views of the right wrist are unremarkable.

ASSESSMENT:

1. Rule out fibromyalgia bilateral upper extremities.

PLAN:

1. I do not see any recurrence of her stenosing tenosynovitis bilaterally or her carpal tunnel syndrome. Patient has vague pains in bilateral upper extremities that may be consistent with fibromyalgia. I do not think that this is sequela or complications from any of her surgeries I recommend that she follow-up with a rheumatologist to rule out fibromyalgia. I do not think that this is work-related since she no longer has symptoms of carpal tunnel syndrome or trigger

finger. She may return to her previous work status.

The claimant testified that Dr. Rhodes "didn't treat me....And he's got on here, on this letter here that he had examined me. No nerve, did not do a nerve study. X-rayed only one hand before he sent me out. And that was the end of the examination."

A pre-hearing order was filed on August 23, 2004. The claimant contended that she was entitled to "an independent medical examination as the doctor to whom she was granted the one-time change of physician refused to examine her." The respondents contended that they were an employer "contracted with a managed care organization; that Ark. Code Ann. §11-9-514(3)(A)(ii) allows an employee to petition the Commission one time only for a change of physician; that Ark. Code Ann. §11-9-514(b) states that any treatment or services furnished or prescribed to by a physician other than the one selected according to the foregoing, except emergency treatment, shall be at the claimant's expense. The respondents contend that based on the foregoing, the claimant is not entitled to an independent medical examination at respondents' expense."

The parties agreed to litigate the following issue:  
"Whether the claimant can petition the Commission for another change of physician after she has already received a one-time change of physician."

On September 9, 2004, the claimant presented to Dr. Willis Courtney at Arkansas Neurology & Epilepsy Diagnostic Testing Center, P.A. Dr. Courtney's impression was "bilateral hand pain and soreness," and he planned additional diagnostic testing. The claimant followed up with Dr. Courtney on September 21, 2004:

The patient was initially evaluated by me on 9/9/04 secondary to complaint of bilateral hand pain and soreness. The patient reported a history of carpal tunnel syndrome in the past, status post carpal tunnel release one or two years ago, but stated that the pain has increased in severity over the past few months. During the patient's initial visit, she was scheduled for metabolic lab and NCV of the upper extremities. NCV study revealed bilateral carpal tunnel syndrome, right side greater than left. Her metabolic lab revealed an elevated bilateral carpal tunnel syndrome, right side greater than left. Her metabolic lab revealed an elevated Hemoglobin A1-C and elevated glucose. The patient was informed of her test results and I recommended that the patient see an orthopedic surgeon for her bilateral carpal tunnel syndrome and that she follow up with Dr. Nancy Williams regarding her elevated Hemoglobin A1-C and mildly elevated serum glucose. She voiced understanding and agreed with this plan.

Dr. Courtney referred the claimant to Dr. John Lytle for an orthopedic evaluation.

After a hearing, the administrative law judge found, "1. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical benefits at respondents' expense. 2. The issue of impairment rating is held in abeyance." The administrative law judge directed the respondents to provide reasonably necessary medical treatment, "to include the medical expenses claimant incurred from Dr. Willis Courtney." The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-514(a)(3)(A) provides:

(ii) Where the employer has contracted with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician to a physician who must either be associated with the managed care entity chosen by the employer or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury but only if the primary care physician agrees to refer the employee to the managed care entity chosen by the employer for any specialized treatment, including physical therapy, and only if the

primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care entity chosen by the employer.

The statute explicitly provides that the claimant-employee has an absolute right to a one-time change of physician. Collins v. Lennox Indus., Inc., 77 Ark. App. 303, 120 S.W.3d 153 (2003). The respondent-employer must pay for at least an initial visit to the new physician in order to fulfill the respondents' obligation to provide reasonably necessary medical treatment pursuant to Ark. Code Ann. §11-9-508(a). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003).

The Full Commission in the present matter reverses the administrative law judge's finding that the claimant proved she was entitled to additional medical treatment at the respondents' expense. Following her compensable injury, the claimant received authorized medical treatment from Dr. Moore. Dr. Moore performed a left thumb A1 pulley release and left carpal tunnel release in July 2002. Dr. Moore pronounced maximum medical improvement on the left on July 23, 2002. Dr. Moore performed a right carpal tunnel release in October 2002 and a right A1 pulley release in April 2003.

Dr. Moore pronounced maximum medical improvement on the right on July 24, 2003. Dr. Moore noted on October 7, 2003 that the claimant had resumed her regular work activities. Dr. Moore's physical examination of the claimant showed no evidence of significant swelling, inflammation, erythema, or edema. Although Dr. Moore recommended a job transfer, he did not recommend additional medical treatment other than continued use of anti-inflammatory medication. Dr. Moore advised the claimant that she could return to him for additional treatment if she experienced additional problems.

