

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010134

ERMA J. WYNN, EMPLOYEE	CLAIMANT
FAIRFIELD COMMUNITIES, INC., EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED AUGUST 15, 2006

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE MICHAEL MAYTON, 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 June 29, 2005.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On January 31, 2000, the claimant sustained a compensable injury to her right upper extremity which arose out of and during the course of her employment

with Fairfield Communities, Inc., at which time she earned sufficient wages to entitle her to compensation rates of \$247.00 per week for temporary total disability and \$185.00 per week for permanent partial disability.

3. The claimant's healing period ended on or before June 29, 2000.

4. The claimant was paid temporary total disability benefits for appropriate dates that she was required to miss work; however, respondents have underpaid the claimant \$7.00 per week during the period of her total disability.

5. The claimant sustained a seven percent (7%) impairment rating to the right upper extremity as assigned by Dr. Berry Thompson, and subsequently confirmed by Dr. G. Thomas Frazier. Respondents accepted and paid a seven percent (7%) impairment to the right upper extremity below the elbow, rather than the appropriate rating of seven percent (7%) to the entire, right upper extremity. Accordingly, the claimant has proven, by a preponderance of the credible evidence, that she is entitled to an additional 4.2 weeks of permanent disability at the rate of \$185.00 per week, as well as an additional \$5.00 per week, representing the underpayment in the permanent partial disability rate.

6. The claimant has failed to prove that she sustained any additional injuries on January 31, 2000, beyond the admitted injury to her right elbow.

7. The claimant has failed to prove, by a preponderance of the credible evidence, that additional medical treatment is reasonably necessary.

8. Respondents have controverted all benefits beyond those previously paid.

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 concurs and dissents.

CONCURRING AND DISSENTING OPINION

_____Based upon my de novo review of the record, I respectfully concur, in part, and dissent, in part, from the Majority's decision affirming and adopting the Administrative Law Judge's June 29, 2005 opinion. Specifically, I concur with the awarding of the adjusted TTD/PPD rates. I, also, agree with the awarding of the impairment rating to the entire upper extremity as assigned by Dr. Berry Thompson. I dissent without opinion from the Administrative Law Judge's, and now the Majority's, decision that claimant has failed to prove that she sustained any

additional injuries on January 31, 2000, beyond the admitted injury to her right elbow. In my opinion, claimant has met her burden of proving that additional medical treatment for her right elbow is reasonable and necessary, and I respectfully dissent in that regard.

_____The claimant is sixty-three (63) years old. She graduated from high school and has also completed some college courses. In addition, the claimant has vocational training, specifically, secretarial training at Capital City Business College. The claimant sustained an admitted, compensable injury on January 31, 2000, when she slipped on some ice and fell on her right side, sustaining a traumatic injury to her right elbow. The claimant was initially examined and evaluated by Dr. Leibovich, at which time she was diagnosed with a dislocated right elbow. She was treated with manipulated reduction and was placed in a sling. She was then referred to Dr. S. Berry Thompson.

_____Claimant was first seen by Dr. Thompson on February 3, 2000, at which time she was placed in a whole arm splint. Dr. Thompson's report from this date states:

X-rays from Baptist reveal a posterior dislocation of the right elbow. There are two small flex (sic) of bone, one posteriorly and one anteriorly. The closed reduction maneuver was performed and then post reduction x-rays do confirm the presence of reduction of the dislocation. The one anterior fracture fragment is still visible anteriorly and somewhat proximal.

_____ Claimant was next seen by Dr. Thompson on February 10, 2000. At that time he removed the splint but kept her arm in a sling and set the claimant up with physical therapy. X-rays taken on that date show "maintenance of the reduced position of the elbow joint. The small flecks of bone noted on her initial films are still present."

_____ On February 24, 2000, Dr. Thompson noted with regard to the bone fragments: "She has not at this point developed any additional heterotopic bone other than for the small fragments of bone which have been noted initially." He recommended further physical therapy for claimant and noted that x-rays would not be needed on her return.

_____The claimant continued with physical therapy until May 18, 2000, at which time Dr. Thompson continued her with a home exercise program to be checked by a therapist once weekly. X-rays were taken on this date that showed "small areas of heterotopic bone about the elbow, but these have not changed and do not appear to be progressing."

_____Dr. Thompson opined that claimant had reached maximum medical improvement on June 29, 2000. Claimant was assigned an impairment rating of seven percent (7%) based on Figure 32, page 3-40 of the AMA Guides to the Evaluation of Permanent Impairment (4th ed. 1993). Repeat x-rays were not taken on this date.

_____Claimant requested a change of physician to Dr. David M. Rhodes. Claimant was seen by Dr. Rhodes on March 19, 2001. X-rays taken on this date showed "minimal joint narrowing with osteophyte at the ulnotrochlear joint." Dr. Rhodes prescribed physical therapy. There were apparently some problems with approval of the physical therapy and claimant did not begin receiving physical therapy until April 20, 2001. Claimant was released on an

as-needed basis by Dr. Rhodes on June 25, 2001. There is no indication in the record of any x-rays being taken of the elbow after March 19, 2001.

_____ Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury. Medical treatment which is required to stabilize and

maintain an injured worker's status remains the responsibility of the employer. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

_____ Claimant is still experiencing pain and having difficulties with her elbow and is requesting that she be allowed at least a follow-up exam from Dr. Rhodes. Claimant testified at the hearing as to her condition.

- Q. Has your condition remained the same, gotten worse, or better?
- A. It's about - - it's about - - it's about the same. It sometimes is okay, but then, again, I can hardly use it. My elbow will give out. Like I'll be putting some clothes in the bags at Dillard's, and I have problem getting them in there, bagging it. And then, again, it's fine. Okay? It just kind of goes and comes. I have some, you know, good days, and then I have some bad days.

The claimant has been diagnosed with heterotopic bone about the elbow. According to Dorland's Illustrated Medical Dictionary heterotopic means "occurring at an abnormal place or upon the wrong part of the body". In 2000, Dr. Thompson

makes a comment that the heterotopic bone does not appear to be progressing. If the heterotopic bone was not progressing at that time, it seems to mean that it could progress at sometime in the future.

_____The Administrative Law Judge made the following comment from the bench at the hearing:

. . . the only other benefit that your entitled to is perhaps follow-up evaluations of your elbow and you have proved that those were reasonably necessary.

In my opinion, the Administrative Law Judge's statement from the bench is correct. Claimant had a serious fall onto ice causing significant damage to her elbow. Claimant is still having problems with her elbow. In my opinion, claimant has shown that the medical treatment she is requesting is reasonable and necessary.

For the foregoing reasons, I concur, in part, and dissent, in part, from the Majority's decision. Specifically, I concur with the awarding of the adjusted TTD/PPD rates. I, also, concur with the awarding of the

impairment rating to the entire upper extremity as assigned by Dr. Berry Thompson. I, respectfully, dissent without opinion from the Majority's decision that claimant has failed to prove that she sustained any additional injuries on January 31, 2000, beyond the admitted injury to her right elbow. In my opinion, claimant has met her burden of proving that additional medical treatment for her right elbow is reasonable and necessary; therefore, I, respectfully, dissent from the Majority's decision in that regard.

SHELBY W. TURNER, Commissioner