

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313025

SHARON HALL,
EMPLOYEE

CLAIMANT

WHITE RODGERS DIVISION/
EMERSON ELECTRIC,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 17, 2009

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

Claimant represented by the HONORABLE KRISTOFER E.
RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE BILL H.
WALMSLEY, Attorney at Law, Batesville, Arkansas.

Decision of Administrative Law Judge: Affirmed as
modified.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed July 21, 2009. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including January 10, 2003.

3. The claimant sustained a carpal tunnel injury to her right upper extremity on January 10, 2003, which is a scheduled injury.
4. The claimant's average weekly wage at the time of her injury was \$357.42, which entitles her to a temporary total disability rate of \$238.00 and a permanent partial disability rate of \$179.00.
5. The respondents have paid \$11,628.00 in indemnity benefits, and \$12,437.05 in medical benefits.
6. Respondents have controverted claimant's entitlement to additional benefits.
7. The claimant's treating physicians include, but are not limited to Drs. Safman, Allen, Moore, Rutherford, Schlesinger, and Wilbourn.
8. This claim for an injury to the claimant's right elbow is barred by the statute of limitations.
9. The treatment rendered by Dr. Frazier was based on a valid referral, and therefore authorized.
10. The claimant proved by a preponderance of the evidence that the treatment received from Drs. Roulier, Frazier, and Allen was reasonably necessary and causally connected to her right wrist injury of January 10, 2003. To the extent that Drs. Roulier, Frazier, and Allen provided treatment for the claimant's general health and non-compensable right elbow problems, finding number 10 is hereby modified to find that only treatment by these physicians for the claimant's compensable right wrist injury is reasonable and necessary medical treatment for which the respondents are liable.
11. The claimant also proved her entitlement to future medical treatment for her right wrist injury, including the removal of the ganglion cyst by Dr. Frazier.

12. The treatment provided by Dr. Taylor and Dr. Brown was not authorized and not the responsibility of the respondents. Said treatment shall be at the claimant's expense. Ark. Code Ann. § 11-9-514(b).

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

We therefore affirm the July 21, 2009 decision 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 on appeal.

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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING DISSENTING OPINION

I concur with the majority decision to affirm and adopt as modified the decision of the Administrative Law Judge. Specifically, I concur with the finding that respondents are not liable for treatment provided by Drs. Roulier, Frazier, and Allen to the extent such treatment was for the claimant's general health and non-compensable right elbow problems. However, I must respectfully dissent from the finding that continued treatment for the claimant's ganglion cyst is reasonable

and necessary in connection with the claimant's compensable right wrist injury. The claimant had a pre-existing condition of a ganglion cyst which was first surgically removed in 1999, more than three years prior to her compensable injury. The cyst recurred within three months of this removal surgery. It was again removed after the claimant developed her compensable carpal tunnel syndrome and underwent the carpal tunnel release surgery. As her physician's expected, this cyst again recurred within three months of the surgery to remove it.

Employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of employees' injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant has the burden of proving by a preponderance of the credible evidence that medical treatment is reasonable and necessary. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion, Feb. 17, 1989 (D612291); B.R. Hollingshead v. Colson Caster, Full Commission Opinion, Aug. 27, 1993 (D703346). Kuhn v. Majestic Hotel, 50 Ark. App. 23, 899 S.W.2d 845 (1995); Bartlett v. Mead Container Board, 47 Ark. App. 181, 888 S.W.2d 314 (1994). 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 Commission Opinion, Dec. 13, 1989 (D512553). In the present case, claimant's ganglion cyst has never been shown to be causally related to her compensable injury. This is clearly a pre-existing condition that has been removed more than once and continues to return. No physician has ever stated that the ganglion cyst is in any way related to the claimant's compensable injury. Thus, the condition sought to be remedied is not compensable nor has it been shown to have a causal connection to the claimant's compensable injury. Accordingly, it is improper to award medical treatment for a non-compensable condition. Williams v. L&W Janitorial, Inc., 85 Ark.App. 1, 145 S.W.3d 383 (2004). Therefore, I must respectfully dissent from this finding.

KAREN H. MCKINNEY, COMMISSIONER