Rather than continue to treat with Dr. Moore, the claimant obtained a Change of Physician Order from the Commission, granting the claimant a change of physician to Dr. Rhodes. The record demonstrates that Dr. Rhodes conducted a thorough physical examination of the claimant. Whether or not Dr. Rhodes correctly characterized Dr. Nancy Williams as a referring physician does not alter the fact that Dr. Rhodes was the claimant's new "authorized physician" pursuant to the Change of Physician Order sought by the claimant from the Commission. Nor does the circumstance of whether or not Dr. Williams also referred

the claimant to Dr. Rhodes affect the weight the Commission ultimately places on Dr. Rhodes' findings.

Dr. Rhodes opined that the claimant had fibromyalgia but stated, "I do not see any recurrence of her stenosing tenosynovitis bilaterally or her carpal tunnel syndrome. Patient has vague pains in bilateral upper extremities that may be consistent with fibromyalgia. I do not think that this is sequela or complications from any of her surgeries." Dr. Rhodes recommended "that she follow-up with a rheumatologist to rule out fibromyalgia. I do not think that this is work-related since she no longer has symptoms of carpal tunnel syndrome or trigger finger. She may return to her previous work status." Dr. Rhodes did not recommend additional medical treatment. The claimant subsequently sought treatment on her own from Dr. Courtney, but the Full Commission finds that this treatment was unauthorized pursuant to Ark. Code Ann. §11-9-514(b). Nor did the claimant prove by a preponderance of the evidence that the treatment recommendations and referrals of Dr. Courtney were reasonably necessary in connection with the claimant's injury pursuant to Ark. Code Ann. §11-9-508(a).

Based on our *de novo* review of the entire record, therefore, the Full Commission reverses the administrative law judge's finding that the claimant proved that she was entitled to additional medical benefits at the respondents' expense. This claim is denied and dismissed.

\_\_\_IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**Dissenting Opinion**

I respectfully dissent from the majority opinion finding that the Claimant was granted her one-time change of physician, and that she did not prove that additional medical treatment after her change of physician was reasonably necessary in connection with her compensable injury. I find that the cost of Claimant's Independent Medical Examination (IME) with Dr. Willis Courtney, should be borne by Respondent

since the doctor to whom she was granted the one-time change of physician, Dr. David Rhodes, refused to examine her. Based on Dr. Rhodes refusal to examine Claimant, I find that her medical treatment was controverted and the change of physician rules therefore did not apply. Accordingly, I find that Claimant is entitled to reasonably necessary medical treatment based on the objective medical findings in Dr. Courtney's report.

Claimant received her statutory one-time change of physician on December 19, 2003. The Order referred the Claimant to Dr. David Rhodes. The Claimant credibly testified that Dr. Rhodes would not treat her because he said it was a "conflict of interest." During her appointment with Dr. Rhodes, Claimant testified that he only x-rayed her right hand, even though she had previously been diagnosed with bilateral carpal tunnel syndrome. For reasons that are not clear from the record, Dr. Rhodes refused to treat the Claimant and referred her back to her primary care physician, Dr. Nancy Williams. Dr. Williams then referred the Claimant to Dr. Courtney. Dr. Courtney's evaluation of the Claimant on September 9, 2004 revealed "bilateral carpal tunnel syndrome, right side greater than left." He recommended that Claimant

see an orthopedic surgeon, Dr. John Lytle and follow up with Dr. Nancy Williams. Claimant did not go to her appointment with Dr. Lytle because Respondent refused to pay for any additional treatment and she did not want to incur further expenses prior to her hearing. Once a claim has been controverted, the change of physician rules become non-applicable. Sanyo Mfg. Corp. v. Farrell, 16 Ark. App. 59; 696 S.W.2d 779 (1985).

Alternatively, the fact that Claimant received her statutory one-time change of physician is a moot point, since she was referred by Dr. Nancy Williams to Dr. Courtney. Dr. Williams was an authorized treating physician to whom Claimant was referred by Dr. Rhodes after he refused to treat her. Under Ark. Code Ann. § 11-9-514(b), routine treatment by a physician other than the claimant's authorized treating physician shall be at the claimant's expense. However, this section is inapplicable if the authorized treating physician refers the claimant to another doctor for examination or treatment. Electro-Air v. Villines, 16 Ark. App. 102, 697 S.W.2d 932 (1985).

Based on the foregoing, I would affirm the Administrative Law Judge and award Claimant the reasonably

necessary medical treatment, including the expenses she incurred from her visit with Dr. Courtney, to which she is entitled.

SHELBY W. TURNER, Commissioner